United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 14-263**
	)	**Issued: May 23, 2014**
DEPARTMENT OF THE NAVY, U.S. MARINE CORPORATION, Camp Pendelton, CA	)	
Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2013 appellant filed a timely appeal of the May 17, 2013 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[3]

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the last OWCP decision. As OWCP's decision was issued on May 17, 2013, the 180th day after May 17, 2013 was November 13, 2013. Since using November 15, 2013, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark in considered the date of filing. The date of the U.S. Postal Service postmark is November 13, 2013, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. §§ 8101-8193.

[3] 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).

ISSUE

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

FACTUAL HISTORY

On December 8, 2012 appellant, then a 43-year-old motor vehicle operator, filed a traumatic injury claim alleging that on December 5, 2012 he experienced severe chest pain while lifting tires into the bed of a pickup truck. He stopped work on December 6, 2012.

In a December 28, 2012 letter, OWCP advised appellant of the evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the caused relationship of his claimed condition and to work factors.

On December 5, 2012 appellant was treated by Dr. Robert J. Eggold, Board-certified in emergency medicine, who noted that appellant's onset of his condition was December 5, 2012 and he was off work from December 5 to 9, 2012. In work status reports dated December 10 and 20, 2012, Dr. Charles A. Prior, a Board-certified family practitioner, noted the onset of appellant's condition was December 5, 2012 and he was off work from December 5 to 9, 2012 and December 23, 2012 to January 6, 2013. He reported that appellant's injury occurred at work and was a workers' compensation injury. In a December 28, 2012 work status report, Dr. Thomas Wang, a Board-certified family practitioner, noted a date of injury of December 5, 2012. He advised that appellant could return to work at modified duty from December 28, 2012 to January 11, 2013. Dr. Wang noted maximum medical improvement was expected in four weeks. In a December 28, 2012 duty status report, he noted that appellant could return to work limited duty.

In a January 31, 2013 decision, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish a firm medical condition causally related to the December 5, 2012 incident.

On February 11, 2013 appellant requested reconsideration. In a January 9, 2013 attending physician's report, Dr. Eggold listed the date of injury of December 5, 2012. Appellant reported being a heavy truck driver who did a lot of lifting and had a piercing pain in the center of his chest. The chest wall was not dull to percussion or tender. Dr. Eggold diagnosed costochondritis of the sternum. He recommended ice and Lidoderm patch and advised that appellant was disabled for four days. In a December 10, 2012 progress report, Dr. Prior treated appellant for costochondritis. He noted findings of chest pain, no palpations, shortness of breath, wheezing or rales. Appellant's injury occurred at work. Dr. Prior diagnosed costochondritis and advised that appellant was disabled from December 5 to 23, 2012.

In work status reports dated December 20, 2012 to January 31, 2013, Dr. Wang noted a December 5, 2012 date of injury and diagnosed costochondritis. Appellant was placed on modified duty from December 28, 2012 to February 28, 2013. In primary treating physician's progress reports dated December 28, 2012 to January 31, 2013, Dr. Wang listed appellant's complaints of intermittent, mild/moderate, sharp pain in the middle of his chest. Appellant was a

motor vehicle operator who, on December 5, 2012, was lifting tire wheels weighing about 30 to 40 pounds when he had pain in the center of his chest. He sought treatment on December 5, 2012 and was diagnosed with costochondritis and placed off work. Dr. Wang noted findings of clear lungs bilaterally without wheezes or rales, no murmurs and mild tenderness with palpation over the sternum and costochondral junction. He advised that appellant was progressing slower than expected but had no chest trauma or significant injury but had pain from lifting. Dr. Wang stated that the findings and diagnosis were consistent with the history of injury and was work related based on the history provided by appellant. He noted that appellant's subjective complaints were greater than would be expected based upon objective findings and history. Dr. Wang opined that appellant's chest condition was likely flared up by his upper respiratory infection and released him to modified duties from January 31 to February 28, 2013. In a January 11, 2013 work status report, he noted a December 5, 2012 date of injury and advised that appellant was on modified activity from January 11 to February 21, 2013.

Appellant submitted a January 2, 2013 dispensary permit prepared by a nurse, who noted that appellant was injured on December 5, 2012 and was released to modified duties. In dispensary permits dated January 11 and February 4, 2013 a physician's assistant advised that appellant was referred for an injury. A chest x-ray dated January 31, 2013 revealed no abnormalities.

In a May 17, 2013 decision, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that his chest condition was causally related to the December 5, 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 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 is 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.[4]

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.[5]

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

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

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

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.[6]

ANALYSIS

It is not disputed that appellant worked as a motor vehicle operator and, on December 5, 2012, he lifted tires into the bed of a pickup truck. He was diagnosed with costochondritis. The Board finds that appellant has not submitted sufficient medical evidence to establish that his diagnosed costochondritis was causally related to the December 5, 2012 work incident.

In reports dated December 28, 2012 to January 31, 2013, Dr. Wang noted appellant's complaints of intermittent, mild/moderate, sharp pain in the middle of his chest with a December 5, 2012 date of injury. Appellant was a motor vehicle operator who on December 5, 2012 was lifting tire wheels weighing about 30 to 40 pounds when he had pain in the center of his chest. Dr. Wang diagnosed costochondritis and advised that appellant was placed off work. He stated that appellant was progressing slower than expected but had no chest trauma or significant injury. Dr. Wang noted that appellant's subjective complaints were greater than would be expected based upon objective findings but stated that the findings and diagnosis were consistent with the history of injury. He opined that the condition was work-related based on the history provided by appellant. Although Dr. Wang supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding causal relationship. He did not sufficiently explain how lifting wheels at work would cause the diagnosed costochondritis. The other reports from Dr. Wang did not specifically address whether the December 5, 2012 work incident caused or contributed to appellant's diagnoses and are insufficient to establish the claim.[7]

In a December 10, 2012 progress report, Dr. Prior noted treating appellant for costochondritis. He noted that this injury occurred at work and diagnosed costochondritis. Dr. Prior advised that appellant was disabled from work from December 5 to 23, 2012. Although he supported causal relationship in a conclusory statement, he did not provide medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's diagnosed conditions and lifting at work on December 5, 2012. Other reports from Dr. Prior are also insufficient to establish the claim as the physician either did not address causal relationship or provided no medical reasoning in support of his opinion.

Appellant also provided evidence from Dr. Eggold but this evidence is insufficient to establish the claim as he did not specifically support that the December 5, 2012 work incident caused or contributed to appellant's diagnosed medical condition. Likewise, other medical evidence, such as the January 31, 2013 chest x-ray, did not provide an opinion on the causal relationship between appellant's job and his diagnosed costochondritis. For this reason, this evidence is not sufficient to meet his burden of proof.

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

[7] *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).

Appellant submitted a dispensary permit prepared by a nurse dated January 2, 2013 and reports from a physician's assistant dated January 11 and February 4, 2013. The Board has held that treatment notes signed by a nurse or physician's assistant are not considered medical evidence as these providers are not a physician under FECA.[8]

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.[9] Appellant failed to submit such evidence and OWCP therefore properly denied his claim for compensation.

On appeal, appellant disagreed with OWCP's decision denying his claim for compensation and asserts that he sustained an employment-related injury on December 5, 2012 and has submitted sufficient medical evidence to establish that the diagnosed conditions are related to the employment-related incident. As noted above, the Board finds that the medical evidence does not establish that his conditions were causally related to the December 5, 2012 work incident. Reports from appellant's physician's failed to provide sufficient medical rationale explaining how appellant's injuries were causally related to this incident.

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.

[8] *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).

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

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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