United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 14-1376**
	)	**Issued: November 4, 2014**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Gulfport, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 30, 2014 appellant filed a timely appeal from a January 23, 2014 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a low back injury due to a September 17, 2013 incident.

FACTUAL HISTORY

On December 12, 2013 appellant, then a 54-year-old general warehouse leader, filed a traumatic injury claim alleging that on September 17, 2013 he sustained a back injury while

[1] 5 U.S.C. § 8101 *et seq.*

packing materials into a container for shipment. He stopped work on September 19, 2013. Appellant returned to work on September 25, 2013 but missed intermittent time thereafter.

In an October 9, 2013 supervisory mishap report, appellant noted that he injured his lower back while packing materials for a shipment. He informed his supervisor of his injury on two different occasions that day. In an October 9, 2013 statement, Paul Darden, appellant's supervisor, noted that appellant did not inform him that an accident occurred; only that he had back pain and needed medical attention.

In a December 20, 2013 letter, OWCP notified appellant that the evidence was insufficient to establish his claim. Appellant was instructed to submit a medical report from his attending physician including a diagnosis, history of the injury and a physician's opinion regarding causal relationship supported by medical rationale.

In a September 17, 2013 statement, Gerold Griffin, appellant's co-worker, advised that he witnessed appellant rubbing his back. Appellant told him that his back hurt. Mr. Griffin advised that appellant was still in pain after he returned to work. In a September 18, 2013 statement, George Scherff, appellant's coworker, advised that on the day of the incident, appellant asked him to take over his duties because he hurt his back.

In September 23 and October 10, 2013 treatment records, a nurse practitioner noted that appellant complained of back pain and a neck spasm. She diagnosed muscle spasm of the neck, referred appellant for physical therapy and released him without limitations.

In a November 20, 2013 report, Dr. John Highsmith, Board-certified in family medicine, advised that appellant experienced back pain for the past two months with no improvement.[2] Appellant informed Dr. Highsmith that he felt that something was inside his back, especially upon bending. Dr. Highsmith diagnosed lower back pain, requested magnetic resonance imaging (MRI) scan and released appellant without limitation. In a December 6, 2013 lumbar MRI scan report, Dr. Shane Diekman, a Board-certified diagnostic radiologist, noted that appellant experienced back pain for the past two months. Testing revealed mild multilevel spondylosis.

In a December 16, 2013 disability report, Dr. Highsmith advised that appellant was unable to lift over 20 pounds, climb, squat or bend until completion of an evaluation by a specialist. An accompanying December 16, 2013 treatment note diagnosed lower back pain and advised that appellant was referred for a neurology consultation.

In a January 7, 2014 report, Dr. Highsmith advised that appellant visited his office for low back and hand pain. Appellant stated that the low back pain began after packing heavy items at work but without trauma. Dr. Highsmith advised that an MRI scan revealed spondylosis with no impingement and no evidence of trauma. In his opinion, back pain and strains were common conditions and that there was no medical evidence that appellant's back pain was caused by any specific trauma at work. Dr. Highsmith further advised that a definitive diagnosis by a neurologist was pending.

[2] Dr. Highsmith also stated that appellant presented with complaints of pain in his hands that started three days earlier.

In a January 14, 2014 statement, appellant alleged that he felt a twinge in his lower back that radiated to his buttocks and lower left leg as he was packing a container for shipment. He also stated that there was a delay in filing his claim because his supervisor did not ask if he wanted to file a workers' compensation claim until December 11, 2013. In a December 11, 2013 e-mail, Mr. Darden advised appellant to refrain from heavy lifting, bending, squatting, climbing, or forklift operation on bumpy terrain until he was cleared by his physician.

By decision dated January 23, 2014, OWCP denied appellant's claim. It found that the medical evidence was not sufficient to establish that his low back condition was causally related to the September 17, 2013 incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[5]

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 or she 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.[6]

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

OWCP accepted that appellant was packing items into a container on September 17, 2013 as alleged. The evidence includes statements of coworkers and supports that the claimed work

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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

incident occurred. The Board finds that the medical evidence is insufficient to establish that the employment incident of September 17, 2013 caused appellant's lower back injury.

The only medical evidence to address causal relationship is Dr. Highsmith's January 7, 2014 report. Dr. Highsmith advised that an MRI scan of the lumbar spine revealed spondylosis without impingement. He noted that appellant related his condition to packing heavy items at work.[8] However, Dr. Highsmith stated that, in his opinion, back pain and strains were common conditions and that there is no medical evidence that appellant's back pain was caused by any specific trauma at work. This report fails to discharge appellant's burden of proof because Dr. Highsmith did not find a causal relationship between the accepted incident and his back condition.

Other reports and treatment records from Dr. Highsmith do not support that appellant's low back condition was caused or aggravated by work factors on September 17, 2013. The December 6, 2013 MRI scan report does not address causal relationship between a diagnosed medical condition and work events on September 17, 2013. The Board has held that medical records that do not state an opinion on causal relationship are of little probative value.[9]

In September 23 and October 10, 2013 treatment records, a nurse practitioner noted appellant's condition. However, records from a nurse practitioner do not constitute competent medical opinion in support of a claim. A nurse practitioner is not considered a physician as defined under FECA.[10] Thus, these records are of no probative medical value.

On appeal, appellant argues that the medical evidence contains a medical diagnosis. The Board notes he was diagnosed with lumbar spondylosis. However, the claim is deficient because appellant did not submit medical evidence addressing how the September 17, 2013 incident caused or contributed to this diagnosed medical condition. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[11] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.[12] Appellant has not provided such medical opinion evidence in this case. He failed to meet his burden of proof.

[8] The Board notes that Dr. Highsmith's report did not list the date of the incident accepted in this case.

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

[10] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

[11] *See supra* note 6.

[12] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

Appellant may submit new evidence or argument as part of a formal 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.[13]

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on September 17, 2013.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[13] Appellant submitted new evidence after issuance of the January 23, 2014 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).