United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 15-1645**
	)	**Issued: December 7, 2015**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Albuquerque, NM, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2015 appellant filed a timely appeal from a March 13, 2015 merit decision and a May 29, 2015 nonmerit 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.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish additional work-related conditions; (2) whether OWCP abused its discretion by denying appellant's request for authorization of medical treatment; and (3) whether it properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On December 29, 2010 appellant, then a 40-year-old biological science technician, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2010 he sustained a lower

[1] 5 U.S.C. § 8101 *et seq.*

back injury due to shoveling snow at work. He did not stop work, but began performing light-duty work for the employing establishment. Appellant's claim was administratively handled to allow for payment of a limited amount of medical expenses, but the merits of his claim had not been formally considered.

Appellant received treatment for his back problems from Dr. Kevin Finley, an attending osteopath and Board-certified family practitioner. In a January 7, 2011 report, Dr. Finley diagnosed a lumbar strain due to the December 28, 2010 work incident. On February 11, 2011 he diagnosed degenerative disc disease of the lumbar spine.[2]

In a June 2, 2011 report, Dr. Gianelia Guernelli, an attending Board-certified physical medicine and rehabilitation physician, discussed appellant's December 28, 2010 back injury and noted that he presented with complaints of pain and stiffness in his lumbar region. He indicated that a recent magnetic resonance imaging (MRI) scan showed degenerative disc disease at L4-5 through L5-S1 and stated that, on examination, appellant's back was nontender to palpation.[3] Treatment recommendations included taking nonsteroidal anti-inflammatory drugs and applying ice to the back followed by heat.

In mid-June 2011 OWCP formally considered appellant's claim and accepted it for a lumbar strain due to the December 28, 2010 work incident.

In an October 14, 2011 report, Dr. Michael F. Regan, an attending Board-certified orthopedic surgeon, stated that appellant described a work injury in December 2010 due to shoveling snow and complained of low back pain since that time. He noted that, on examination, appellant's back was not particularly tender and that there was no radicular pain with straight leg raising. Diagnostic testing of the lumbar spine showed degenerative disc disease but no fracture or clinically relevant compression. Dr. Regan indicated that surgery would not benefit appellant and recommended that he continue with nonsteroidal anti-inflammatory drugs and unspecified physical modalities.

On January 13, 2015 appellant filed a recurrence claim (Form CA-2a) on which he checked a box indicating that his claimed recurrence was for "medical treatment only." In other communications with OWCP, he indicated that he wished to receive authorization for chiropractic care and that he believed that he sustained a more serious injury on December 28, 2010 than a lumbar strain.

In a February 6, 2015 letter, OWCP asked appellant to submit additional factual and medical evidence in support of his claim that he had a recurring need for medical treatment due to his December 28, 2010 work injury and his claim that he sustained additional conditions on December 28, 2010.

[2] The record contains lumbar x-rays from February 3, 2011.

[3] Dr. Guernelli did not identify the date of the MRI scan, but the only MRI scan of appellant's lumbar spine in the record is dated April 28, 2011.

Appellant submitted a February 23, 2015 statement in which he indicated that his back pain had never gone away and that he recently started treatment with a chiropractor which seemed to be "helping tremendously."

Appellant submitted a December 19, 2014 report in which Dr. Finley noted that he had experienced low back pain since 2008 and had received epidural injections in the past. Dr. Finley noted that appellant reported that he had previously tried chiropractic treatment which provided some relief from his back pain. Appellant also reported that in mid-2014 a tractor on which he was riding rolled over and he now had pain that went down both legs. Dr. Finley diagnosed low back pain and degenerative disc disease of the lumbar spine. In a December 19, 2014 form report, Dr. Finely noted "referral to chiropractic" in the "treatment/plan" portion of the form.

In a February 6, 2015 report, Dr. Finley noted that appellant reported having back pain with radiation to both upper buttocks. He noted that, prior to December 28, 2010, appellant's low back pain was periodic and not considered to be discogenic. Dr. Finley noted that, after his injury at work on December 28, 2010, app's back pain changed to symptoms compatible to a disc injury. An MRI scan showed the degenerative changes and bulging and herniated discs that were abutting the nerve roots and giving appellant his symptoms. Dr. Finley stated, "It is clear that this most likely occurred with the injury of [December 28, 2010] as [appellant] did not have these symptoms before this." He noted that the degenerative changes were most likely present for quite some time but the bulging and herniated discs were most likely new following the incident at work on December 28, 2010. Dr. Finely noted that appellant recently was evaluated and treated with chiropractic care including electrical stimulation and laser therapy. This care gave appellant relief, but the relief was temporary and he continued to have the discomfort in the lower back. Dr. Finley diagnosed low back pain, degenerative disc disease of the lumbar spine, and displacement of lumbar disc without myelopathy. He noted that it was apparent that the lower back pain appellant now had was different from what he had in previous years and noted, "It is obvious to me that the symptoms he developed after the incident at work on December 28, 2010, with a causative factors [sic] of his persistent symptoms with radicular pain."

In a March 13, 2015 decision, OWCP found that appellant had not met his burden of proof to establish an additional condition other than the accepted December 28, 2010 lumbar strain. It further denied appellant's request for authorization of medical treatment related to the December 28, 2010 work injury.

Appellant requested a review of the written record from OWCP's March 13, 2015 decision in a form dated April 27, 2015. The form was marked as received by OWCP on May 4, 2015.

By decision dated May 29, 2015, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record as untimely filed. It noted that his form requesting a review of the written record from the March 13, 2015 decision was dated April 27, 2015 but not received by OWCP until May 4, 2015, outside of the requisite 30-day period. OWCP indicated that it was exercising its discretion and denying appellant's request for a review of the written record on the basis that the issue raised by appellant's request could be addressed if he requested reconsideration and submitted additional evidence.

LEGAL PRECEDENT -- ISSUE 1

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, that an injury was sustained in the performance of duty as alleged and that any specific condition and/or disability for which compensation is claimed are causally related to the employment injury.[4]

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[5] The medical evidence required to establish a causal relationship between a claimed condition and employment factors is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a lumbar strain due to shoveling snow at work on December 28, 2010. Appellant later claimed that he sustained a more serious low back injury due to the December 28, 2010 work injury but, OWCP denied expansion of his claim for an additional condition.

The Board finds that appellant has failed to meet his burden of proof to establish a work-related injury other than the accepted lumbar strain.

Appellant submitted a February 6, 2015 report in which Dr. Finley, an attending osteopath and Board-certified family practitioner, noted that, prior to December 28, 2010, appellant's low back pain was periodic and not considered to be discogenic. Dr. Finley indicated that, after appellant's injury at work on December 28, 2010, his back pain changed to symptoms compatible to a disc injury. He discussed an MRI scan that showed the degenerative changes and bulging and herniated discs that were abutting the nerve roots and posited that the findings gave appellant his symptoms.[7] Dr. Finley noted, "It is clear that this most likely occurred with the injury of [December 28, 2010] as he did not have these symptoms before this." He noted that the degenerative changes were most likely present for quite some time but the bulging and herniated disc were most likely new following the incident at work on December 28, 2010. Dr. Finley concluded that it was apparent that the lower back pain appellant now had was

[4] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

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

[6] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[7] Dr. Finley did not identify the date of the MRI scan, but the only MRI scan of appellant's lumbar spine in the record is dated April 28, 2011.

different from what he had in previous years and suggested that the December 28, 2010 work incident was responsible for his persistent symptoms with radicular pain.

The Board finds that, while Dr. Finley provided an opinion suggesting that appellant sustained an aggravation of preexisting degenerative disc disease of the lumbar spine on December 28, 2010, his opinion is of limited probative value because he did not provide adequate medical rationale in support of his opinion. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[8] Dr. Finley did not provide any description of the December 28, 2010 work injury or explain how appellant's actions on that date could have caused an injury other than a lumbar strain. Such medical rationale is especially necessary because appellant did not report having pain that radiated down into both his legs until more than three years after sustaining the December 28, 2010 work injury. Moreover, Dr. Finley had indicated that appellant had back pain dating from 2008, *i.e.*, a time prior to the December 28, 2010 work injury, and had rolled over his tractor in a nonwork-related incident in mid-2014. He did not adequately explain why appellant's continuing back problems were not due to the natural progression of his preexisting disc disease or some other nonwork-related back condition.

Appellant did not submit any other medical evidence addressing whether he sustained a medical condition on December 28, 2010 other than a lumbar strain. He has failed to meet his burden of proof to expand his claim.[9]

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[10]

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.[11] The only limitation on OWCP's authority is that of reasonableness.[12] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[13] In order to be entitled to

[8] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[9] On appeal, appellant again argued that he sustained a more severe injury on December 28, 2010 than a lumbar strain, but he did not explain how the medical evidence of record supported this argument.

[10] 5 U.S.C. § 8103.

[11] *Vicky C. Randall*, 51 ECAB 357 (2000).

[12] *Lecil E. Stevens*, 49 ECAB 673 (1998).

[13] *Rosa Lee Jones*, 36 ECAB 679 (1985).

reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[14] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[15]

ANALYSIS -- ISSUE 2

Appellant filed a claim alleging that in February 2015 he had a recurrence of a need for medical care related to his December 28, 2010 work injury.[16] In particular, he indicated that he wished to receive authorization for chiropractic care. The Board finds that OWCP did not abuse its discretion by denying appellant's request for authorization of additional medical treatment.

In reports dated December 19, 2014 and February 6, 2015, Dr. Finley noted that appellant had recently tried chiropractic care for his back. He noted that appellant self-reported getting some relief from his back pain but that the relief was temporary and his pain returned. In a December 19, 2014 form report, Dr. Finely noted "referral to chiropractic" in the "treatment/plan" portion of the form.

The Board finds that Dr. Finley did not provide a rationalized medical opinion establishing that appellant's need for any specific medical care, including chiropractic care, was related to the accepted December 28, 2010 work injury, *i.e.*, a lumbar strain. As explained above, it has not been accepted that appellant sustained work-related degenerative disc disease of the lumbar spine and it appears that Dr. Finley's treatment recommendations were for a nonwork-related degenerative condition. As noted above, in order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[17]

Appellant did not submit any reports containing a rationalized medical opinion justifying authorization of specific medical treatment, other than the earlier treatment already approved, which was necessitated by his December 28, 2010 lumbar strain. The Board finds that OWCP did not abuse its discretion in denying appellant's claim for additional medical treatment.

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.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of FECA provides that a claimant is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.[18] Section 10.615 of OWCP's federal regulations implementing

[14] *Bertha L. Arnold*, 38 ECAB 282 (1986).

[15] *Zane H. Cassell*, 32 ECAB 1537 (1981).

[16] For these reasons explained above, appellant's work injury has only been accepted for a lumbar strain.

[17] *See supra* note 13.

[18] 5 U.S.C. § 8124(b)(1).

this section of FECA, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.[19] Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of FECA and its implementing regulations. OWCP's regulations and Board precedent provide that the request for an oral hearing or review of the written record must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carrier's date marking) of the date of the decision for which an oral hearing or review of the written record is sought.[20]

ANALYSIS -- ISSUE 3

In this case, appellant's form requesting a review of the written record from OWCP's March 13, 2015 decision was dated April 27, 2015 and was marked as received by OWCP's Branch of Hearings and Review on May 4, 2015. As the request was not sent within 30 days after OWCP issued its March 13, 2015 decision, it was untimely filed and he was not entitled to a review of the written record as a matter of right.[21]

OWCP retains the discretionary power to grant a review of the written record when a claimant fails to request a review within the allotted time. In this case, it exercised its discretion in its May 29, 2015 decision by finding that the issue raised by appellant's request could be addressed if he requested reconsideration and submitted additional evidence. The Board finds that this denial of his request for review of the written record is a proper exercise of OWCP's authority.[22]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a work-related injury other than the accepted lumbar strain. The Board further finds that OWCP did not abuse its discretion by denying appellant's request for authorization of medical treatment and that OWCP properly denied his request for a review of the written record.

[19] 20 C.F.R. § 10.615.

[20] *Id.* at § 10.616(a). A request for review of the written record is subject to the same requirement as an oral hearing request that the request be sent within 30 days of OWCP's final decision. *See J.P.*, Docket No. 15-790 (issued June 3, 2015).

[21] The envelope in which appellant's request was sent contains an illegible postmark, but the date of the form containing the request shows that his request for a review of the written record was untimely.

[22] *See D.P.*, Docket No.15-1061 (issued July 22, 2015).

ORDER

IT IS HEREBY ORDERED THAT the May 29 and March 13, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 7, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board