United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 15-0974**
	)	**Issued: December 10, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 31, 2015 appellant filed a timely appeal from December 15, 2014 and March 12, 2015 merit decisions 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 an injury in the performance of duty on March 18, 2014.

FACTUAL HISTORY

On March 19, 2014 appellant, then a 57-year-old laborer/custodian, filed a traumatic injury claim alleging that on March 18, 2014 he strained his back and neck when lifting a

[1] 5 U.S.C. § 8101 *et seq.*

garbage can into a dumpster in the performance of duty. The employing establishment controverted the claim.

Along with the claim, OWCP received treatment notes dating from March 10, 2009 and May 20, 2013 from Dr. Robert D. Waddell, a chiropractor. In a March 10, 2009 report, Dr. Waddell advised that he was treating appellant for injuries he sustained on January 2, 2009 while employed at the employing establishment as a semi-driver.[2] He diagnosed: cervical musculoligamentous strain injury; cervical radiculopathy; subluxation of C6-7 vertebrae; degenerative disc disease; lumbar musculoligamentous strain injury, sciatica, subluxation of L4-5 vertebrae. In a September 5, 2012 report, Dr. Waddell indicated that he was treating appellant for injuries sustained on March 24, 2010 in the course of his work duties. He diagnosed: cervical musculoligamentous strain injury; cervical radiculopathy; subluxation of C6 level; spondylosis degenerative joint disease aggravated; thoracic musculoligamentous strain injury, spasm, subluxation T8 level, spondylosis degenerative joint disease; sciatica; subluxation of L5 level; spondylosis; and degenerative joint disease. Dr. Waddell also provided a January 5, 2009 x-ray report which listed subluxation of C5-6, and L4-5 vertebrae.

OWCP received a March 26, 2014 chiropractic referral, from a nurse practitioner which indicated that appellant was being referred for chiropractic treatment for diagnoses to include: cervicalgia, strain of the thoracic region and lumbar region.

By letter dated April 3, 2014, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

Appellant provided additional evidence from Dr. Waddell. In reports dated March 19, 2014, Dr. Waddell indicated that appellant was unable to work from March 19 to March 25, 2014. A March 19, 2014 x-ray read by Dr. Waddell revealed that appellant had subluxation at the C6-7, T8, and L4-5 levels as well as cervical degenerative joint disease.

Dr. Waddell noted in a March 28, 2014 attending physician's report that appellant was lifting a 55-gallon trash container of 70 pounds from the floor to a larger container and experienced an acute neck, mid and low back pain. He indicated that appellant had a preexisting history of cervical spondylosis. Dr. Waddell provided findings to include cervical and lumbar degeneration, paraspinal sprain, subluxation at C5, T8, L5, and cervical spondylosis. He diagnosed subluxation at C5, T8, and L5. Dr. Waddell checked the box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. He indicated that appellant was receiving chiropractic manipulation of the spine, ultra sound, and manual traction. Dr. Waddell placed appellant off work from March 19 to April 2, 2014 and indicated that he was partially disabled from April 3 to 30, 2014.

[2] Appellant has several prior claims that include an April 9, 2001 traumatic injury claim which OWCP accepted for cervical/lumbar strain and cervical, and lumbar subluxation C5-6 and L4-5 in claim number xxxxxx097. On February 28, 2008 OWCP terminated his compensation benefits in that claim. The Board affirmed the termination. Docket No. 09-475 (issued December 24, 2009). Matters pertaining to any prior claims of appellant are not before the Board on the present appeal.

In a March 31, 2014 narrative report, Dr. Waddell explained that on March 19, 2014 he saw appellant for an injury that occurred on March 18, 2014 when appellant was lifting and twisting with a heavy 55-gallon trash can. He explained that appellant had acute neck pain, occipital headaches, mid back pain, and lower back pain. Dr. Waddell indicated that appellant had a prior work-related history of injury on March 24, 2010 for which he was treated and the last visit was August 22, 2013. He examined appellant and noted that x-rays demonstrated a loss of the normal cervical lordosis due to spasm and subluxation of C6-7 vertebrae, cervical degenerative disc disease C4-7 levels, subluxation of T8 vertebrae, and subluxation of L4-5 vertebrae. Dr. Waddell diagnosed cervical musculoligamentous strain injury/cervicalgia, cervical radiculopathy, subluxation of C6-7 vertebrae, degenerative disc disease, thoracic musculoligamentous strain injury, subluxation T8 vertebrae, lumbar musculoligamentous strain injury, sciatica, and subluxation of L4-5 vertebrae. He noted that appellant was undergoing further chiropractic treatment. Appellant was released to work on April 3, 2014 with restrictions. Dr. Waddell noted that he had enclosed his March 19, 2014 x-ray report which revealed spinal subluxations. By duty status report dated April 2, 2014, he diagnosed cervical, thoracic, and lumbar strain. Dr. Waddell advised that appellant could return to work with restrictions and referred to his April 2, 2014 report of work ability.[3] OWCP also received nurses' notes.

In a letter dated April 2, 2014, Loi M. Hathaway, an employing establishment health and resource management representative, controverted the claim. She noted that prior to the incident appellant was diagnosed with "left neck pain" and "significant" facet arthritis at C2-3, C3-4, and C4-5 on the left. Ms. Hathaway noted that on "[February 6] cervical radiofrequency fluoroscopic" was performed. She stated that there was no medical documentation from a qualified physician for the "'new' neck and back incident." Ms. Hathaway explained that appellant was already seeking chiropractic treatment for a "major preexisting back and neck injury" before the March 18, 2014 incident. She argued that there was no medical evidence to support a new injury or a worsening of his preexisting injury.

By decision dated May 8, 2014, OWCP denied appellant's claim. It found that the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work events. OWCP noted that the medical evidence was from a chiropractor. It found that the chiropractor did not diagnose a spinal subluxation demonstrated by x-ray.

On May 14, 2014 appellant requested reconsideration. He provided an April 11, 2014 statement in which he described how his claimed injury occurred.

In reports dated April 25, 2014, Dr. Terry W. Kopp, Board-certified in family medicine, noted that appellant had pain and was following a chiropractic specialist. He advised that he was having neck pain, headaches and was still sore. Dr. Kopp diagnosed cervicalgia.

In a May 16, 2014 report, Dr. Waddell indicated that he had diagnosed a spinal subluxation demonstrated by x-ray taken on March 19, 2014 and that this established that the

[3] An April 2, 2014 report of work ability signed by Dr. Waddell noted that appellant was able to work with restrictions from April 3 to 30, 2014. The restrictions included: bending frequently, (four to eight hours); squatting frequently, (four to eight hours); walking and standing frequently, (four to eight hours); reaching above the shoulders, occasionally, (one to three hours); lift, carry, and pulling no more than 11 to 20 pounds.

medical condition was due to the March 18, 2014 work injury. He noted appellant's prior history which included a prior work injury of March 24, 2010 and advised that he was last seen on August 22, 2013. Dr. Waddell examined appellant and determined that x-rays revealed findings to include subluxation of T8 vertebrae and L4-5 vertebrae. He diagnosed cervical musculoligamentous strain injury, cervicalgia, cervical radiculopathy, subluxation of C6-7 vertebrae, degenerative disc disease, thoracic musculoligamentous strain injury, subluxation T8 vertebrae, lumbar musculoligamentous strain injury, sciatica and subluxation of L4-5 vertebrae. Dr. Waddell reiterated that he had enclosed his x-ray report which documented subluxation of the cervical spine at C6-7, thoracic spine T8, and lumbar spine L4-5. He opined that these injuries were causally related to the work injury of March 18, 2014. Dr. Waddell continued to treat appellant and submit reports. OWCP also received copies of previously submitted reports and nurses' notes.

On July 20, 2014 Renee Ryan, an employing establishment human resource specialist, further controverted the claim.

By decision dated August 20, 2014, OWCP denied the claim finding that the medical evidence was insufficient to establish causal relationship. It found that the medical evidence was insufficiently rationalized to establish that appellant's condition was caused by work duties.

On September 17, 2014 appellant requested reconsideration. He provided copies of previously submitted evidence. Appellant also provided a September 16, 2014 report from Dr. Kopp who diagnosed cervical radiculitis and opined that the "initial injury is more likely than not the cause of his ongoing neck symptoms."

On September 22, 2014 Dr. Waddell explained that on March 18, 2014 appellant sustained a traumatic injury while at work. He noted that the injury occurred when appellant lifted a 55-gallon trash can and twisted to dump the can in a dumpster. Dr. Waddell indicated that appellant sustained a cervical strain, thoracic strain, and lumbar strain as a result of the injury. He explained that x-rays were obtained on March 19, 2014 of the cervical, thoracic and lumbar spine and they demonstrated subluxations at C6-7, T8, and L4-5 vertebrae causally related to the March 18, 2014 work injury. Dr. Waddell explained that the specific employment factor of lifting a 55-gallon trash can and twisting caused a cervical, thoracic, lumbar musculoligamentous strain injury, resulting in reduced range of motion, paraspinal spasm, swelling/inflammation and the pathology subluxation/misalignment segmental dysfunction of the C5-7, and T8, L4-5 vertebrae. He opined that he had explained the causality and the diagnosed condition was causally related.

By decision dated December 15, 2014, OWCP denied appellant's claim on the grounds that he did not establish an injury as alleged. It found that the medical evidence was insufficient to establish that appellant's condition was caused by employment duties.

On January 23, 2015 appellant requested reconsideration.

In a January 14, 2015 report, Dr. Kopp diagnosed cervical radiculitis. He noted that he had reviewed a magnetic resonance imaging (MRI) scan and opined that it was "more clear to me now that the injury from March 18, 2014 led to the neck pain that he had, particularly with

the new findings on the MRI [scan] exam[ination]." Dr. Kopp recommended returning to work with a 20-pound lifting restriction.

In a January 19, 2015 report, Dr. Waddell reiterated that appellant sustained a work-related injury on March 18, 2014. He indicated that appellant had objective findings to include cervical, thoracic and lumbar strain resulting in reduced range of motion, paraspinal spasm, swelling/inflammation, and the pathology subluxation/misalignment, segmental dysfunction of the C5-7, T8, and L4-5 vertebrae. Dr. Waddell explained that he was aware of appellant's preexisting subluxation at C5-6, L4-5. He also noted that he had reviewed the x-ray report indicating prior cervical spondylosis. Dr. Waddell opined that, after reviewing the complete and accurate history of the medical facts, it was his opinion that the rationalized medical evidence supported a causal relationship between appellant's diagnosed condition and the employment incident of March 18, 2014. He opined that the diagnosed condition was causally related to the March 18, 2014 incident.

By decision dated December 15, 2014, OWCP denied modification of the prior decision.

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 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 must first be determined whether a "fact of injury" has been established. 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] 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.[8]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical

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

[8] *Id*.

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.[9]

ANALYSIS

Appellant alleged that on March 18, 2014 he strained his back and neck by lifting a garbage can at work. OWCP accepted that the claimed event occurred. Therefore, the Board finds that the first component of fact of injury is established; the claimed incident -- that appellant was lifting a garbage can into the dumpster at work as alleged.

However, with regard to the second component of fact of injury, the Board notes that the medical evidence submitted by appellant is insufficiently rationalized to support that he sustained a back and neck injury at work on March 18, 2014. The record contains several reports from Dr. Waddell, a chiropractor. Section 8101(2) of FECA provides that the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary.[10] As Dr. Waddell advised that he diagnosed a subluxation based on March 19, 2014 x-rays, he is considered a physician under FECA.[11]

In May 16 and September 22, 2014 reports, Dr. Waddell noted that appellant was injured at work on March 18, 2014 while lifting a 55-gallon trash can and twisting to dump the can in a dumpster. He indicated that this caused a cervical strain, thoracic strain, and lumbar strain. Dr. Waddell noted that the March 19, 2014 x-rays which revealed subluxations at C6-7, T8, and L4-5. He opined that they were causally related to the March 18, 2014 work injury. Dr. Waddell stated that lifting a 55-gallon trash can and twisting caused a cervical, thoracic, lumbar musculoligamentous strain injury, resulting in reduced range of motion, paraspinal spasm, swelling/inflammation, and the pathology subluxation/misalignment segmental dysfunction of the C5-7 and T8, L4-5 vertebrae. He stated that he had explained the causality and the diagnosed condition was causally related. In his January 19, 2015 report, Dr. Waddell reiterated that appellant sustained a work-related injury on March 18, 2014 and stated that he was aware of appellant's preexisting subluxation at C5-6, L4-5. He opined that the rationalized medical evidence supported causal relationship between appellant's diagnosed condition and the March 18, 2014 employment incident. However, concluding that rationalized medical evidence supports causal relationship is not the same as providing medical rationale to explain the basis of the physician's conclusion on causal relationship. The need for rationale or reasoning is particularly important because appellant had a preexisting history of similar conditions. Dr. Waddell treated appellant before the claimed March 18, 2014 injury for some of the same conditions, but he did not provide medical reasoning to explain why particular physical motions

[9] *I.J.*, 59 ECAB 408 (2008).

[10] *See* 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] OWCP also received reports from Dr. Waddell dating back to March 10, 2009. Those reports pertain to an injury prior to the March 18, 2014 incident and are not relevant to the present claim.

associated with the lifting of a trash container would cause or aggravate the diagnosed spinal subluxations. Without further rationale, his report is of limited probative value.

In a March 28, 2014 report, Dr. Waddell noted appellant's history and reported subluxation diagnoses. He checked a box marked "yes" that he believed that the condition was caused or aggravated by work activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value.[12] Other reports from Dr. Waddell are of limited probative value as they did not offer an opinion on causal relationship.[13]

Appellant also provided a September 16, 2014 report from Dr. Kopp who diagnosed cervical radiculitis and opined that the "initial injury is more likely than not the cause of [appellant's] ongoing neck symptoms." However, his opinion on causal relation is speculative. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[14] Dr. Kopp did not provide adequate medical rationale explaining the nature of the relationship between appellant's current neck condition and the employment incident.[15] On January 14, 2015 he diagnosed cervical radiculitis and noted MRI scan findings. Dr. Kopp opined that it was "more clear to me now that the injury from March 18, 2014 led to the neck pain that [appellant] had, particularly with the new findings on the MRI [scan]." He, however, did not explain the medical reasons for his conclusory opinion on causal relationship. Other reports from Dr. Kopp are of limited probative value as they did not offer a specific opinion on causal relationship.

OWCP also received nurses' notes. The Board notes that nurses are not physicians under FECA and are not competent to render a medical opinion.[16]

Because the medical reports submitted by appellant do not sufficiently address how the March 18, 2014 incident at work caused or aggravated a neck or back condition, these reports are of limited probative value and are insufficient to establish that the March 18, 2014 employment incident caused or aggravated a specific injury.

[12] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[13] *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).

[14] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

[15] *Robert Broome*, 55 ECAB 339 (2004).

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

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 has not met his burden of proof to establish that he sustained an injury in the performance of duty on March 18, 2014.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2015 and December 15, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.[17]

Issued: December 10, 2015
Washington, DC

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

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

[17] James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.