United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 14-44**
	)	**Issued: March 6, 2014**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Burlington, MA, Employer	)	

Appearances:
Appellant, pro se
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 October 15, 2013 appellant filed a timely appeal from a September 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merits of this case.

ISSUE

The issue is whether appellant established that he sustained a traumatic injury in the performance of duty on August 22, 2011, as alleged.

FACTUAL HISTORY

On August 31, 2011 appellant, a 33-year-old immigration enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his neck on August 22, 2011 during

[1] 5 U.S.C. § 8101 *et seq.*

defensive tactics training, which included engaging in neck holds and take downs. He submitted chiropractic treatment notes from Leonard F. Kocis, D.C., D.A.C.B.O.H. dated September 6, 2011 through January 27, 2012 and a cervical spine magnetic resonance imaging (MRI) scan report dated October 17, 2011, interpreted by Terry R. Yochum, a chiropractor.

On August 15, 2012 OWCP requested additional medical evidence from appellant. It noted that the medical reports were signed by a chiropractor and that a chiropractor does not qualify as a physician under FECA unless there is a diagnosed spinal subluxation and it is demonstrated by x-ray. Appellant was advised of the type of information that must be submitted in a physician's report, including an opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. He was accorded 30 days to submit additional evidence. No additional evidence was received.

By decision dated September 19, 2012, OWCP denied the claim on the grounds appellant did not submit any medical evidence containing a firm medical diagnosis in connection with the accepted event.

On October 30, 2012 OWCP received appellant's request for reconsideration.

In an August 20, 2012 report, Dr. Alisa Darling, a Board-certified physiatrist, noted the history of the August 22, 2011 work injury and his subsequent course of treatment, including an October 2011 MRI scan of the cervical spine showing disc herniation at C6-7, extending bilaterally but mainly to the left side. She presented examination findings and provided an impression of left cervical radiculopathy and disc herniation at C6-7, which she opined resulted from an injury at work in August 2011.

By decision dated January 25, 2013, OWCP denied appellant's reconsideration request without merit review.

On March 1, 2013 OWCP received a February 19, 2013 reconsideration request from appellant in which he advised that he submitted an August 20, 2012 report from Dr. Darling. Appellant resubmitted Dr. Darling's August 20, 2012 report along with a copy of his August 31, 2011 Form CA-1.

In a March 14, 2013 letter, OWCP informed appellant that it had created two separate cases for the same injury. It advised that case file number xxxxxx465 was administratively closed and all documents have been moved into the current claim, case file number xxxxxx403.

By decision dated May 20, 2013, OWCP denied appellant's claim. It modified its prior decision to reflect that fact of injury had met, but denied the claim on the basis that causal relationship had not been established.

In an August 12, 2013 letter received August 19, 2013, appellant requested reconsideration. He submitted a July 31, 2013 report from Dr. Darling that provided a detailed description as to how his injury occurred at work. Dr. Darling stated:

> "As per reports with [appellant], sustained neck injury after undergoing defensive tactical training as part of his occupation. [Appellant] was in a training class and was instructed to pretend to be an unruly passenger. His colleague who was playing the officer grabbed him by his neck and back and forced his head between his knees. [Appellant] reports being held in this position for several minutes. He was also instructed to try to get out of the hold in order to help train his colleague in how to deal with this situation. [Appellant] then woke up the next morning with significant neck pain. He also experienced numbness and tingling down his left arm."

Dr. Darling then opined with a significant degree of medical probability that this maneuver led to the herniation of the disc in the cervical spine and his symptoms persisted for some time.

By decision dated September 12, 2013, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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, that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[4]

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[5] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

ANALYSIS

Appellant alleged that he sustained an injury to his neck on August 22, 2011 during defensive tactics training when he engaged in neck holds and take downs. OWCP accepted that the August 22, 2011 incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained a neck injury as a result of this incident. In order to establish a claim that he sustained an employment-related injury, appellant must submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.[9]

In her reports, Dr. Darling provides the history of the August 22, 2011 work injury, appellant's course of treatment, including the October 2011 cervical MRI scan and opines that his left cervical radiculopathy and disc herniation at C6-7 resulted from the August 22, 2011 work injury. However, in her August 20, 2012 report, she fails to fully address the nature of and the exact activities appellant performed during the August 22, 2011 incident. Dr. Darling noted that his condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat the employee's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work caused or aggravated his diagnosed conditions.[10] While Dr. Darling provides a detailed description of appellant's activities on August 22, 2011 in her July 31, 2013 report and opined that the maneuvers appellant performed led to the herniation of the cervical disc and his symptoms, she did not provide medical rationale explaining how physiologically the incident actually caused or aggravated his diagnosed condition.[11] A rationalized explanation of causal relationship is

[5] *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

[6] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *James Mack*, 43 ECAB 321, 329 (1991).

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

[9] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[11] *Id.*

especially important under the circumstances of this case, as Dr. Darling's July 31, 2013 opinion was offered almost two years after the incident. Thus, the Board finds that the reports from Dr. Darling are insufficient to establish that appellant sustained an employment-related injury.

The treatment notes from Dr. Kocis failed to diagnose a spinal subluxation based on x-ray and thus they are of probative medical value.

The October 17, 2011 cervical spine MRI scan report is diagnostic in nature and therefore does not address causal relationship. As such, it is insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.

On appeal, appellant contends that the medical evidence from Dr. Darling supports his claim. As discussed, however, the reports do not establish causal relationship. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[12] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[13] He failed to submit such evidence and therefore failed to discharge his burden of proof.

Appellant asserts that OWCP made various mistakes in the processing of his claim and alleged that it was overly concerned with finding reasons to deny his claim while failing to accurately document and examine all the available evidence. However, there is no evidence to substantiate these allegations.

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.

[12] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[13] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on August 22, 2011 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 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