United States Department of Labor
Employees' Compensation Appeals Board

B.T., Appellant	)	
and	)	**Docket No. 14-1332**
	)	**Issued: November 20, 2014**
DEPARTMENT OF THE ARMY, U.S. ARMY TRAINING & DOCTRINE COMMAND, Fort Rucker, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 22, 2014 appellant filed a timely appeal from the March 31, 2014 Office of Workers' Compensation Programs' (OWCP) decision which affirmed a prior decision denying his claim for a recurrence. 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 has established that he sustained a recurrence of disability on February 7, 2013 causally related to his May 22, 1997 injury.

FACTUAL HISTORY

On June 4, 1997 appellant, then a 45-year-old heating and air conditioning mechanic, filed a traumatic injury claim alleging that on May 22, 1997 he sustained injuries to his lower

[1] 5 U.S.C. § 8101 *et seq.*

back installing an air conditioner compressor in the performance of duty. He was treated conservatively and returned to light duty on May 31, 1997 and continued working until he retired from the employing establishment on January 10, 1998.[2] On September 10, 1997 OWCP accepted the claim for sprain of the back and lumbar region.

In a January 5, 2000 report, Dr. Robert W. Moore, a Board-certified orthopedic surgeon, noted that appellant continued to have pain in his legs but he was handling it well and he did not see any deterioration. He recommended that appellant continue to work and seek treatment as necessary.

In a January 13, 2000 report, Dr. Moore noted that appellant injured his back at work in May 1997 when he was lifting an air conditioner compressor. He indicated that appellant was initially seen by him in August 1997 and he began a conservative treatment program. Dr. Moore explained that he had a magnetic resonance imaging (MRI) scan which revealed a probable herniated lumbar disc at the L4-5 level. He advised that appellant received conservative treatment over the years to include inflammatory medications and epidural injections. Dr. Moore explained that appellant was a candidate for surgical discectomy with possible fusion; however, he had a great fear of surgery and declined any operative intervention. He opined that appellant's symptoms were secondary to his injury in May 1997.[3]

On February 15, 2013 appellant filed a Form CA-2a, recurrence claim, claiming a recurrence for medical treatment beginning February 7, 2013. He noted that, on or about February 7, 2013, he was performing his regular activities and began to feel the same pain in his back tingling down his right leg and hip. Appellant advised that the next morning, he could hardly get out of bed because the pain was excruciating. He indicated that he believed that his symptoms were related to the original 1997 work injury because he had the "same exact pain and symptoms" as he had with the original injury. Appellant alleged that, after his original injury, he returned to light duty for the duration of his time at the employing establishment until his retirement in February 2011. He noted that he subsequently had worked for a private employer as an "HVAC" mechanic since February 2001. Appellant noted that his duties included: repairing air conditioning units, ice machines, refrigerators and control thermostats. He also noted that he worked 40 hours per week.

By letter dated March 4, 2013, OWCP notified appellant of the evidence necessary to establish his claim for a recurrence of a medical condition causally related to his accepted work injury. It requested a medical report from a physician explaining how any renewed need for medical treatment was causally related to a spontaneous worsening of his 1997 work injury, rather than due to an intervening injury or exposure to new work factors.

[2] The record indicates that he later returned to work with the employing establishment before retiring again in 2001.

[3] This report was submitted to OWCP along with a January 12, 2000 recurrence of disability claim, for which appellant indicated that he did not stop work. The record does not indicate that OWCP developed this recurrence claim. Following this, the claim was dormant from September 30, 2001, when Dr. Moore provided work restrictions, until February 2013.

OWCP received clinical notes from a healthcare provider with an illegible signature dating from November 28, 2005 through January 25, 2006. These documents indicated that appellant sustained an injury to his back on November 28, 2005 at 2:00 p.m. while changing a motor and "developed pain in the lower back with pain radiation to [left] leg." OWCP also received nurses' notes.

A February 18, 2013 emergency room note provided by Dr. John A. Powell, a Board-certified internist, revealed that appellant had complaints of lower back pain and noted that he had a history of back injury in 1997. Dr. Powell noted that appellant related that he was advised to have back surgery but he never proceeded with the surgery and had no follow up for his back. He also related that he indicated that he had intermittent back pain and last week it worsened. Dr. Powell noted that appellant denied any recent injury, weakness, fever or incontinence. He diagnosed chronic low back pain, acute sciatica and degenerative disc disease.

A February 18, 2013 x-ray report of the lumbar spine read by Dr. William W. Beckett, a Board-certified diagnostic radiologist, revealed chronic lower lumbar degenerative disc and joint disease mild to moderate with no acute findings. Dr. Beckett noted that appellant had no recent injury.

A March 1, 2013 MRI scan of the lumbar spine read by Stephen L. Fernandez, a Board-certified diagnostic radiologist, revealed low back pain radiating down the right leg and broad-based disc bulges at L1-2, L2-3, L3-4 and L4-5, and moderate multilevel degenerative disc disease, with central canal stenosis, most significant at L4-5.

OWCP received treatment notes dated February 27 and March 1 and 4, 2013 from Dr. Harry Weiser, a Board-certified neurological surgeon, who found low back pain and radiculopathy. March 5, 2013 reports from Dr. Ronnie Wiggins, a Board-certified anesthesiologist, revealed that appellant had low back pain associated with right leg sciatica. Dr. Wiggins noted that appellant received a lumbar epidural injection approximately 15 years ago.

In a March 10, 2013 statement, appellant noted that he "always had minor pain in my lower back and legs from my injury in 5-22-97." He advised that he had an epidural injection in his back for pain and it stopped this pain until now. Appellant advised that his symptoms had been with him and they came and went, especially when walking and standing for long periods. He denied that he sustained any new injuries or received medical treatment since he was treated for his prior injury. In a May 1, 2013 statement, appellant noted that a week prior to February 18, 2013, his symptoms worsened such that he had to visit the emergency room on February 18, 2013. He explained that his pain was continuous and never stopped. Appellant indicated that, when he was being treated for the original 1997 injury, he was told that he would need back surgery for the injury "at some point." He indicated that he worked up until February 18, 2013, when he stopped working.

In an April 30, 2013 report, Dr. David H. Evans, Board-certified in pain medicine, noted that appellant was seen for complaints of low back and right leg pain. He related that appellant had the same pain in "97/98" which required a series of "three LES1 procedures." Dr. Evans performed a lumbar epidural.

By decision dated June 6, 2013, OWCP denied the claim for recurrence. It found that appellant did not establish that he sustained spontaneous worsening of his 1997 work injury which required new medical treatment.

On June 19, 2013 appellant requested a hearing, which was held telephonically on January 22, 2014. At the hearing, he reiterated that he originally injured his back in 1997 at work and chose not to have surgery at that time. Appellant explained that he did not have a new injury with his back during his private employment because he continued to be injured from the original work injury. He stated that he currently was being treated with epidural injections. Appellant stated that in 2005, he was pushing a motor with his leg when he pulled his groin. He stated that he was not lifting. Appellant stated that he did not injure his back in 2005. He stated that he retired from the employing establishment in February 2001 and began working in the private sector as an HVAC mechanic. Appellant indicated that his new position required lifting up to 60 pounds, bending, twisting and moving equipment. He also advised that he had not seen a physician from 2005 to February 2013 for his back condition, but was taking over-the-counter medication. Appellant stated that his symptoms then worsened in February 2013 to the point of requiring new medical treatment.

By decision dated March 31, 2014, OWCP hearing representative affirmed the June 6, 2013 decision. He specifically noted that appellant had not provided medical evidence from a physician, supported by medical rationale and objective findings, to explain whether and how his need for treatment was causally related to his 1997 work injury rather than exposure to injurious work factors for over 10 years in private employment, or the 2005 private employment incident, or to normal age-related degeneration.

LEGAL PRECEDENT

A recurrence of medical condition refers to a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original treatment or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[4]

An employee who claims a recurrence of medical condition has the burden of proof to establish causal relationship by the weight of substantial, reliable and probative evidence. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the employee's need for additional medical care is causally related to the accepted injury and supports that conclusion with sound medical reasoning.[5]

[4] 20 C.F.R. § 10.5(y).

[5] *E.O.*, Docket No. 11-1099 (issued February 24, 2012); *J.B.*, Docket No. 11-1410 (issued January 5, 2012).

ANALYSIS

OWCP accepted appellant's claim for sprain of the back and lumbar region. Appellant returned to light duty on June 11, 1997. He indicated that in 2001 he began work for a private employer as an HVAC mechanic. Appellant subsequently claimed a recurrence of disability for medical treatment beginning February 7, 2013.

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence was causally related to the accepted injury.[6] There are no medical records from late 2001 until February 2013. Although OWCP received clinical notes from a healthcare provider with an illegible signature dating from November 28, 2005 through January 25, 2006, these documents cannot be considered probative medical evidence.[7] Furthermore, the November 28, 2005 note indicates that appellant sustained a new injury to his back while changing a motor. This is significant since appellant was not working for the employing establishment at that time.

Appellant submitted a February 18, 2013 emergency room note from Dr. Powell, who noted that appellant had complaints of lower back pain and a history of back injury in 1997. Dr. Powell also related that appellant indicated that he had intermittent back pain that had recently worsened. However, he did not offer any opinion regarding the cause of the diagnosed conditions. 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.[8]

OWCP received treatment notes dated February 27 and March 1 and 4, 2013 from Dr. Weiser, who found low back pain and radiculopathy and March 5, 2013 reports, from Dr. Wiggins, who advised that appellant had low back pain associated with right leg sciatica. Additionally, OWCP received an April 30, 2013 report from Dr. Evans, who noted that appellant was seen for complaints of low back and right leg pain. Dr. Evans related that appellant had the same pain in "97/98" which required a series of "three LES1 procedures." He performed a lumbar epidural. The Board notes that these reports are also of limited probative value as they offer no opinion on causal relationship. Likewise, other medical reports submitted by appellant, such as diagnostic reports, are insufficient to establish the claim as they do not specifically address how any condition on or after February 7, 2013 is causally related to the original employment injury.

OWCP received nurses' notes. However, nurses are not "physicians" as defined under FECA. Their opinions are of no probative value.[9]

---

[6] *Ricky S. Storms*, 52 ECAB 349 (2001).

[7] *D.D.*, 57 ECAB 734 (2006) (medical reports lacking proper identification cannot be considered as probative evidence in support of a claim). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[8] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *See Roy L. Humphrey*, 57 ECAB 238 (2005); *see also supra* note 7.

Accordingly, the Board finds that appellant has not met his burden of proof in this case as he has not submitted a sufficiently reasoned medical opinion explaining why his recurrence of disability beginning February 7, 2013 was caused or aggravated by the May 22, 1997 injury.

On appeal, appellant argued that his physician was supposed to submit new evidence to OWCP; however, he never did.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on February 7, 2013 causally related to his May 22, 1997 injury.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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