

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

W.G., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Edison, NJ, Employer**

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**Docket No. 13-1672
Issued: March 19, 2014**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 3, 2013 appellant, through his attorney, filed a timely appeal of a March 20, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision addressing his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a traumatic injury on July 31, 2012.

On appeal counsel argued that appellant had submitted sufficient factual and medical evidence to establish his traumatic injury claim or to require additional development by OWCP.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 7, 2012 appellant, then a 43-year-old clerk, filed a traumatic injury claim alleging that he developed lower back pain as well as numbness in both legs and feet due to twisting and turning while moving boxes and turning on a machine on July 31, 2012. The employing establishment completed an authorization for examination and/or treatment on August 8, 2012. Appellant stopped work on July 31, 2012.

Appellant submitted a statement dated August 7, 2012 and noted that on July 31, 2012 he experienced lower back pain and numbness down both legs beginning on 12:45 a.m. while at work.

In a letter dated August 22, 2012, OWCP requested additional factual and medical evidence from appellant and allowed 30 days for a response.

Dr. Frank M. Moore, a Board-certified neurosurgeon, completed a form report on August 15, 2012 and indicated that appellant was disabled due to pain with twisting following a lumbar fusion. He stated that appellant may not be able to return to his position until further notice.

Appellant submitted a narrative statement dated September 6, 2012, which noted that he was working on a conveyor belt on July 31, 2012 lifting boxes that weighed between 5 and 70 pounds. He stated that he had to twist and reach to lift the boxes and place them on the belt. Appellant stated that he had no pain when he began working on July 31, 2012, but that at 3:30 a.m. he asked to leave work due to his back pain. He stated that his supervisors required him to file a new injury form despite his statements that his pain was the result of a prior injury, on November 8, 2009, claim number xxxxxx692.²

By decision dated September 27, 2012, OWCP denied appellant's claim on the grounds that he failed to submit any medical evidence of a diagnosed condition in connection with his employment injury.

Counsel requested an oral hearing before an OWCP hearing representative on October 10, 2012. Dr. Moore completed a note dated August 10, 2011 which stated that appellant's symptoms were worsening with increasing numbness in both legs and he recommended a decompressive laminectomy at L3-4 and L4-5. Appellant underwent an intervertebral fusion at L3-4 and L4-5 on September 22, 2011. On July 2, 2012 Dr. Moore examined appellant and noted appellant's report of discomfort in the lumbosacral area following a workday including twisting 4,000 times. He examined appellant on August 15, 2012 and stated that his low back symptomatology had improved with time, but that he remained partially disabled. In a report dated September 24, 2012, Dr. Moore stated that appellant had previously

² The Board notes that appellant has a separate claim for a back injury in claim number xxxxxx692. This claim is not currently before the Board. Appellant returned to work on May 25, 2012 following surgery under this claim and stopped his light-duty work on July 31, 2012 within 90 days of his return to work. OWCP's procedures provide a separate standard for recurrences of disability within the first 90 days of a return to duty. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7 (October 2009) (superseded June 2013).

undergone a lumbar decompression, fusion and instrumentation at L3-4 and L4-5. He stated that appellant reported residual numbness in both legs and exacerbations of low back symptoms with work activities of repetitive lifting and twisting.

Appellant was unable to testify at the oral hearing on February 6, 2013 due to recent back surgery. He submitted a narrative statement describing his history of back injury at the employing establishment beginning on August 19, 2003. Appellant stated that he experienced a second back injury on November 18, 2009. Both claims were accepted. Appellant noted that he returned to light-duty work following surgery on May 25, 2012 with a lifting restriction of 25 pounds. He continued to bend, twist, pull and push and continued to experience back pain, but completed his work. Appellant stated that on July 31, 2012 he initially experienced minimal pain but that as the day progressed his low back pain became intense and began to shoot into his legs. He stated that he first received medical treatment on August 6, 2012 and first saw Dr. Moore on August 15, 2012. On January 31, 2013 appellant underwent additional surgery to replace hardware. He stated that he “helped boxes down the slide that got stuck on their way to his station.” Appellant stated that he believed that some of the boxes were as heavy as 70 pounds. He stated that he did not lift and carry boxes, but sometimes took boxes off of the floor and put them on the belt. Appellant also stated that he twisted to the left and pushed a button to start the machine.

Dr. Moore completed a report on February 6, 2013 and stated that appellant’s low back pain became significantly worse after a lifting and twisting episode on July 31, 2012. He stated that appellant had “acute exacerbation of his underlying symptomatology.” Dr. Moore examined appellant on August 15, 2012 and diagnosed mechanical low back pain with radiculopathy. He stated, “It was felt that on July 31, 2012 the lifting and twisting incident caused aggravation of his preexisting condition.” Dr. Moore stated, “His job description entailed heavy lifting with a twisting motion. The job description is responsible for his recurrent symptomatology of lumbar pain with lower extremity radiculopathy including weakness and numbness in both legs. These symptoms required surgical decompression which was performed on January 31, 2013.”

By decision dated March 20, 2013, OWCP’s hearing representative denied appellant’s claim on the grounds that there was no specific incident of employment on July 31, 2012 that caused any aggravation of appellant’s back condition and that by August 15, 2012 his symptoms had improved.

LEGAL PRECEDENT

OWCP defines 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.”³ In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident

³ 20 C.F.R. § 10.5(ee).

which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵

Second, the employee must submit sufficient evidence, generally only in the form medical evidence, to establish that the employment incident caused a personal injury.⁶ A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁷ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity identified by the claimant.⁸

ANALYSIS

Appellant filed a traumatic injury claim alleging that on July 31, 2012 he was performing his job duties of lifting and twisting when he experienced low back pain and shooting pain into his legs. He stopped work. Appellant has noted that he had two previous claims for back injury and was recovering from back surgery on September 22, 2011. He returned to light-duty work on May 25, 2012 and stopped work on July 31, 2012. Appellant provided several statements that he was performing his regular light-duty work on July 31, 2012 when he experienced an increase in his back pain, such that he could no longer work. He stopped work on July 31, 2012 and did not return.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *D.B.*, 58 ECAB 464, 466-67 (2007).

⁶ *J.Z.*, 58 ECAB 529 (2007).

⁷ *T.F.*, 58 ECAB 128 (2006).

⁸ *A.D.*, 58 ECAB 149 (2006).

OWCP's hearing representative denied appellant's traumatic injury claim on the grounds that there was no specific incident of employment on July 31, 2012. The Board notes that a traumatic injury claim includes a 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. Appellant has identified a series of events within a single workday, July 31, 2012, caused by lifting and twisting, which affected his back resulting in pain and radiculopathy. The Board finds that the evidence is sufficient to establish that an event within the definition of a traumatic injury occurred on July 31, 2012.

The Board finds, however, that appellant has not submitted sufficient medical evidence to establish his claim. The medical evidence consists of reports from Dr. Moore who examined appellant on August 10, 2011 and recommended a decompressive laminectomy at L3-4 and L4-5. Appellant underwent this surgery on September 22, 2011. Dr. Moore examined appellant on July 2, 2012 and noted appellant's report of discomfort in the lumbosacral area following a workday including twisting 4,000 times. In a report dated September 24, 2012, he stated that appellant reported residual numbness in both legs and exacerbations of low back symptoms with work activities of repetitive lifting and twisting. Dr. Moore completed a report on February 6, 2013 and stated that appellant's low back pain became significantly worse after a lifting and twisting episode on July 31, 2012. He stated that appellant had "acute exacerbation of his underlying symptomatology." These reports are not sufficient to meet appellant's burden of proof as Dr. Moore merely repeated appellant's complaints of increased symptoms without providing any opinion supporting a causal relationship between appellant's condition and his employment activities on July 31, 2012.

On August 15, 2012 Dr. Moore diagnosed mechanical low back pain with radiculopathy and stated that appellant's employment activities of lifting and twisting on July 31, 2012 caused aggravation of his preexisting condition. He stated, "[Appellant's] job description entailed heavy lifting with a twisting motion. The job description is responsible for his recurrent symptomatology of lumbar pain with lower extremity radiculopathy including weakness and numbness in both legs. These symptoms required surgical decompression which was performed on January 31, 2013." In a narrative report dated February 6, 2013, Dr. Moore stated that appellant's low back pain became significantly worse after a lifting and twisting episode on July 31, 2012. He stated that appellant had "acute exacerbation of his underlying symptomatology." Dr. Moore stated, "It was felt that on July 31, 2012 the lifting and twisting incident caused aggravation of his preexisting condition." He diagnosed lumbar pain with lower extremity radiculopathy including weakness and numbness in both legs. While these reports provide an accurate history of injury and an opinion that appellant's employment aggravated his underlying condition, Dr. Moore did not provide the necessary rationalized medical opinion evidence needed to meet appellant's burden of proof. He did not explain how appellant's employment activities on July 31, 2012 resulted in an aggravation of his underlying back condition. Without medical reasoning supporting his conclusions of causal relationship, Dr. Moore's reports are not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant has submitted sufficient factual evidence to establish that his claim is a traumatic injury. The Board further finds that he has not submitted sufficient medical evidence to meet his burden of proof in establishing that he developed radiculopathy as a result of his employment.

ORDER

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

Issued: March 19, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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