United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 14-65**
	)	**Issued: March 27, 2014**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Rochester, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On October 15, 2013 appellant filed a timely appeal of the August 15, 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 the merits of the case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty.

[1] 5 U.S.C. §§ 8101-8193.

[2] With his appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On September 6, 2012 appellant, then a 54-year-old air traffic control specialist, filed a traumatic injury claim alleging that on September 4, 2012 he slipped while descending a stairwell at work and fell on to his left side causing injury to his back and left knee. He did not stop work.

Appellant was treated by Dr. Michael Jordan, a Board-certified orthopedic surgeon and employing establishment physician, on September 10, 2012 for low back pain with numbness radiating down his leg. He reported that appellant's symptoms began on September 4, 2012 when he fell down stairs. Dr. Jordan noted physical findings of full range of motion of the lumbar spine except on flexion, weakness of dorsiflexor on heel walking, positive straight leg raises on the left, decreased sensation at L5 dermatome with weakness on the left side, with trigger points in the left lumbar erectors and piriformis. He recommended ice, stretching and exercise and returned appellant to work without restrictions.

Appellant was treated by Dr. Jason T. Swinton, a chiropractor, from September 10, 2012 to February 7, 2013 for low back pain and sciatica. Dr. Swinton noted findings of intersegmental dysarthria at T4 to 12, L1-4 and S1. He diagnosed intersegmental dysarthria and performed manipulation, electrical stimulation, moist heat and ice. In an October 3, 2012 attending physician's report, Dr. Swinton noted that appellant fell down stairs. He diagnosed sciatica and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity.

On September 27, 2012 appellant saw Dr. Robert Little, a Board-certified orthopedic surgeon, for a left knee injury following a work accident. He reported working as an air traffic controller and that on September 4, 2012 while descending a spiral staircase he slipped and twisted his left knee and fell landing on his right elbow and back. Dr. Little noted that the left knee continued to be symptomatic with pain and swelling. He noted examination findings of effusion of the left knee with tenderness in the medial side of the knee and laxity with positive Lachman's test on the left. Left knee x-rays revealed joint effusion. Dr. Little diagnosed torn anterior cruciate ligament and medial meniscus. On October 8, 2012 he noted a left knee magnetic resonance imaging (MRI) scan revealed degeneration of the posterior horn without discreet tearing, joint effusion with synovitis. In a December 3, 2012 report, Dr. Little noted that appellant's left knee work injury was stabilizing with improvement. He noted some residual left knee tenderness and stable collateral and cruciate ligaments. Dr. Little continued conservative treatment and full employment. On January 18, 2013 he treated appellant for left knee pain status post fall down steps at work on September 4, 2012. Appellant reported that his knee was stable without pain, catching or give away. Dr. Little noted no tenderness of the left knee with good range of motion. He noted that appellant made improvement with treatment, rest and exercise and recommended follow up in three months. An October 4, 2012 left knee MRI scan showed a large joint effusion consistent with nonspecific synovitis, moderate focal degenerative changes with no meniscal tear.

In a March 19, 2013 letter, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case and the claim was administratively handled to allow limited medical payments without adjudicating the merits of the claim. It advised that, because

his medical bills exceeded $1,500.00, his claim would be formally adjudicated. OWCP asked that appellant submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents contributed to his claimed back and left knee injury.

Appellant submitted an April 3, 2013 report from Dr. Swinton who treated him for low back and left knee pain. Appellant reported slipping and falling down stairs at work on September 4, 2012 which resulted in trauma, low back pain, left knee and right elbow pain and numbness and weakness in the left lower extremity. Dr. Swinton noted subluxations at L5-S1 and the left sacroiliac joint found through palpation. He diagnosed sciatic neuritis and lumbago and opined that the traumatic force which occurred as a result of the fall was the cause of the injury.

In a decision dated April 22, 2013, OWCP denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that the claimed medical condition was causally related to work events.

On May 14, 2013 appellant requested reconsideration. He submitted reports from Dr. Little dated September 27, 2012 to January 18, 2013, previously of record. In new reports dated January 17 to March 25, 2013, Dr. Little treated appellant for left shoulder pain related to an injury sustained in Aruba. In an April 9, 2012 report, he noted that appellant worked as an air traffic controller and on September 4, 2012 sustained a work-related fall down steps and twisted his left knee, right elbow and back. Dr. Little noted an MRI scan revealed synovitis and chondromalacia. He opined "I do believe that there is a causal relationship from the fall with the patient's current symptoms and diagnoses." In an April 19, 2013 report, Dr. Little noted treating appellant conservatively for a work injury to his left knee with residual deficits. He opined that appellant reached maximum medical improvement and had 15 percent impairment of the left knee.

In a May 6, 2013 report, Dr. Swinton treated appellant for low back pain and sciatica secondary to subluxations at L4-5. He advised that an x-ray revealed a grade 1 spondylolisthesis as a result of a fall which met the definition of subluxation. Dr. Swinton opined that appellant's fall caused injury to his lumbar spine resulting in spondylolisthesis. He noted objective findings of subluxation at L4-5, trigger points and weakness in the tibialis on the left. Dr. Swinton noted x-ray documentation of subluxation which revealed spondylolisthesis, misalignment at L4-5 due to spondylolisthesis, reduced range of motions found in the lumbar spine, trigger points and palpatory pain. He attached a copy of a May 3, 2013 lumbar spine x-ray performed on his behalf which showed significant degenerative spine disease at L4-L5 with grade 1 spondylolisthesis.

In a decision dated August 15, 2013, OWCP denied modification of the decision dated April 22, 2013.

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.[3]

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.[4]

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.[5]

ANALYSIS

It is not disputed that appellant slipped and fell on to his left side while descending a stairwell on September 4, 2012. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed degeneration of the posterior horn of the left knee without discreet tearing, joint effusion with synovitis and chondromalacia of the left knee, spinal subluxation and spondylolisthesis were causally related to the September 4, 2012 work incident. On April 22, 2013 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the incident caused or aggravated a diagnosed medical condition.

In an April 9, 2013 report, Dr. Little noted that appellant fell at work on September 4, 2012, twisted his left knee and landed on his right elbow and back. He diagnosed synovitis and chondromalacia and opined, "I do believe that there is a causal relationship from the fall with the patient's current symptoms and diagnoses." Similarly, in an April 19, 2013 report, Dr. Little noted treating appellant for a work-related injury to his left knee. In a September 27, 2012 report, he noted treating appellant for a left knee injury subsequent to a work-related accident. Appellant related his workplace slip and fall on stairs on September 4, 2010 in which he twisted his left knee and landed on his right elbow and back. In reports dated October 8, 2012 to January 18, 2013, Dr. Little noted diagnostic test findings and indicated that appellant's work-related knee injury was stabilizing.

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

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

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

The Board finds that, although he provided some support for causal relationship, Dr. Little's opinion is of limited probative value as he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's diagnosed condition and the September 4, 2012 work incident.[6] Dr. Little did not explain how falling down steps would have caused or aggravated the diagnosed conditions or why such condition would not be due to any nonwork factors such as age-related degenerative changes. Therefore, these reports are insufficient to meet appellant's burden of proof. Other reports from Dr. Little noted appellant's treatment for left shoulder pain related to an injury sustained in Aruba which are not relevant to the current condition.

Appellant also submitted reports from Dr. Swinton, a treating chiropractor. In a May 6, 2013 report, Dr. Swinton noted treating appellant for low back pain, sciatica secondary to subluxations at L4-5. He noted an x-ray report revealed a grade 1 spondylolisthesis as a result of his fall which met the definition of subluxation.[7] Dr. Swinton opined that appellant's fall caused his lumbar spine injury. In an April 3, 2013 report, appellant reported the slip and fall at work on September 4, 2012 and Dr. Swinton noted subluxations at L5-S1 and the left sacroiliac joint and diagnosed sciatic neuritis and lumbago. Dr. Swinton opined that the traumatic force which occurred as a result of the fall caused the injury. Although he supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding the causal relationship between appellant's diagnosed conditions and the work incident. Dr. Swinton failed to sufficiently explain how slipping and falling down stairs would cause the diagnosed subluxations at L4-5. In an October 3, 2012 attending physician's report, he checked a box "yes" that appellant's condition was caused or aggravated by work activity. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8] Other reports from Dr. Swinton also do not sufficiently explain how the September 4, 2012 work incident caused or aggravated a spinal subluxation.

In his September 10, 2012 report, Dr. Jordan saw appellant for low back pain with numbness radiating down his leg. Appellant related that his symptoms began when he fell down stairs on September 4, 2012. Dr. Jordan noted findings and diagnoses but he did not specifically indicate whether the September 4, 2012 work incident caused or contributed to appellant's diagnoses. Thus, this report is insufficient to establish the claim.[9] Likewise, other medical reports of record are insufficient to establish the claim as they do not support that the September 4, 2012 work incident contributed to appellant's diagnoses.

[6] *See T.M.*, Docket No. 08-975 (issued February 6, 2009).

[7] As Dr. Swinton diagnosed subluxation at L4-5 based on a May 3, 2013 x-ray, he is a physician as defined under FECA. *See Mary A. Ceglia*, 55 ECAB 626 (2004); 5 U.S.C. § 8101(2).

[8] *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] *See J.F.*, Docket No. 09-1061 (issued November 17, 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).

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.[10] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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.[11]

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

[11] OWCP, on December 11, 2013 and February 6, 2014, issued decisions denying modification of its denial of appellant's claim. Appellant appealed his claim to the Board on October 15, 2013 and the Board obtained jurisdiction over the matter at that time. Therefore, these OWCP decisions are null and void as the Board and OWCP may not simultaneously have jurisdiction over the same case. *See Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board