

**United States Department of Labor
Employees' Compensation Appeals Board**

M.T., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Point Mugu, CA, Employer**

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**Docket No. 15-427
Issued: April 21, 2015**

Appearances:
Raquell Krueger-Denio, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 16, 2014 appellant, through his representative, filed a timely appeal from a November 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 sustained an injury on August 28, 2013 in the performance of duty, as alleged.

FACTUAL HISTORY

On September 3, 2013 appellant, then a 44-year-old firefighter, filed a traumatic injury claim alleging that on August 28, 2013 he sustained pain and pressure in his lower back and legs

¹ 5 U.S.C. § 8101 *et seq.*

after emptying “trash and office furniture out of a trailer” behind the fire station. He stopped work on August 28, 2013. The employing establishment did not controvert the claim.

In a disability certificate dated August 29, 2013, Dr. Russell Nelson, a Board-certified orthopedic surgeon, diagnosed appellant’s status post lumbar fusion. He found that appellant was totally disabled until September 3, 2013. On September 3, 2013 Dr. Nelson diagnosed lumbago and status post fusion and found that appellant was unable to work until September 24, 2013.

By letter dated September 17, 2013, OWCP advised appellant that his claim originally appeared to be minor and thus it had approved a limited amount of medical expenses. It was now formally adjudicating his case. OWCP requested that appellant provide additional factual information, including why he was working on a day that appeared to be a nonscheduled workday. It further requested that he submit a detailed medical report from his attending physician addressing the causal relationship between any diagnosed condition and work factors.

In a disability certificate dated October 10, 2013, Dr. Nelson diagnosed status post lumbar fusion and found that appellant could return to his usual work duties on October 11, 2013.

By decision dated October 22, 2013, OWCP denied appellant’s claim on the grounds that the medical evidence was insufficient to show that he sustained a medical condition causally related to the accepted August 28, 2013 work incident.

On August 12, 2014 appellant, through his representative, requested reconsideration. The representative noted that appellant had a history of prior work injuries to his lumbar spine in 2007 and 2009 for which he underwent a fusion at L4-5 and L5-S1. In January 2011, appellant returned to work without restrictions. On August 28, 2013 he experienced back pain after moving office furniture and other heavy items out of a trailer. The next day, the pain radiated into appellant’s lower right extremity. Dr. Nelson found that appellant was totally disabled from August 28 until October 9, 2013. Appellant’s representative asserted that appellant had met his burden to show an injury on August 28, 2013 through the newly submitted May 20, 2014 report from Dr. Nelson. She also maintained that a magnetic resonance imaging (MRI) scan study dated July 15, 2014, “which was ordered for a new injury sustained this year,” revealed “objective findings related to this injury on appeal.”

A July 15, 2014 MRI scan study showed retrolisthesis at L2 and L3-4, an osteophyte impinging on the right nerve roots and status post surgery at L4-5 and L5-S1.

In a report dated May 20, 2014, Dr. Nelson evaluated appellant for continued back pain. He diagnosed status post lumbar fusion from L4 to S1 and “[s]tatus post recent aggravation of lumbar musculature and scar tissue around the fusion.” Dr. Nelson stated:

“In an attempt to clarify [his] status, [appellant] sustained prior lumbar injuries that resulted in fusion [at] L4-5 and L5-S1. He had returned to work full duty when he aggravated this area producing pain and symptomatology which caused him to come off of work. Although it does not appear [that appellant] sustained a permanent aggravation, he did require time off of work and medications.

[Appellant] also required therapy. This was to treat scar tissue and muscular around his lumbar fusion area. This involved a period of temporary disability from August 29 through October 9, 2013. I ordered this disability to allow [appellant] to recover from this work-related aggravation of his prior fusion area.”

In a supplemental report dated August 4, 2014, Dr. Nelson related that, subsequent to appellant’s 2007 and 2009 injuries, he sustained an injury on August 8, 2013 with symptoms of pain radiating into the right buttock. Appellant was disabled from August 20 to October 19, 2013, at which time he resumed his usual employment. Dr. Nelson described another injury at work on July 1, 2014, resulting in a herniation at L3-4. He advised that the “initial injury lifting the office furniture weakened the disc space at L3-4 and may well have produced the annual tear” and “may well have been the initial insult at the L3-4 disc area.” In an addendum dated November 24, 2014, Dr. Nelson clarified that appellant sustained an injury on August 28, 2013 rather than August 8, 2013.

By decision dated November 6, 2014, OWCP denied modification of its October 22, 2013 decision. It found that the medical evidence from Dr. Nelson was insufficient to establish that appellant sustained an injury on August 28, 2013 as he did not reach a definite diagnosis, provide an accurate date of injury, or sufficiently address causation.

On appeal, appellant’s representative describes his history of injury and the August 28, 2013 work incident. She argues that Dr. Nelson’s May 20, 2014 report is sufficient to meet appellant’s burden of proof and notes that an aggravation of a preexisting condition is compensable. Appellant’s representative also asserts that Dr. Nelson’s reference to an August 8, 2013 injury was a typographical error. She contends that OWCP’s decisions do not contain findings of fact and a statement of reasons in accordance with 20 C.F.R. § 10.126. Appellant’s representative notes that OWCP did not analyze the July 15, 2014 MRI scan study.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner

² 5 U.S.C. § 8101 *et seq.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

alleged, by a preponderance of the reliable, probative, and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

ANALYSIS

Appellant alleged that he sustained an injury to his lower back on August 28, 2013 after moving heavy furniture and trash from a trailer. OWCP accepted that the August 28, 2013 incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained an injury as a result of this incident.

The Board finds that appellant has not established that the August 28, 2013 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁸

In a disability certificate dated August 29, 2013, Dr. Nelson diagnosed status post lumbar fusion and opined that appellant could not work until September 3, 2013. On September 3, 2013 he diagnosed lumbago and status post fusion and found that appellant remained totally disabled. On October 10, 2013 Dr. Nelson diagnosed status post lumbar fusion and advised that appellant could return to work with no restrictions. In these reports, however, he did not address the cause of appellant's condition and disability. 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.⁹

On May 20, 2014 Dr. Nelson diagnosed status post lumbar fusion from L4 to S1 with a recent aggravation of scar tissue and the lumbar musculature around the site of the fusion. He noted that appellant had resumed his regular work after the fusion, but subsequently aggravated the area. Dr. Nelson found that appellant was disabled from work for the period August 29 through October 9, 2013 as he required recovery from a "work-related aggravation of [appellant's] prior fusion area." He did not, however, discuss the history of the August 28, 2013 work injury or provide any rationale for his finding that appellant was disabled from employment.

In order to establish causal relationship, a physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

⁹ *S.E.*, Docket No. 08-221 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

rationale explaining the nature of the relationship of the diagnosed condition and the specific employment incident.¹⁰

In a report dated August 4, 2014, Dr. Nelson indicated that on August 8, 2013 appellant experienced pain radiating into the right buttock after an August 8, 2013 injury. He found that appellant was disabled from this injury from August 20 to October 19, 2013. Dr. Nelson determined that when appellant lifted office furniture he possibly sustained an “initial insult at the L3-4 disc area” that may have caused an annual tear. In an addendum dated November 24, 2014, he clarified that appellant sustained the injury on August 28, 2013, rather than August 8, 2013. Dr. Nelson did not, however, provide a firm diagnosis or explain how, with reference to the mechanism of injury, it caused any diagnosed condition. A physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant’s diagnosed medical condition.¹¹ Further, Dr. Nelson’s finding that lifting furniture may have caused an injury at L3-4 is couched in speculative terms, and the Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹²

As appellant has not submitted reasoned medical evidence based on a complete factual history addressing whether he sustained an injury on August 28, 2013, he has not met his burden of proof.

On appeal, appellant’s representative maintains that Dr. Nelson’s reports are sufficient to meet appellant’s burden of proof and notes that an aggravation of a preexisting condition is compensable. She also asserts that Dr. Nelson’s reference to an August 8, 2013 injury was a typographical error. The representative is correct in her assertion that an aggravation of a preexisting condition is compensable, but only upon proper proof of such aggravation. Moreover, as discussed, however, Dr. Nelson’s reports do not contain a reasoned opinion on causation and thus are insufficient to meet appellant’s burden of proof.

Appellant’s representative also contends that OWCP did not provide adequate findings of fact and a statement of reasons and did not analyze the MRI scan study.¹³ OWCP, however, weighed the medical reports submitted and made findings regarding their probative value. The July 15, 2014 MRI scan study did not address causation and was obtained for “a new injury sustained this year;” consequently, it is not probative.¹⁴

¹⁰ See *Charles W. Downey*, 54 ECAB 421 (2003); *Roger Dingess*, 47 ECAB 123 (1995).

¹¹ See *John W. Montoya*, 54 ECAB 306 (2003).

¹² *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹³ OWCP’s regulations provide that a decision “shall contain findings of fact and a statement of reasons.” 20 C.F.R. § 10.126.

¹⁴ See *J.E.*, Docket No. 13-508 (issued May 16, 2013).

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on August 28, 2013 in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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