

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

J.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE, KESSLER
AIR FORCE BASE, MS, Employer**

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**Docket No. 13-1668
Issued: January 6, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 5, 2013 appellant filed a timely appeal from a January 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established a lumbar injury causally related to a November 6, 2010 employment injury.

FACTUAL HISTORY

On March 7, 2011 appellant, then a 43-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right leg and foot injury in the performance of duty on November 6, 2010. He stated that "after running for about half of [a]

¹ 5 U.S.C. § 8101 *et seq.*

mile during physical training” he felt pain in his right leg and numbness in his right foot. A March 16, 2011 memorandum from the employing establishment advised that appellant was a civilian employee serving in a position that required an active reserve assignment and participation in military physical training. The employing establishment confirmed that the training on November 6, 2010 was conducted on the employing establishment premises.

Appellant received treatment for his right leg from Dr. Jeffrey Noblin, a Board-certified orthopedic surgeon. In a report dated February 15, 2011, Dr. Noblin diagnosed compartment syndrome. In a report dated March 2, 2011, he noted that appellant underwent right leg surgery, described as fascial release from the lateral and anterior compartment with neurolysis of superficial peroneal nerve.

On November 16, 2011 OWCP accepted the claim for right leg compartment syndrome. In a report dated December 27, 2011, Dr. Joe Chen, an anesthesiologist, noted that appellant received a lumbar epidural injection. By report dated January 17, 2012, Dr. Noblin reported that a magnetic resonance imaging scan revealed right-sided radiculopathy at L5-S1, and appellant was referred to a spine specialist.

In a report dated February 3, 2012, Dr. Charles Winters, a Board-certified orthopedic surgeon, listed a history that appellant had occasional back pain. He stated that following right leg treatment appellant tried to return to running but could not run. Dr. Winters diagnosed compartment syndrome, “radiculopathy lumbosacral radiculitis” and right foot pain. By report dated February 23, 2012, he stated that x-rays showed a narrowing of the L5-S1 disc. Appellant requested that the lumbar condition also be accepted.

By report dated March 12, 2012, Dr. Winters stated that he had been asked to determine if there was a relationship between the running injury and appellant’s low back condition. He opined that “when you have neuroforaminal narrowing, repetitive activity such as running, bending, jumping and lifting can aggravate the nerve because the neuroforamen is already tight. The additional movement in the area of a tight nerve can bruise the nerve or contuse it, even compress the nerve in such a way that it causes radicular pain.” Dr. Winters noted that appellant had right leg pain, some of which was related to his previous compartment syndrome problem but some of it may also be related to an aggravation of the neuroforaminal compression by running.

In a report dated July 23, 2012, Dr. Winters stated that appellant’s “pain is work related due to running with the compartment syndrome in his leg. I feel that his repetitive activity at work such as running, bending, jumping and lifting caused his initial leg pain. [Appellant] began having pain after running at work. He did not have an actual injury date but the pain was caused by his repetitive work with running, bending and jumping.” Dr. Winters stated that diagnosis radiculopathy lumbosacral radiculitis should be considered work related.

By decision dated September 10, 2012, OWCP denied appellant’s lumbar condition as a consequential injury.

Appellant requested a review of the written record by an OWCP hearing representative. He submitted a September 25, 2012 brief report from Dr. Winters, who stated that appellant’s

diagnoses were related to “his repetitive activities.” Dr. Winters included lumbar disc disease along with his previous diagnoses.

In a decision dated January 17, 2013, OWCP’s hearing representative affirmed the September 10, 2012 decision. He found that the medical evidence was not sufficient to establish a lumbar injury causally related to the November 6, 2010 work activity. The hearing representative noted that appellant could file an occupational disease or illness claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any specific condition for which compensation is claimed is causally related to the employment injury.³ The medical evidence necessary to establish a diagnosed condition is rationalized medical opinion on causal relation.

It is well established that rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and federal employment. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁴

ANALYSIS

Appellant sustained a traumatic injury while running in a training program on November 6, 2010. OWCP accepted right leg compartment syndrome. The issue is whether appellant also sustained a lumbar injury. It is his burden of proof to establish that a lumbar condition was employment related and the evidence must include a rationalized medical opinion.

The Board finds that the medical evidence of record does not meet appellant’s burden of proof. While Dr. Winters stated that the diagnoses of radiculopathy and lumber radiculitis were work related, he did not provide a rationalized medical opinion based on a complete and accurate factual and medical background. The traumatic injury claim was based on running on November 6, 2010, but he never provided a history that included a specific history of the accepted employment incident. None of Dr. Winters’ reports provide an adequate background for an opinion as to a lumbar condition causally related to the November 6, 2010 employment activity.

The primary lumbar diagnosis was a lumbosacral radiculitis, with the additional diagnosis of lumbar disc disease noted in a September 25, 2012 report. With respect to causal relationship, Dr. Winters referred generally to repetitive activity such as running, bending, jumping and lifting. He did not explain the nature or extent of such activities or provide other detail. In a

² *Id.* at §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

July 23, 2012 report, Dr. Winters stated that such repetitive activity was work activity, again without further explanation. The general reference to repetitive activities at work is of diminished probative value with respect to the issue of causal relation and the specific running activity on November 6, 2010. If appellant is claiming that repetitive work activity over more than one workday caused his lumbar condition, then an occupational disease or illness claim may be filed.⁵ As to his traumatic injury claim, the medical evidence does not provide an accurate factual background discussing the nature and extent of how running on November 6, 2010 caused or contributed to his low back condition.

In the July 23, 2012 report, Dr. Winters states that appellant had pain “due to running with the compartment syndrome in his leg.” He does not make it clear that appellant’s back condition was consequential injury from the accepted compartment syndrome. A consequential injury is an injury that is the direct and natural result of a compensable primary injury, without an independent intervening cause.⁶ To establish a consequential injury, Dr. Winters must provide a rationalized medical opinion on the issue.⁷ He did not provide an adequate medical opinion on the issue of causal relationship.

On appeal, appellant stated that after a recovery period of four months following his March 2, 2011 surgery, Dr. Noblin recommended that he resume an exercise routine. He stated that after resuming exercise, he felt his calf cramping, and pain in his low back. Appellant contends that these injuries are related to November 6, 2010. The issue presented is a medical issue that must be resolved by probative medical evidence. Dr. Winters must provide an accurate factual background that demonstrates an understanding of the November 6, 2010 employment activity and a rationalized opinion on causal relationship between a diagnosed back or calf condition and the employment activity or the accepted employment injury. Appellant also submitted a medical report, but the Board can review only evidence that was before OWCP at the time of the final decision on appeal.⁸ He 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 established a lumbar injury causally related to a November 6, 2010 employment injury.

⁵ 20 C.F.R. § 10.5(q) defines an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.

⁶ *Albert F. Ranieri*, 55 ECAB 598 (2004). See also A. Larson, *The Law of Workers’ Compensation* § 10.01 (November 2000).

⁷ *J.A.*, Docket No. 12-603 (issued October 10, 2012).

⁸ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 17, 2013 is affirmed.

Issued: January 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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