

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

C.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Las Vegas, NV, Employer)

Docket No. 15-0537
Issued: September 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 20, 2015 appellant filed a timely appeal of the November 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision in this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On September 26, 2014 appellant, then a 58-year-old supply technician filed a Form CA-2, occupational disease claim alleging that he developed low back pain and bilateral knee

¹ 5 U.S.C. §§ 8101-8193.

pain from constant lifting, bending, and stooping required in his job as a supply technician. He first became aware of his condition and realized it was causally related to his employment on May 1, 2014. Appellant did not stop work. His supervisor, Patag Patrick noted on appellant's claim form that appellant returned to work and was restricted to lifting no more than 10 pounds until his follow-up appointment.

Appellant was treated by Dr. Farooq Kayani, a Board-certified family practitioner, on October 2, 2014, who noted appellant could return to work on October 2, 2014 and continued appellant's work restrictions. He came under the treatment of Dr. Vincent O. Chu, a Board-certified internist, on December 30, 2013 for atypical chest pain and a stress test. Dr. Chu diagnosed chronic kidney disease, type 2 uncontrolled diabetes mellitus, glucose-6-phosphate dehydrogenase, hypertension, dyslipidemia, tobacco disorder, chronic low back pain, knee pain, and allergic rhinitis. On April 11 and August 26, 2014 he treated appellant for low back pain and bilateral knee pain with locking knees after prolonged standing and sitting. Dr. Chu noted that appellant's history was significant for patella chondromalacia, knee pain, and low back pain.

On October 20, 2014 OWCP advised appellant of the factual and medical evidence needed to establish his claim. It requested that he describe in greater detail the employment-related activities he believed contributed to his condition. OWCP also requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

On October 27, 2014 appellant submitted a Form CA-7, claim for compensation, for leave without pay for October 24, 2014. He submitted a prescription note from Dr. Leonardo A. Gan-Lim, a Board-certified internist, dated October 24, 2014, that excused appellant from lifting, pulling, and bending for one month because of aggravation of his low back pain. On October 24, 2014 Dr. Gan-Lim, diagnosed chronic back pain and bilateral knee pain and ordered x-rays of the back and knees. Also submitted was a medical report which was illegible due to poor copy quality.

In a decision dated November 26, 2015, OWCP denied appellant's claim finding the evidence was insufficient to establish the events occurred as alleged. It also indicated that he did not submit any medical evidence to establish the diagnosed medical condition was causally related to a work injury or event.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident, or exposure caused an injury.²

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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 diagnosed condition and the specific employment factors identified by the claimant.³

ANALYSIS

OWCP denied appellant's claim finding that he failed to establish that the events occurred as alleged. It is not disputed that his duties as a supply technician involved lifting, bending, and stooping. Specifically, appellant's supervisor, did not dispute appellant's description of his work duties or that appellant was performing those duties on or about May 1, 2014. Rather, the supervisor noted on the Form CA-2 that appellant had returned to work and was restricted to lifting no more than 10 pounds until his follow-up appointment on October 2, 2014. The evidence is undisputed that on or about May 1, 2014, appellant was performing his work duties as a supply technician which included performing lifting, bending, and stooping.⁴

The Board finds that the medical evidence in this claim is insufficient to establish that appellant developed a low back and bilateral knee condition related to his employment duties. On October 20, 2014 OWCP advised appellant of the type of medical evidence needed, but appellant has not offered evidence to establish that any of his claimed conditions are causally related to specific employment factors or conditions.

Appellant submitted an October 2, 2014 note from Dr. Kayani who returned appellant to work on October 2, 2014 and continued his work restrictions. He was treated by Dr. Chu on December 30, 2013 for atypical chest pain and a stress test. Dr. Chu diagnosed chronic low back pain and knee pain. However, neither Drs. Kayani nor Chu's reports provide a history of injury⁵

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *See H.G.*, 59 ECAB 552 (2008) (an injury does not have to be confirmed by an eyewitness to establish that it occurred in the performance of duty; an employee's statement regarding the circumstances surrounding an injury is of great probative value and will be accepted unless refuted by persuasive evidence).

⁵ *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history).

or offer an opinion on how appellant's employment caused or aggravated his condition.⁶ Consequently these reports are of no probative value and do not establish appellant's occupational illness claim.

In reports dated April 11 and August 26, 2014, Dr. Chu treated appellant for low back pain and bilateral knee pain with locking knees after prolonged standing and sitting. He noted that appellant's history was significant for patella chondromalacia, knee pain, and low back pain. Dr. Chu diagnosed chronic low back pain and knee pain. These additional reports are also insufficient because Dr. Chu failed to offer rationalized medical opinion on whether appellant's low back and bilateral knee pain was related to his employment duties.⁷

Appellant submitted a prescription note from Dr. Gan-Lim dated October 24, 2014, who excused appellant from work activities that involve lifting, pulling, and bending for one month because of aggravation of his low back pain. On October 24, 2014 Dr. Gan Lim, diagnosed chronic back pain and bilateral knee pain and ordered x-rays of the back and knees. He did not provide a history of injury⁸ or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁹

There is no other medical evidence that provides an opinion on the causal relationship between appellant's job and his diagnosed conditions.

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 nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.¹⁰ Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's 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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

⁶ *A.D.*, 58 ECAB 149 (2006) (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).

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ *Supra* note 5.

⁹ *Supra* note 6.

¹⁰ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board