United States Department of Labor
Employees' Compensation Appeals Board

H.O., Appellant	)	
and	)	**Docket No. 13-1856**
	)	**Issued: September 22, 2014**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 6, 2013 appellant filed a timely appeal from the June 21, 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on January 15, 2013.

FACTUAL HISTORY

On January 25, 2013 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim alleging that on January 15, 2013 he sustained an injury to his left knee while lifting a

[1] 5 U.S.C. § 8101 *et seq.*

bucket filled with "book like magazines" at work.[2] He stopped work on January 15, 2013. The employing establishment advised that it had no notice of the claimed injury until January 25, 2013. The case was initially administratively accepted and closed; but it was reopened on February 1, 2013 as appellant had not returned to work.

In a January 16, 2013 report, Dr. Bonnie Simmons, Board-certified in emergency medicine, noted that x-rays of the lumbosacral spine failed to reveal any fracture, subluxation or degenerative changes. She found that appellant had a normal lumbosacral spine. In a January 18, 2013 treatment note, Dr. Pye Yar, a family practitioner, noted "left back pain shooting to the leg." He diagnosed sciatica and screen neoplasm. Appellant stated that he had gone to the emergency room at Lutheran Hospital. On January 18, 2013 he went to see his primary care physician, Dr. Yar, who gave him a steroid injection and an injection for pain. In an insurance verification form dated January 23, 2013, there is a question concerning whether the patient's condition is related to a no-fault motor vehicle accident or to workers' compensation. The answer "No" is circled but no physician's name appears on the intake form.

In a report dated January 24, 2013, Dr. Mathew Lefkowitz, a Board-certified anesthesiologist, noted that appellant was seen with chief complaints of left leg pain that began after he injured himself while lifting a bucket at work in January 2013. He diagnosed sacroiliitis, sciatica and lumbosacral radiculopathy. Dr. Lefkowitz placed appellant off work until further notice based on his pain and difficulties with prolonged sitting, standing, walking and going from a sitting to a standing position.

In a February 1, 2013 letter, OWCP advised appellant of the additional evidence needed to establish the claim. It asked that he further explain how the injury occurred and why he delayed informing the employing establishment. OWCP also explained that a physician's opinion on causal relationship was crucial to his claim.

Appellant submitted a January 25, 2013 statement describing his claimed injury. He noted that, on January 15, 2013, he was working on his route when he picked up a heavy bucket that looked like it was filled with magazines. Appellant explained that he squatted and picked up the bucket and felt a little pain in his lower back area. He advised that he "stretched a few times and didn't feel bad, so I continued boxing up." Appellant noted that he tried out his route and about half way through delivery, he started to feel a pain in his left hip and thigh. He explained that "it wasn't real bad but I was feeling it." Appellant noted that he went to lunch and felt "alright" but later started feeling left leg pain again. He explained that he met his coworker, who travelled to the train station with him and let him know that he was going to seek pain relief from 800 milligrams of Ibuprofen as his pain was worsening. Appellant noted that, two months prior, it worked when his right hip and right knee were hurting due to arthritis. He later noted that he could barely walk the next day and went to the hospital. Appellant explained that he was on vacation from January 18 to 25, 2013, but, during this time, he was seeing physicians and going to the hospital for relief of his pain. He stated that all he could do was lie in bed.

[2] On the claim form, a coworker, Mr. Cruz, stated that he saw appellant sitting on January 15, 2013 and that appellant stated that he had a lot of leg pain. He also supported appellant's statement that no supervisor was on the floor at the time they spoke.

In a letter dated January 30, 2013, Sondra Cofield, a customer service supervisor, controverted the claim. She noted that, on Friday, January 30, 2013, appellant reported to management that he sustained an injury to his lower back on January 15, 2013 while lifting a tub of mail on his route. Ms. Cofield advised that he did not mention the injury to his supervisors until 10 days after the incident occurred. She advised that management was unable to properly investigate. Ms. Cofield also noted that appellant had a preexisting condition on the right side of the body. In a separate letter also dated January 30, 2013, she advised that he was instructed to call in on February 1, 2013 for a predisciplinary interview.

In a February 6, 2013 report, Dr. Lefkowitz noted that appellant had left leg pain after picking up a bucket at work. He indicated that appellant did not have a history of preexisting disease. Dr. Lefkowitz checked a box "yes" in response to whether he believed that the condition was caused or aggravated by work activity. He advised that appellant could not return to regular work but could return to light work on March 5, 2013.

In a separate report also dated February 6, 2013, Dr. Lefkowitz noted appellant's history, which included a history of arthritis and pain in the right knee in the past. He indicated that the present injury aggravated these conditions. Dr. Lefkowitz diagnosed sacroiliitis, sciatica, thoracic or lumbosacral neuritis or radiculitis, unspecified, internal derangement of knee and pain in joint involving pelvic region and thigh.

In a February 28, 2013 report, Dr. Lefkowitz diagnosed sciatica and thoracic or lumbosacral neuritis or neuritis unspecified. OWCP also received nursing notes.

On March 3, 2013 appellant requested a review of the written record.

By decision dated March 6, 2013, OWCP denied appellant's claim. It found that he had established that he was a federal employee who filed a timely claim. OWCP also found that the accident or trauma had occurred within the performance of appellant's duties and that a medical condition had been diagnosed. It denied the claim because he had not established that his claimed condition was causally related to his employment.

On March 3, 2013 appellant requested a review of the written record. In a March 12, 2013 attending physician's report, Dr. Lefkowitz diagnosed sacroiliitis, sciatica and lumbosacral radiculopathy and checked a box "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. He advised that appellant was totally disabled for the period January 15 to March 5, 2013 and could return to light duty with restrictions on February 28, 2013.

In a March 13, 2013 report, Dr. Lefkowitz noted that appellant was seen for pain management principally for left leg pain. He diagnosed sacroiliitis, sciatica and lumbosacral radiculopathy. Dr. Lefkowitz stated, "in my professional opinion, there is a causal relationship between the pain while [appellant] felt while lifting the 30- to 50-pound bucket at work and his experience of severe low back pain that radiated to the posterolateral aspect of his left leg about four hours after his initial injury. [Appellant] has no previous injury of low back or leg pain and experienced an onset of pain symptoms both immediately after lifting the bucket and again on the same day as this injury."

In an April 18, 2013 report, Dr. Lefkowitz saw appellant for pain. Appellant explained that it was while lifting the bucket to put it on a chair that he felt pain in the left side of his low back but continued to work, assuming that he could work through the initial pain. Dr. Lefkowitz provided a history that essentially followed appellant's statement of January 25, 2013. He repeated his diagnosis of sciatica and thoracic or lumbosacral neuritis or radiculitis, unspecified. Dr. Lefkowitz continued to treat appellant and submit reports.

In a June 21, 2013 decision, an OWCP hearing representative affirmed the March 6, 2013 decision because she found that the medical evidence failed to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 timely filed within the applicable time limitation period of FECA[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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.[7] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[8] 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.[9]

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.[10]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

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

ANALYSIS

Appellant alleged that on January 15, 2013 he injured his left knee while lifting a bucket filled with magazines at work. OWCP has accepted that the claimed event occurred and that appellant was within the performance of duty and that a medical diagnosis exists.

However, the medical evidence is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. It contains no reasoned explanation of how the specific employment incident on January 15, 2013 caused or aggravated an injury.[11] The Board notes that this is particularly important in light of appellant's indication that he had a prior arthritic condition for which he had received treatment from his family physician.

Appellant submitted several reports from Dr. Lefkowitz. They included reports dated January 24, February 6 and 28, 2013, in which he noted that appellant was seen with chief complaints of left leg pain that began after he injured himself. In a separate report also dated February 6, 2013, Dr. Lefkowitz noted appellant's history and diagnosed sacroiliitis, sciatica, thoracic or lumbosacral neuritis or radiculitis, unspecified, internal derangement of knee and pain in joint involving pelvic region and thigh. However, these reports are of limited probative value on the relevant issue because they lack an opinion on causal relationship.[12]

In a March 13, 2013 report, Dr. Lefkowitz noted that appellant was seen for left leg pain that began after he injured himself at work on January 15, 2013. He opined that "there is a causal relationship between the pain … [appellant] felt while lifting the 30- to 50-pound bucket at work and his experience of severe low back pain that radiated to the posterolateral aspect of his left leg about four hours after his initial injury." Dr. Lefkowitz also stated that appellant had "no previous injury of low back or leg pain and experienced an onset of pain symptoms both immediately after lifting the bucket and again on the same day as this injury." Although, he provided his belief that the pain was related to the accepted incident, he provided no basis or rationale for his conclusion. Dr. Lefkowitz failed to explain why the pain could not also relate to the preexisting arthritic condition.[13]

Furthermore, 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.[14]

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[11] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[14] *Phillip L. Barnes*, 55 ECAB 426 (2004).

In his April 18, 2013 report, Dr. Lefkowitz again noted the history of injury as reported by appellant. The Board finds that while Dr. Lefkowitz described appellant's activities he did not offer his own opinion on causal relationship and did not provide medical rationale to explain the reasons why lifting a bucket would cause or aggravate the diagnosed conditions.

In form reports dated February 6 and March 12, 2013, Dr. Lefkowitz noted that appellant had pain in his left leg after picking up a bucket at work. He again indicated that appellant did not have a history or evidence of preexisting disease. Dr. Lefkowitz checked the box "yes" to indicate that his condition was caused or aggravated by work activity. He advised that appellant "was lifting a bucket at work and subsequently felt pain." The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[15] Thus these reports are of little probative value and insufficient to establish the claim.

Other medical reports submitted by appellant, including reports of diagnostic testing, are insufficient to establish the claim as these reports do not specifically address how employment factors caused or contributed to a diagnosed medical condition.[16] OWCP also received nursing notes. However, nurses are not physicians under FECA and are not competent to render a medical opinion.[17]

Because the medical reports submitted by appellant do not sufficiently explain why the January 15, 2013 work activity caused or aggravated a left knee condition, these reports are of limited probative value and are insufficient to establish that the January 15, 2013 employment incident caused or aggravated a specific injury.

Therefore the Board finds that appellant did not meet his burden of proof to establish a traumatic injury in the performance of duty on January 15, 2013. On appeal, appellant asserted that the evidence was sufficient to establish his claim. However, as found above, the medical evidence does not establish causal relationship between appellant's diagnosis and his employment.

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 a traumatic injury in the performance of duty on January 15, 2013.

[15] *Calvin E. King*, 51 ECAB 394 (2000).

[16] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[17] *G.G.*, 58 ECAB 389 (2007). *See* 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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