United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 15-600**
	)	**Issued: June 2, 2015**
DEPARTMENT OF THE ARMY, INSTALLATION MANAGEMENT COMMAND, LAWSON ARMY AIRFIELD, FORT BENNING, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 26, 2015 appellant, through counsel, filed a timely appeal from a December 3, 2014 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 has met his burden of proof to establish that he sustained a back injury on September 10, 2013, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 11, 2013 appellant, then a 32-year-old firefighter, filed a traumatic injury claim alleging that on September 10, 2013 he injured his back while pulling a hose load of 1.75" attack line of the fire apparatus. He stopped work on September 10, 2013.

Medical notes from Columbus Regional Medical Center dated September 11, 2013 noted a report of back pain and excused appellant from work until September 13, 2013.

In a September 12, 2013 treatment note, Dr. Glenn E. Fussell, a Board-certified family practitioner, noted that appellant was pulling a hose load of 1.75" attack line of the fire apparatus and injured his back. Appellant went to the hospital where they stated it looked like the muscles were pinching a nerve. Dr. Fussell noted appellant's complaints and set forth findings on examination. An assessment of low back pain was provided along with several other diagnoses. Appellant was referred to Dr. Thomas Bernard, a Board-certified orthopedic surgeon, for further treatment and was taken off work until seen by Dr. Bernard.

In a September 12, 2013 certificate for work absence, Dr. Fussell advised that appellant was unable to return to work until seen by Dr. Bernard. In an October 8, 2013 note, he cleared appellant to return to work with a restriction of no lifting over 10 pounds. In an October 14, 2013 note, Dr. Fussell stated that appellant could continue to work with the restriction of no lifting over 10 pounds. He noted that this restriction would be revaluated when appellant saw Dr. Bernard.

On October 17, 2013 OWCP advised appellant of the deficiencies in his claim and provided him 30 days in which to submit additional medical evidence, which provided a diagnosis of a medical condition which was sustained as a result of the claimed events.

In an October 22, 2013 report, Dr. Fussell noted that appellant had fallen at work the previous day. He noted that appellant was entering a coworker's sleeping quarters and as he turned the door knob, he had a back spasm that caused him to fall. Dr. Fussell noted that appellant went to the hospital last night and was told he strained his lower back. He noted findings on examination and provided an assessment of low back pain and accidental fall. Dr. Fussell indicated that appellant could resume the same work restrictions he was on with light duty and no lifting over 10 pounds. He noted that appellant would see Dr. Bernard on November 4, 2013.

By decision dated November 25, 2013, OWCP denied the claim as appellant had not established the medical component of fact of injury as the medical evidence submitted failed to contain a diagnosis in connection with the event or a well-rationalized opinion based on objective findings on whether and how any condition diagnosed was attributable to identified work activities.

On November 7, 2014 appellant requested reconsideration. A nurse restriction form signed February 25, 2014 was submitted along with several reports from Dr. Fussell.

In a November 15, 2013 report, Dr. Fussell noted that appellant was seen for a follow-up on multiple chronic conditions. He noted examination findings. An assessment of arthropathy

of spinal facet joint; low back pain; accidental fall and other diagnoses were provided. Dr. Fussell noted that, based on a March 12, 2013 magnetic resonance imaging (MRI) scan, appellant had proven facet arthropathy but a diagnosis of spondylosis was equivocal. He recommended that appellant continue work restrictions of no lifting over 10 pounds.

In a February 25, 2014 report, Dr. Fussell noted that on February 9, 2013 appellant was assigned as the driver and while pushing the external bay door open, it jammed and jolted his back causing back pain. That injury was reported. On February 22, 2013 appellant was opening a hanger door when the weather stripping on the door got caught and abruptly stopped. He stated that it jammed him and he felt a tingling down to his hips. Appellant tried to pull it another way and realized that his back was hurting. He was seen at the hospital and given an anti-inflammatory injection, Flexeril, and Motrin and put on light duty. On February 22, 2013 Dr. Fussell performed an x-ray, which showed a normal spine with loss of lordosis, which suggested an injury and spasm. Appellant also had cardiac issues and was referred to another physician for a work-up which ultimately was negative. Dr. Fussell saw appellant again on March 15, 2013 with improvement in his back pain, but still restricted to light duty. The lumbar spine MRI scan showed mild disc bulging at L3-4 and L4-5 with no nerve root compression. Mild bilateral facet arthropathy at L4-5 and L5-S1 was noted, with a slightly bigger bulge that indented the anterior thecal sac. Moderate narrowing of the neural formina was also noted with moderate facet arthropathy at that level. Appellant returned to full duty in April 2013 and remained in full-duty status until July 26, 2013, after he reinjured his back at work when he bent over to pick something up and his back locked up. Dr. Fussell stated that he returned appellant to work the following Monday and worked him up for a kidney stone. He saw appellant for another episode of back pain on September 12, 2013 when appellant injured his back while pulling a hose load. Dr. Fussell noted that appellant's complaints were not following the context of his examination. He indicated that appellant went on light duty from then until the present. The next injury was on October 21, 2013 when appellant fell at work due to a back spasm. Dr. Fussell noted that appellant was referred to Dr. Bernard for an evaluation of his back. Appellant was seen on November 4 and December 16, 2013. Dr. Bernard diagnosed lumbosacral spondylosis without myelopathy and recommended light-duty work restrictions with a 10-pound weight limit, physical therapy, and back brace. Dr. Fussell stated that he kept appellant on the same restrictions. Appellant still complained of chronic back pain. Dr. Fussell noted findings on examination and provided an assessment of lumbosacral spondylosis without myelopathy, symptomatic, arthropathy of spinal facet joint, asymptomatic, low back pain, and accidental fall.

By decision dated December 3, 2014, OWCP modified its prior decision to reflect that the fact of injury had been established, but denied the claim as causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.[2] 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.[3]

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.[4] 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.[5] 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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[9]

ANALYSIS -- ISSUE 1

OWCP denied appellant's claim as the medical evidence of record was insufficient to establish that his diagnosed back conditions were caused or aggravated by his work activities. The Board affirms the decision.

Appellant alleged that he sustained a back injury while pulling a hose load on September 10, 2013. The employing establishment has not disputed that this event occurred as alleged. Dr. Fussell failed to present any medical rationale as to how the September 10, 2013 work-related event could cause or aggravate the diagnosed conditions of lumbosacral

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989); *B.F.*, Docket No. 09-60 (issued March 17, 2009).

[5] *D.B.*, 58 ECAB 464 (2007); *Paul Foster*, 56 ECAB 208 (2004).

[6] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[7] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006).

[8] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Sedi L. Graham*, 57 ECAB 494 (2006).

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

spondylosis without myelopathy, arthropathy of spinal facet joint, low back pain, and accidental fall.[10]

While Dr. Fussell noted the September 10, 2013 work incident in his February 25, 2014 report, he additionally reported that appellant had several other work-related incidents which caused injury to his back: on February 9, 2013, while pushing a bay door open; on February 22, 2013, while opening a hanger door; on July 26, 2013, when bending over to pick something up; and on October 21, 2013 when appellant fell at work due to a back spasm.

An explanation as to how physiologically the September 10, 2013 incident would have caused the diagnosed conditions is especially important given the number of other incidents appellant experienced during 2013, allegedly causing back injury. Dr. Fussell's report does not offer a rationalized medical explanation as to how the September 10, 2013 incident caused injury. As such his February 25, 2014 report is of little probative value in establishing appellant's claim.

Notes from a nurse are also insufficient to establish appellant's claim. Nurses are not considered physicians under FECA. A nurse's opinion regarding diagnosis or causal relationship is therefore of no probative value.[11]

Appellant also submitted work restriction notes and several treatment notes from Dr. Fussell in support of his claim that he sustained a back condition on September 10, 2013. However, these notes do not offer any opinion on causal relationship between the diagnosed medical condition and the September 10, 2013 employment incident. Thus, these notes are insufficient to meet appellant's burden of proof.

The Board finds that the medical evidence does not establish that appellant sustained a medical condition causally related to his federal employment. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment or the belief that his condition was caused, precipitated, or aggravated by his employment, is sufficient to establish causal relationship.[12] Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that he did not meet his burden of proof in establishing his claim.

On appeal, counsel argued that the decision is contrary to fact and law. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to the accepted September 10, 2013 event of pulling a hose load, or appellant's other firefighter

[10] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, *id*.

[11] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

duties. Reports from appellant's treating physician failed to provide sufficient medical rationale based on a complete factual background explaining the reasons why his diagnosed conditions were caused or aggravated by particular employment duties.

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 a back injury on September 10, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2015
Washington, DC

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

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

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