United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
	)	**Docket No. 13-2119**
and	)	**Issued: February 21, 2014**
	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, North Syracuse, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 16, 2013 appellant filed a timely appeal from the March 21 and June 24, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (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 he sustained a back injury on January 3, 2013 while in the performance of duty.

On appeal, appellant contends that he sustained a work-related back injury based on his physician's diagnosis of back strain.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 3, 2013 appellant, then a 62-year-old transportation security officer, filed a traumatic injury claim alleging that he sustained a lower back strain at work on that date. He bent over while performing a physical pat down of a passenger and when he stood up, he felt a pop in his back that radiated from his legs. Appellant stopped work.

A January 3, 2013 report from an urgent care facility contained a partially illegible signature of a registered nurse with the last name of Woodruff. It provided a history of the January 3, 2013 incident, findings on physical examination and diagnosed back pain.

In a January 7, 2013 medical report, Dr. Mark W. McSwain, an attending Board-certified internist, obtained a history of the January 3, 2013 incident and appellant's medical, family and social background. He listed findings on physical examination and advised that appellant had acute onset of severe lower back pain that occurred at work. The pain was nonradiating and nonradicular and sounded muscular in etiology. It was worse when appellant tried to stand straight or rise from sitting. Dr. McSwain placed him off work for one week, listed his physical restrictions and addressed his treatment plan. In a January 18, 2013 form report, he indicated with an affirmative mark that appellant's back pain was caused by the January 3, 2013 incident. Dr. McSwain advised that he could return to work on January 18, 2013 without limitations.[2]

By letter dated February 7, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit additional factual and medical evidence, including a rationalized medical opinion from an attending physician which provided dates of examination and treatment, a complete and accurate history and date of injury, a history of all prior industrial and nonindustrial conditions, a detailed description of findings and test results and a firm medical diagnosis. OWCP also requested a well-reasoned medical opinion explaining how the claimed January 3, 2013 work incident caused or aggravated the claimed back condition.

Treatment notes cosigned by a physical therapist and a physician whose signature is illegible addressed the treatment of appellant's lower back pain on January 10 and 11, 2013.

On February 19, 2013 appellant stated that the immediate effects of his injury included trouble standing, walking and sitting. He immediately reported his injury to his supervisor and sought medical treatment.

An incident investigative report described what happened on January 3, 2013. Appellant injured his back while bending to pat down a passenger.

In a September 12, 2011 report, Dr. McSwain noted that appellant had reinjured his back. He obtained a medical history that included chronic back pain and disc surgery performed eight years ago. Dr. McSwain also listed appellant's social and family background. He listed essentially normal findings on physical examination. In a February 18, 2013 attending physician's report (Form CA-20), Dr. McSwain obtained a history of the January 3, 2013

[2] On February 12, 2013 OWCP was advised that appellant returned to work on January 18, 2013.

incident. He diagnosed muscular low back pain and indicated with a check mark that the diagnosed condition was caused or aggravated by an employment activity.

A January 3, 2013 report from the urgent care group contained a provider's illegible signature. It provided a diagnosis of back pain and stated that appellant could not return to work for five days.

In a March 21, 2013 decision, OWCP accepted that the January 3, 2013 incident occurred as alleged. It denied appellant's claim, however, finding that he failed to submit sufficient medical evidence to establish that he sustained a back injury causally related to the accepted employment incident.

By letter dated April 1, 2013, appellant requested reconsideration.

In a February 13, 2013 Form CA-20, Dr. McSwain reiterated the diagnosis of muscular low back pain and lumbar strain. He indicated with an affirmative mark that the diagnosed conditions were caused or aggravated by the January 3, 2013 employment incident. Dr. McSwain stated that appellant's conditions were clearly work related as appellant had no pain until screening a passenger.

In a June 24, 2013 decision, OWCP denied modification of its prior decision. It found that appellant failed to submit rationalized medical evidence to establish that he sustained a back injury causally related to the January 3, 2013 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[6] There are two components involved in establishing the fact of injury. 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.[7]

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

OWCP accepted that on January 3, 2013 appellant patted down a passenger at work in the performance of duty. It found that the medical evidence failed to establish that he sustained a back injury as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence demonstrating that he sustained a back condition causally related to the January 3, 2013 employment incident.

Dr. McSwain's February 13, 2013 CA-20 form report provided a check mark that appellant's low back pain and lumbar strain were caused or aggravated by the January 3, 2013 employment incident. His only rationale for causal relation was that appellant had no pain before the employment incident. The Board has held that an opinion, without supporting rationale, that a condition is causally related to an employment injury because the employee was asymptomatic before the incident is insufficient to support a causal relationship.[11] Dr. McSwain's January 18 and February 18, 2013 form reports also indicated with a check mark that appellant's back pain was caused or aggravated by the January 3, 2013 work incident. He failed to explain how the diagnosed lumbar strain was caused or aggravated by the accepted employment incident. The Board has held that a form report that addresses causal relationship with a check mark, without medical rationale explaining how the work conditions caused the alleged injury is insufficient to establish causal relationship.[12] Although Dr. McSwain generally supported causal relationship, he did not adequately explain the basis of his conclusion.[13] His September 12, 2011 report noted a prior history of chronic back pain and medical treatment that included disc surgery some eight years before the claimed incident. Dr. McSwain also listed findings on physical examination. He did not provide a fully-rationalized opinion based on a full or accurate history of appellant's lumbar treatment. For the stated reasons, the Board finds that Dr. McSwain's reports are of diminished probative value and do not establish appellant's claim.

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[11] *John F. Glynn*, 53 ECAB 562 (2002).

[12] *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[13] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

The reports from the urgent care group and treatment notes contained illegible signatures are insufficient to establish appellant's claim. Reports that are unsigned or bear illegible signatures, lack proper identification and cannot be considered probative medical evidence.[14] Additionally, the note signed by Nurse Woodruff is of no probative value as a nurse is not a physician as defined under FECA.[15] The Board finds that there is insufficient medical evidence of record to establish that appellant sustained a back injury causally related to the accepted January 3, 2013 employment incident.

On appeal, appellant contended that he sustained a work-related back injury based on his physician's diagnosis of lumbar strain. As stated, although Dr. McSwain diagnosed lumbar strain, he failed to provide a sufficiently rationalized medical opinion on the causal relationship between the back condition and the accepted January 3, 2013 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a back injury on January 3, 2013 while in the performance of duty.

[14] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[15] *See* 5 U.S.C. § 8101(2); *see also David P. Sawchuk*, 57 ECAB 316 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 24 and March 21, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 21, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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