United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 13-2043**
	)	**Issued: March 12, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 6, 2013 appellant filed a timely appeal from the April 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his 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 traumatic injury in the performance of duty on July 11, 2012.

FACTUAL HISTORY

On July 13, 2012 appellant, then a 50-year-old distribution/window clerk, filed a traumatic injury claim alleging that, on July 11, 2012, he sustained pain in the low back while lifting bundles of red plum. He stopped work on July 12, 2012. The employing establishment

[1] 5 U.S.C. § 8101 *et seq.*

checked "yes" in response to whether its knowledge of the facts about the injury agreed with the statements of the employee.

OWCP received treatment notes related to appellant's cervical and shoulder pain and dated March 29, 2012. It also received April 5, 2012 duty status reports, from Dr. Mina Garrett-Scott, a Board-certified family practitioner, which indicated that he was lifting packages and felt pain in the mid and lower back. Dr. Garrett-Scott diagnosed muscle strain and indicated that appellant could return to work on April 6, 2012.

In a letter dated July 18, 2012, Frank Nagle, a manager with the employing establishment, controverted the claim. In an undated statement received by OWCP on July 24, 2012, Terri L. Allfrey, a customer service supervisor, explained that on Wednesday, July 11, 2012 appellant was instructed to work with two other clerks and put circulars around the carrier cases. The circulars were stacked on pallets and appellant would pick-up one bundle at a time and place them on the floor near the appropriate carrier case. Ms. Allfrey noted that, "[j]ust prior to going on lunch, [appellant] made a passing comment that he was sore and would rest while on his lunch." Appellant made no further comments with regard to his back condition. Ms. Allfrey noted that he left a half-hour early due to there being no work left. Appellant called in sick the next day and on July 13, 2012 informed his supervisor that he had a job-related injury.

In treatment notes dated July 13, 2012, Dr. Garrett-Scott noted that appellant was lifting heavy bundles at the employing establishment and developed low back pain three days earlier. She diagnosed a lumbar strain and lumbar degenerative disc disease and placed him off work from July 13 to 20, 2012. On July 20, 2012 Dr. Garrett-Scott noted that appellant was lifting at work and felt pain in his low back. She diagnosed sacroiliitis and lumbago. Dr. Garrett-Scott checked the box "yes" in response to whether the diagnosis was due to the injury. She advised that appellant could not return to work and could not lift. Dr. Garrett-Scott prescribed physical therapy. She submitted additional duty status reports reiterating her findings.

A July 13, 2012 lumbar spine x-ray read by Dr. Howard Miller, a Board-certified diagnostic radiologist, revealed a normal examination of the lumbar spine.

By letter dated August 6, 2012, OWCP advised appellant that his case initially appeared to be a minor injury that resulted in minimal or no lost time from work. A limited amount of medical expenses was administratively approved without consideration of the merits of the case. OWCP requested additional medical evidence and afforded appellant 30 days to respond to its inquiries.

On August 10 and September 7, 2012 Dr. Garrett-Scott diagnosed lumbago, ileitis and lumbar strain. She released appellant to full duty on September 7, 2012. OWCP also received physical therapy notes and treatment notes from an unknown provider.

In an August 25, 2012 statement, appellant described his activities on July 11, 2012. He was lifting bundles with another clerk and suddenly felt low back pain. Appellant mentioned the incident to the coworker and stretched a few times but the pain did not go away. He finished the pallet and advised his supervisor, Ms. Allfrey of the pain in his low back. Appellant then went to work at the front window and took some pain medication. He spoke to his supervisor and was

told to fill out paperwork for sick leave and go home. The next day appellant was in pain and called in sick. He informed his supervisor that he hurt his low back at work and inquired into how he could file an injury report. An August 17, 2012 statement from George Martin, a coworker, confirmed that appellant hurt his back on July 11, 2012 at work.

By decision dated September 14, 2012, OWCP accepted the incident but denied appellant's claim. It accepted the July 11, 2012 incident but found that the medical evidence was not sufficient to establish causal relation.

On September 24, 2012 appellant requested a hearing, which was held on January 30, 2013. On March 4, 2013 OWCP received a report from a physical therapist from Kessler rehabilitation indicating that it is possible to sustain a lumbar injury as a result of lifting regarding appellant's lumbar condition.

By decision dated April 24, 2013, an OWCP hearing representative affirmed the September 14, 2012 decision. The hearing representative found that it was established that appellant lifted bundles of mail while working on July 11, 2012. However, appellant did not submit sufficient rationalized medical opinion to establish how any diagnosed condition was causally related to the July 11, 2012 incident.

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 timely filed within the applicable time limitation period of FECA[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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.[5] Second, the employee must submit evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

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[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (August 2012).

[6] *See John J. Carlone*, 41 ECAB 354 (1989). For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

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.[7]

ANALYSIS

Appellant alleged that, on July 11, 2012, he was lifting bundles of circulars at work and experienced pain in his lower back. The evidence supports that he was lifting bundles of circulars on July 11, 2012, as alleged.

The Board finds, however, that the medical evidence is insufficient to establish causal relationship. The medical reports of record do not establish that lifting bundles at work caused a personal injury on July 11, 2012. There is no reasoned explanation by a physician regarding how lifting the circulars on July 11, 2012 caused or aggravated his low back condition.[8]

Appellant submitted treatment notes from Dr. Garrett-Scott. On July 13, 2012 Dr. Garrett-Scott obtained a history that he was lifting heavy bundles at work and developed low back pain about three days prior. She diagnosed a lumbar strain and lumbar degenerative disc disease and placed appellant off work from July 13 to 20, 2012. Dr. Garrett-Scott did not provide medical rationale addressing how lifting bundles caused or aggravated his diagnosed medical condition.[9] In form duty status reports that day, she noted the same history of injury and diagnosed lumbar strain due to injury. However, Dr. Garrett-Scott did not explain how she arrived at this conclusion. A medical report is of limited probative value on the issue of causal relationship if it merely contains a conclusion that the condition was caused by the employment injury that is unsupported by medical rationale.[10] On July 20, 2012 Dr. Garrett-Scott noted that appellant was lifting at work and felt pain in his lower back. She diagnosed sacroiliitis and lumbago and checked a box "yes" in response to whether the diagnosis was due to the injury. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[11] The reports from Dr. Garrett-Scott are insufficient to establish the claim as they either predate the claimed injury or fail to address causal relationship.[12]

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

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *See id.*

[10] *See Albert C. Brown*, 52 ECAB 152 (2000).

[11] *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

[12] *S.E.,* Docket No. 08-2214 (issued May 6, 2009) (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).

The record also contains physical therapy records. However, section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by FECA will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under FECA. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[13]

Because the medical reports submitted by appellant do not sufficiently explain how the July 11, 2012 lifting activities at work caused or aggravated a low back condition, the medical evidence is of limited probative value and is insufficient to establish that the July 11, 2012 employment incident caused or aggravated a diagnosed medical condition.

On appeal, appellant argued that he had already provided sufficient evidence to support his claim and that his physician moved out of state.[14] However, as noted above, the medical evidence is insufficiently rationalized to establish his claim.

Appellant may submit evidence or argument with a written request for reconsideration 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 he sustained a traumatic injury in the performance of duty on July 11, 2012.

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[13] *Jane A. White,* 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

[14] The record indicates that Dr. Garrett-Scott subsequently left the medical practice where she treated appellant.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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