

**United States Department of Labor
Employees' Compensation Appeals Board**

W.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION
MEDICAL CENTER, Durham, NC, Employer**

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**Docket No. 14-1811
Issued: December 16, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2014 appellant, through counsel, filed a timely appeal from a July 23, 2014 Office of Workers' Compensation Programs' (OWCP) decision denying his claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his lower back condition is causally related to an April 17, 2013 employment incident, as alleged.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 22, 2013 appellant, then a 39-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back and left and right side on April 17, 2013 as a result of turning a patient in bed while trying to change him and moving the bed over a cord on the floor.

In an April 26, 2013 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated May 8, 2013 and physical therapy notes dated May 7 through 22, 2013.

In a March 12, 2013 report, Dr. Sabana Pathan, a family medicine specialist, indicated that appellant's condition was likely to flare up once a week if he continued doing heavy lifting, pulling, pushing, or transferring loads greater than 30 pounds. On May 21, 2013 she indicated that he initially presented with ongoing back pain on January 9, 2013 and reported having ongoing lower back discomfort that would get worse with activities such as heavy lifting, carrying, and transferring patients. Dr. Pathan stated that it was "unclear if [appellant] may have aggravated an old injury or sustained a new injury based on the physical demands that his work requires."

A March 28, 2013 magnetic resonance imaging (MRI) scan of the lumbar spine revealed central disc protrusion at L3-5 and diffuses protruding disc material and spur at L5-S1.

In an April 18, 2013 report, Dr. Hope Hall-Wilson, a Board-certified family practitioner, indicated that appellant had "a long history of back pain that ha[d] flared over the past few days." She took him off work and released him to light duty effective April 20, 2013 with restrictions of no lifting over 10 pounds until cleared by a spinal specialist.

On April 26, 2013 Dr. Christopher Brown, an orthopedic surgeon, stated that appellant complained of back and buttock pain, which was aggravated by activity and helped by rest. He indicated that appellant's pain was interfering with his ability to do his job as a medical assistant.

By decision dated June 3, 2013, OWCP denied the claim finding that appellant failed to establish fact of injury.

On June 25, 2013 appellant, through counsel, requested an oral hearing before an OWCP hearing representative and submitted physical therapy notes dated June 4, 2013.

In a June 5, 2013 report, Dr. Anand Joshi, a Board-certified physiatrist, diagnosed bilateral L4-5 and L5-S1 foraminal and lateral recess stenosis due to L4-5 and L5-S1 disc bulge and bilateral facet arthropathy. He indicated that appellant's bilateral low back pain began on April 17, 2013 while performing his job duties as a nursing assistant while transferring an overweight patient. Dr. Joshi reported that appellant suddenly felt a sharp pull in his back and since then his preexisting back pain had been worse. He indicated that appellant's pain in the lower back on the right side radiated to the right hip and worsened with extension. Dr. Joshi released appellant to light-duty work effective June 17, 2013 with restrictions on lifting, pushing,

and pulling up to 10 pounds. On July 1, 2013 he reiterated his diagnosis and indicated that appellant continued to have low back pain in the midline.

A telephonic hearing was held before the hearing representative on November 25, 2013.

Appellant submitted reports dated January 9 through March 26, 2013 from Dr. Pathan, who indicated that appellant had a history of hypertension and lower back pain.

On April 18, 2013 Dr. Hall-Wilson indicated that appellant was seen for back spasms and diagnosed chronic back pain. She indicated that he did a lot of heavy lifting and moving of patients at his job and had to leave work on April 17, 2013 due to an acute flare of back pain.

In a November 25, 2013 report, Dr. Joshi advised that, due to his April 17, 2013 injury, appellant was restricted to lifting, pushing, and pulling up to 10 pounds, with no frequent bending at the waist until January 2, 2014.

By decision dated January 13, 2014, the hearing representative affirmed, as modified, the June 3, 2013 decision finding that appellant established fact of injury, but the medical evidence was not sufficient to establish a causal relationship between his lower back condition and the April 17, 2013 employment incident.

On June 19, 2014 appellant, through counsel, requested reconsideration and submitted progress notes dated August 19 and October 15, 2013 from Dr. Joshi, who indicated that appellant continued to experience lower back pain.

In a June 10, 2014 report, Dr. Pathan reiterated appellant's medical history and diagnosed spinal stenosis, lumbar region, without neurogenic claudication.

By decision dated July 23, 2014, OWCP denied modification of the January 13, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury³ was sustained in the performance of duty, as alleged,

² *Id.* at § 8101 *et seq.*

³ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

OWCP has accepted that the employment incident of April 17, 2013 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s lower back condition resulted from the April 17, 2013 employment incident. The Board finds that he did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In his reports, Dr. Joshi diagnosed bilateral L4-5 and L5-S1 foraminal and lateral recess stenosis due to L4-5 and L5-S1 disc bulge and bilateral facet arthropathy. He indicated that appellant’s bilateral low back pain began on April 17, 2013 while performing his job duties as a nursing assistant while transferring an overweight patient. Dr. Joshi reported that appellant suddenly felt a sharp pull in his back and since then his preexisting back pain had been worse. He indicated that appellant’s pain in the lower back on the right side radiated to the right hip and worsened with extension. On July 1, 2013 Dr. Joshi reiterated his diagnosis and indicated that appellant continued to have low back pain in the midline. In a November 25, 2013 report, he advised that, due to appellant’s April 17, 2013 injury, appellant was restricted to lifting, pushing, and pulling up to 10 pounds, with no frequent bending at the waist until January 2, 2014. Dr. Joshi failed to provide a rationalized opinion explaining how turning a patient in bed while trying to change him and moving the bed over a cord in the floor at work on April 17, 2013 caused or aggravated appellant’s lower back condition. He noted that appellant’s condition

⁴ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed condition.⁷ Thus, the Board finds that the reports from Dr. Joshi are insufficient to establish that appellant sustained an employment-related injury.

In reports dated April 18, 2013, Dr. Hall-Wilson indicated that appellant was seen for back spasms and diagnosed chronic back pain. She reported that he did a lot of heavy lifting and moving of patients at his job and had to leave work on April 17, 2013 due to an acute flare of back pain. Dr. Hall-Wilson took appellant off work and released him to light-duty effective April 20, 2013 with restrictions of no lifting over 10 pounds until cleared by a spinal specialist. The Board finds that she did not provide sufficient medical rationale explaining how appellant's lower back condition was caused or aggravated by turning a patient at work on April 17, 2013. Thus, appellant failed to meet his burden to establish a claim.

In her reports, Dr. Pathan diagnosed spinal stenosis, in the lumbar region, without neurogenic claudication and indicated that appellant had a history of hypertension and lower back pain. On May 21, 2013 she indicated that he initially presented with ongoing back pain on January 9, 2013 and reported having ongoing lower back discomfort that would get worse with activities such as heavy lifting, carrying, and transferring patients. Dr. Pathan indicated that appellant's condition was likely to flare-up once a week if he continued doing heavy lifting, pulling, pushing, or transferring loads greater than 30 pounds. She stated that it was "unclear if he may have aggravated an old injury or sustained a new injury based on the physical demands that his work requires." As Dr. Pathan's opinion was equivocal in that the nature of the injury was unclear, it was insufficient to meet appellant's burden of proof.

On April 26, 2013 Dr. Brown indicated that appellant complained of back and buttock pain, which was aggravated by activity and interfering with his ability to do his job as a medical assistant. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Thus, appellant has not met his burden of proof with this submission.

The March 28, 2013 MRI scan and physical therapy notes dated May 7 through June 4, 2013 do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to his employment.⁹

As appellant has not submitted sufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to an April 17, 2013 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

⁷ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

On appeal, counsel contends that OWCP's decision is contrary to fact and law. Based on the findings and reasons stated above, the Board finds his arguments are not substantiated.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his lower back condition is causally related to an April 17, 2013 employment incident, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board