

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

J.Z., Appellant

and

PEACE CORPS, St. Charles, MO, Employer

)
)
)
)
)
)
)

**Docket No. 15-1624
Issued: December 10, 2015**

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 H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 21, 2015 appellant filed a timely appeal from a June 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on August 18, 2014, as alleged.

On appeal appellant contends that his symptoms of lower back pain due to the August 18, 2015 injury have not gone away and that a magnetic resonance imaging (MRI) scan corroborates his chiropractor's findings.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 26, 2014 appellant, then a 61-year-old regional recruiter, filed a traumatic injury claim alleging that on August 18, 2014 he suffered a lower back strain due to leaning over and shoveling and spreading mulch around trees as part of a service project for the employing establishment. The employing establishment noted that appellant was in the performance of duty as he was attending a staff retreat and participating in a volunteer work project. Appellant submitted multiple documents with his claim, but OWCP was unable to properly image these documents into the record.

By letter dated December 10, 2014, OWCP asked appellant to submit further information, including legible copies of the evidence he had already submitted.

In September 26, 2014 x-ray reports of appellant's spine, Dr. Ian Graham, a Board-certified radiologist, found normal alignment of the vertebral bodies of the lumbar spine, mild anterior narrowing of the superior endplate of L1, disc narrowing L5-S1, and demonstrated facet degenerative changes. He listed his impression as mild anterior narrowing L1, chronicity indeterminate without older films. Dr. Graham interpreted x-rays of appellant's thoracic spine as showing curvature to the right. He found no compression deformity, abnormal listhesis, or prevertebral soft tissue irregularity.

In an attending physician's report of November 24, 2014, Dr. Todd W. Just, a chiropractor, found disc space narrowing at L5-S1 and dextroscoliosis thoracolumbar spine. He diagnosed lumbar sprain/strain, lumbar disc degeneration, and lumbosacral joint disorder. Dr. Just noted that he provided chiropractic manipulation and myofascial release. He checked a box marked "yes" indicating that he believed that appellant's condition was caused or aggravated when appellant shoveled mulch during the service project on August 18, 2014. In a December 19, 2014 report, Dr. Just noted that he first started treating appellant on August 11, 2014. He noted that on August 11, 2014 appellant stated that he injured his back and left side of his back up to his left armpit area when lifting something heavy on August 9, 2014. Dr. Just diagnosed lumbar strain/sprain; lumbar disc degeneration; lumbosacral joint disorder; scoliosis; and thoracic subluxation. He noted that idiopathic scoliosis is a spinal condition that results in early onset joint and disc degenerative changes due to force imbalances associated with abnormal lateral spinal curvature. Dr. Just noted that appellant obviously had scoliosis and disc degeneration prior to the injury, but the activity of lifting heavy objects in a spinal flexion position was a very common mechanism for injury of lower back. He noted that his next visit with appellant was on September 26, 2014, and that at that time appellant had increased lower back pain with lumbar extension and right lateral bending and dextroscoliosis of the thoracolumbar spine. Dr. Just noted that appellant had a positive right-sided Kemp's test at L4-5 and mild adhesions were evident bilaterally in the lower transversospinalis muscles at the cervical region. He noted a subluxation of the thoracolumbar region with moderate restriction of joint function, and stated that he ordered an x-ray study.

By decision dated January 13, 2015, OWCP denied appellant's claim.

On April 21, 2015 appellant requested reconsideration. He contended that the symptoms of lower back pain and ache have not resolved and that on March 25, 2015 he had a lumbar

magnetic resonance imaging (MRI) scan done to give more clinical support of the condition due to the injury. Appellant submitted a report of the MRI scan of the lumbar spine conducted on March 26, 2015 which was interpreted by Dr. Richard Koch, a Board-certified diagnostic radiologist, as showing lumbar levoscoliosis.

By decision dated June 24, 2015, OWCP denied modification of its earlier 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

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 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.⁶

ANALYSIS

The Board finds that it is undisputed that an incident occurred as alleged during appellant's employment on August 18, 2014. However, the medical evidence does not establish

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁶ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

that appellant sustained a medical condition causally related to this accepted incident. Therefore, OWCP properly denied appellant's claim.

In support of his claim, appellant submitted reports by Dr. Just, a chiropractor, detailing his treatment of appellant. In a November 24, 2014 attending physician's report, Dr. Just checked a box indicating that appellant's medical condition, which included lumbar sprain/strain, lumbar disc degeneration, and lumbosacral disc disorder, was causally related to the work he did shoveling mulch during the employment-related service project of August 18, 2014. Section 8101(2) of FECA⁷ 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.⁸ Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not considered a physician under FECA and his opinion does not constitute competent medical evidence.⁹ Although Dr. Just did note subluxations, he did not indicate that his diagnosis was based on x-rays. Furthermore, it appears that Dr. Just diagnosed subluxations as of August 11, 2014. However, this diagnosis of subluxations predated the August 18, 2014 injury, and therefore this evidence is not persuasive evidence with regard to this claim.¹⁰

Appellant also submitted the results of objective studies. Dr. Graham noted certain mild changes in the September 26, 2014 x-ray reports of appellant's spine, and Dr. Koch interpreted appellant's March 26, 2015 MRI scan as showing levoscoliosis. However, neither Dr. Graham nor Dr. Koch gave any opinion linking appellant's diagnostic findings to his accepted employment incident of August 18, 2014.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.¹¹ Because he has not provided medical opinion evidence clearly explaining how his accepted employment incident resulted in a specific medical diagnosis, appellant failed to meet his burden of proof, and OWCP properly denied his claim for compensation.

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.

⁷ 5 U.S.C. § 8102(2).

⁸ See 20 C.F.R. § 10.311.

⁹ See *Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).

¹⁰ See *H.M.*, Docket No. 11-781 (issued March 8, 2012).

¹¹ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on August 18, 2014, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2015 is affirmed.

Issued: December 10, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board