United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
	)	
and	)	**Docket No. 14-606**
	)	**Issued: June 24, 2014**
DEPARTMENT OF ENGRAVING, BUREAU OF PRINTING & ENGRAVING, Fort Worth, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2014 appellant filed a timely appeal of the December 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury claim on October 25, 2013.

FACTUAL HISTORY

On October 30, 2013 appellant then a 58-year-old lead police officer, filed a traumatic injury claim, Form CA-1, alleging that on October 25, 2013 he experienced right back and leg

[1] 5 U.S.C. §§ 8101-8193.

pain when entering and exiting a police patrol vehicle while wearing a newly required armored vest. He did not stop work.

Appellant submitted an October 30, 2013 note from an employing establishment registered nurse who treated him for right leg pain. He reported that on October 25, 2013 he was wearing a new armored vest weighing between 40 and 45 pounds and was driving a patrol car and while entering and exiting the car he pulled a muscle in his right leg. Appellant reported that, as the pain continued, he sought treatment from his physician on October 29, 2013. The nurse noted that appellant ambulated well with no limp or difficulty and diagnosed alteration in comfort with right leg pain.

Appellant submitted an October 30, 2013 report from Dr. Kenneth Baldwin, an osteopath, who treated him for a leg injury which occurred on October 24, 2013. He reported being issued an armored vest which he had trouble maneuvering and when entering his patrol car he felt a sharp pain in his right leg, lower back and S1 joint, which radiated into his buttocks. Dr. Baldwin noted decreased range of motion and pain of the lumbar spine with flexion, extension and side bending, negative straight leg testing, equal reflexes and intact sensory and motor examination. He diagnosed lumbosacral strain and returned appellant to light duty with no driving. In an October 30, 2013 work restriction evaluation and physician work activity status report, Dr. Baldwin diagnosed sacroiliac strain and returned appellant to work on October 30, 2013 to modified duty with restrictions of no driving a work vehicle. Appellant also submitted an information sheet for sacroiliac sprain syndrome. He submitted a November 3, 2013 statement from Corporal Jerry Smith who noted that the mandatory bullet proof vest was issued on October 18, 2013. Corporal Smith noted transporting appellant, who reported hurting his backside while entering and exiting the patrol vehicle while wearing the vest.

In a November 14, 2013 letter, OWCP advised appellant of the evidence needed to establish his claim, particularly that he submit a physician's reasoned opinion addressing the relationship of his claimed condition to specific employment factors.

Appellant submitted a November 20, 2013, progress note from Dr. Baldwin, who treated him for low back pain over the right S1 joint with radicular pain in the right buttocks to the knee. Dr. Baldwin noted findings on examination of decreased range of motion of the lumbar spine with pain on flexion and extension, negative straight leg raises, reflexes were equal and sensory examination was intact. He diagnosed lumbosacral strain and lumbar radiculopathy. Dr. Baldwin returned appellant to light duty and advised that he was unable to drive the company vehicle. In physician work activity status reports dated November 20 and December 4, 2013, he diagnosed sacroiliac strain, lumbar radiculopathy and lumbosacral sprain. Dr. Baldwin returned appellant to modified-duty work with restrictions of no driving the company vehicle. Appellant submitted a November 20, 2013 referral for physical therapy from Dr. Baldwin, who diagnosed lumbar radiculopathy, lumbosacral joint sprain and sacroiliac strain. In a December 4, 2013 progress report, Dr. Baldwin treated appellant for pain over the lumbar and S1 joint with radiation into the right knee and foot. He diagnosed lumbosacral sprain and lumbar radiculopathy and returned appellant to light duty noting that he could not drive a company vehicle.

In a November 21, 2013 statement, appellant noted that he experienced right back and leg pain while entering and exiting a police sedan while wearing the newly required armor vest. He reported first consulting with his physician on October 29, 2013 and reporting a work injury and subsequently being treated by Dr. Baldwin. Appellant reported that Dr. Baldwin diagnosed sacroiliac strain and prescribed medications, therapy and work restrictions. He did not have prior back or leg injuries.

In a December 20, 2013 decision, OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that a medical condition was causally related to the accepted work-related events.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[4]

ANALYSIS

It is not disputed that appellant worked as a police officer and that on October 25, 2013 he was wearing a newly required armored vest while entering and exiting his patrol vehicle. It is also not disputed that he was diagnosed with sacroiliac strain, lumbar radiculopathy and lumbosacral sprain. The Board finds, however, that appellant did not submit sufficient medical evidence to establish that his diagnosed sacroiliac strain, lumbar radiculopathy or lumbosacral sprain were causally related to the October 25, 2013 work incident.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *T.H.*, 59 ECAB 388 (2008).

[4] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant submitted an October 30, 2013 report from Dr. Baldwin who treated him for a leg injury which occurred on October 24, 2013. He reported being issued an armored vest and had trouble maneuvering when entering and exiting his patrol car. Appellant reported feeling a sharp pain in his right leg, lower back and S1 joint, which radiated into his buttocks. Dr. Baldwin diagnosed lumbosacral strain and returned appellant to light duty with no driving. It is noted that Dr. Baldwin repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Baldwin provided his own opinion he failed to address the causal relationship of appellant's lumbosacral strain to the October 25, 2013 incident.[5] He did not explain how wearing an armored vest and entering or exiting a vehicle would cause or aggravate the diagnosed conditions and why such condition would not be due to any nonwork factors. Therefore, this report is insufficient to meet appellant's burden of proof. Dr. Baldwin's other reports note appellant's status and restrictions but do not specifically address whether the October 25, 2013 incident caused or contributed to appellant's diagnosed conditions.[6] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted an October 30, 2013 note from an employing establishment nurse who treated him for right leg pain and diagnosed alteration in comfort with right leg pain. However, the Board has held that documents or notes signed by a nurse are not considered medical evidence as a nurse is not a physician under FECA.[7] Thus, the treatment records from the nurse are of no probative medical value in establishing appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[8] Appellant failed to submit such evidence and OWCP therefore properly denied his claim for compensation.

On appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal.[9]

[5] *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).

[6] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[7] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[8] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *See* 20 C.F.R. § 501.2(c).

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2014
Washington, DC

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

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

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