United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 15-1210**
	)	**Issued: October 8, 2015**
TENNESSEE VALLEY AUTHORITY, SHAWNEE FOSSIL PLANT, Paducah, KY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 5, 2015 appellant, through counsel, filed a timely appeal from a January 29, 2015 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 30, 2014.

FACTUAL HISTORY

On February 18, 2014 appellant, then a 38-year-old assistant unit operator, filed a traumatic injury claim alleging that on January 30, 2014 he injured the left side of his lower

[1] 5 U.S.C. § 8101 *et seq.*

back, the sacrum, and down the left leg when his feet slipped out from underneath him while at work. He stated that, as he started falling, he grabbed a traveling screen to prevent hitting the ground. Appellant explained that he was hanging there with his feet and legs out, which caused him to bend and twist at his lower back. The employing establishment controverted the claim. Appellant stopped work on February 7, 2014 and returned on February 18, 2014.

By letter dated March 4, 2014, OWCP advised appellant that additional factual and medical evidence was needed. It advised that a physician's opinion explaining how the reported work incident caused or contributed to his condition was crucial to his claim.

OWCP received a February 3, 2014 report from a nurse practitioner who noted that appellant presented with back pain of undetermined etiology. The nurse practitioner noted that the condition was not related to a specific injury. In a February 10, 2014 report, however, appellant indicated that his condition was due to repetitive activity and that he also remembered that he hurt himself the previous week when he slipped on ice and caught himself without completely falling.

In a February 4, 2014 disability certificate, Dr. K. Brandon Strenge, a Board-certified orthopedic surgeon, placed appellant off work from February 7 to 18, 2014. A February 14, 2014 magnetic resonance imaging (MRI) scan report of the lumbar spine read by Dr. Brad Williams, a Board-certified diagnostic radiologist, revealed a mild broad-based disc bulge at L4-5, a broad-based disc bulge at L3-4, mild lumbar spondylosis, neuroforaminal stenosis on the right side at L4-5 level, and no frank herniated nucleus pulposus.

On March 4, 2014 Dr. Jeffrey L. Riney, Board-certified in family medicine, noted that appellant presented with back pain and related that his condition was "related to repetitive activity (I remembered how I hurt my back last week when it was icy I slipped and caught myself without completely falling. My feet went one way and upper body went another way. The injury occurred five week(s) ago (January 30 had the fall) at work. The injury resulted from a fall (slipped and nearly fell. I was able to catch myself.)" Dr. Riney diagnosed acute back pain and acute left lumbar radiculopathy.

In a March 13, 2014 report, Dr. Strenge noted that appellant presented with complaints of low back pain after slipping on ice about a month earlier. He noted findings and reported that lumbar x-rays taken that day showed degenerative changes. Diagnoses included: low back pain; left lower extremity radiculopathy; degenerative disc disease, worse at L3-4; bilateral recess stenosis at L3-4; annular tear at L3-4; and chronic appearing compression deformity, superior endplate at L4. Dr. Strenge also indicated that appellant had a history of neck pain, cervical degenerative disc disease, and arm radiculopathy. He recommended additional MRI scan testing as appellant's pain complaints were "out of proportion."

On March 26, 2014 Robin Daugherty, an employing establishment manager, controverted the claim. Accompanying her controversion was a March 18, 2014 letter from Amy M. Cavitt, a nurse with the employing establishment. Ms. Cavitt noted that on February 3, 2014, appellant's medical provider indicated that "the etiology is undetermined" and that the "condition is not related to a specific injury." She further noted that it was not until later visits to his healthcare provider that appellant "remembers what happened, a near fall on ice." Ms. Cavitt stated that

appellant had three other traumatic injury claims that were reported within eight hours or less of the incidents. She advised that, after the alleged near fall, he worked his tour shift and did not report the alleged incident to his supervisor for nine days.

In an April 1, 2014 lumbar spine MRI scan, Dr. Eric Shields a Board-certified anesthesiologist, diagnosed multilevel degenerative disc disease and facet changes with foraminal stenosis at the lower 3 levels, with the most significant foraminal narrowing on the right at L4-5.

By decision dated April 14, 2014, OWCP denied appellant's claim on the grounds that the medical evidence did not establish an injury causally related to the January 30, 2014 employment incident.

On April 29, 2014 counsel for appellant requested a telephonic hearing before an OWCP hearing representative, which was held on November 14, 2014.

In an April 10, 2014 report, Dr. Strenge noted that appellant returned for an evaluation of back trouble. He explained that, while he previously treated appellant for cervical problems, appellant had no prior history of back trouble or leg pain until January 30, 2014 when he slipped at work. Dr. Strenge noted that appellant was able to partially catch himself but he developed back pain, which he believed to be a muscle strain at the time. He explained that appellant worked a couple more nights and stopped work on February 7, 2014 as he developed increasing back pain as well as pain down the left leg. Appellant described the pain as "knife stabbing" and on the left buttock, thigh and left leg, it was like a "blow torch and sledge hammer." Dr. Strenge advised that appellant was status post work injury on January 30, 2014. Diagnoses included: left sided back pain; severe left buttock, thigh and leg radiculopathy; degenerative disc disease, L3-4, L5-S1, worse at L3-4; mild facet arthropathy, L3-4, L5-S1; mild foraminal stenosis, worse on the left L5-S1. Dr. Strenge noted that appellant had underlying degenerative changes from L3 to S1 with foraminal stenosis that was worse on the left at L5-S1, which he believed "was aggravated and brought into disabling reality as a result of the work injury that occurred on January 30, 2014, he was previously asymptomatic." He advised that he was placing appellant off work until he was reevaluated and tested. In a separate report also dated April 10, 2014, Dr. Strenge placed appellant off work due to his back.

In an April 14, 2014 report, Dr. Bradly Newcom, Board-certified in anesthesiology and pain medicine and an associate of Dr. Strenge, noted that appellant slipped and fell at work on February 1, 2014. He advised that appellant did not fall all the way to the floor because he caught himself. Appellant related that he twisted after he caught himself and immediately felt mild discomfort, although after awakening from sleep he was much worse. Dr. Newcom noted that appellant described his pain as 10 out of 10 and constant. He advised that appellant tried heat and ice, as well as muscle relaxants and a nonsteroidal, none of which helped. Dr. Newcom explained that he would proceed with lumbar epidural steroid injections. He diagnosed lumbar degenerative disc disease and lumbar neuritis. In an April 14, 2014 disability certificate, Dr. Newcom, placed appellant off work until the trial of three epidurals was performed. On April 22, May 6, and 21, 2014, he performed lumbar epidural steroid injections.

In a May 29, 2014 report, Dr. Strenge repeated his diagnoses and explained that there was not much to offer for appellant. He noted that appellant had difficulty putting a shoe on his left foot due to the pain and he could not wear a steel boot. Additionally, Dr. Strenge noted that appellant felt that the pain in the left side of his back and left leg would prevent him from performing his usual work duties. He recommended physical therapy and kept appellant off work. OWCP received copies of previously submitted reports.

By operative report dated July 10, 2014, Dr. Melvin D. Law, Jr., a Board-certified orthopedic surgeon, noted performing a lumbar microdiscectomy and foraminotomy at L5-S1, left lateral approach.

On November 14, 2014 OWCP also received a February 20, 2014 statement from appellant in which he described how his injury occurred on Thursday, January 30, 2014 between 10:00 p.m. and 11:00 p.m.

By decision dated January 29, 2015, an OWCP hearing representative affirmed the April 14, 2014 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *T.H.*, 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS

The record supports that on January 30, 2014 appellant slipped as alleged and caught himself before falling to the ground. The Board finds, however, that the medical evidence does not establish a causal relationship between the January 30, 2014 employment incident and diagnosed medical conditions.

OWCP received several reports from Dr. Strenge. In his April 10, 2014 report, Dr. Strenge noted that appellant was doing well with no prior history of back trouble or leg pain until January 30, 2014 when he slipped at work. He noted findings and advised that appellant had underlying degenerative changes from L3 to S1 with foraminal stenosis. Dr. Strenge opined that this low back condition "was aggravated and brought into disabling reality as a result of the work injury that occurred on January 30, 2014, he was previously asymptomatic." However, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[7] Dr. Strenge did not provide medical rationale explaining the basis of his conclusion on causal relationship. The need for such reasoning is particularly important where appellant had preexisting degenerative spine conditions. Other reports from Dr. Strenge either did not provide medical reasoning to explain how the work incident contributed to a medical condition or did not address causal relationship in his remaining reports of March 13 and May 29, 2014. Thus, the evidence from him is insufficient to establish the claim.

In a March 4, 2014 report, Dr. Riney related the history of injury as provided by appellant. He diagnosed acute back pain and acute left lumbar radiculopathy. The Board notes that, while Dr. Riney described appellant's activities, Dr. Riney did not offer his own opinion on causal relationship. Thus his report is of little probative value.[8]

In an April 14, 2014 report, Dr. Newcom noted that appellant advised that he slipped and fell at work. He noted findings and diagnoses but did not otherwise address the cause of appellant's condition. Even if Newcom's repetition of the history provided by appellant may be considered as support for causal relationship, this is of limited probative value as he did not provide any medical reasoning to explain the basis of his conclusion.

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

[7] *John F. Glynn*, 53 ECAB 562 (2002).

[8] *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

The remaining medical reports in the record are also insufficient to establish the claim as they do not contain a specific opinion on causal relationship.[9] OWCP also received nurses' notes. However, nurses are not considered physicians under FECA and are not competent to render a medical opinion.[10]

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 did not meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 30, 2014.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2015
Washington, DC

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

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

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

[9] *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).

[10] *G.G.*, 58 ECAB 389 (2007). *See* 5 U.S.C. § 8101(2) (defines the term physician).