United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 16-0798**
	)	**Issued: December 2, 2016**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 11, 2006 appellant filed a timely appeal from a January 27, 2016 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 the case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a low back injury causally related to a July 9, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence with his request for appeal. However, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering the new evidence for the first time on this appeal pursuant to 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 17, 2015 appellant, then a 47-year-old sheet metal worker, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2015, while he was installing cherrymax rivets on the edge of an aircraft wing, he pushed a rivet into a hole and felt low back pain. He stopped work on July 9, 2015 and returned to work on July 16, 2015.

By letter dated July 29, 2015, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant was seen by Dr. Edward T. King, a Board-certified physiatrist and an employing establishment physician, on July 9, 2015 for back pain. He reported that, while working on July 9, 2015, he was standing on the left side of an aircraft wing and pushed a rivet and felt low back pain. Appellant reported having back surgery to replace two lumbar discs in 2004, but noted that he had no back pain since that time. Dr. King found limited range of lumbar spine motion and diagnosed lower back sprain. On July 10, 2015 he treated appellant for left paravertebral muscle spasms.

In a July 13, 2015 health record, Dr. Philip Beck, an employing establishment osteopath, treated appellant for a low back sprain sustained on July 9, 2015. Appellant's history was significant for an L4-5 and L5-S1 disc fusion. He reported continued discomfort and decreased range of motion of the lumbosacral spine. On July 13, 2015 Dr. Beck issued appellant a Form CA-16, authorization for examination and/or treatment. On this form he noted that appellant reported a low back strain on July 9, 2015 and had a history of L4-5 and L5-S1 fusion. Appellant was authorized to see Dr. Cheng L. Soo, a Board-certified orthopedist.

Appellant was treated by Dr. Soo on July 14, 2015 for low back pain. Dr. Soo noted appellant's history was significant for artificial disc replacement surgery at L4-5 and L5-S1 in 2004. Appellant reported that his current complaint of back pain began on July 9, 2015 after working on an aircraft wing. He was trying to push a rivet into a hole and felt a pull in his lower back. Dr. Soo reported that the pain resulted in difficulty walking and poor sleep. He noted findings on examination of tenderness of the sacroiliac joints on the left side and limited extension of the lumbar spine. Dr. Soo diagnosed mechanical complication due to an implant and internal device, postlaminectomy syndrome of the lumbar region, and status post artificial disc replacement at L4-5 and L5-S1. He noted lumbar spine x-rays revealed mild scoliosis apex over L3-4 and L4-5 and the disc over L4-5 appeared to have shifted laterally and anteriorly. On July 28, 2015 Dr. Soo noted no significant improvement in appellant's symptoms. Examination findings were unchanged. Dr. Soo diagnosed mechanical complication due to implant and internal device, noting the L4-5 implant shifted anteriorly and laterally left, postlaminectomy syndrome of the lumbar region, and status post artificial disc replacement at L4-5 and L5-S1. He noted a computerized tomography (CT) scan of the lumbar spine showed a shift in L4-5 disc replacement implant anteriorly and laterally toward the left against the great vessels. Dr. Soo recommended a revision of the anterior lumbar interbody fusion. In a work status report dated July 28, 2015, he released appellant to light duty, sitting or sedentary work with additional restrictions.

On July 15, 2015 appellant was treated by Dr. Theodore Mickle, an osteopath and employing establishment physician, for a low back strain which occurred on July 9, 2015 while at work. He reported difficulty walking and was released to work with restrictions. In a July 15, 2015 recommendation for duty form report, Dr. Mickle noted that appellant could return to work with restrictions. He indicated by checking a box marked yes that appellant's condition was job related and occurred on July 9, 2015.

In a decision dated September 17, 2015, OWCP denied appellant's claim as the medical evidence of record did not establish that the claimed medical condition was causally related to the accepted work-related events.

In an appeal request form dated October 23, 2015, appellant requested reconsideration. He submitted reports from Dr. Soo dated July 14 and 28, 2015, both previously of record.

On October 15, 2015 appellant was treated by Dr. Nathaniel Stetson, an osteopath, for low back pain. Dr. Stetson noted findings of lower back pain and weakness in the legs. He diagnosed lumbar degenerative disc disease. Dr. Stetson noted that appellant was status post two level artificial disc replacement at L4-5 and L5-S1 and presented after having an episode of back pain after twisting in July. He noted that the CT scan of the lumbar spine revealed a partially extruded artificial disc at L4-5 and a slight coronal deformity. Dr. Stetson took appellant off work and recommended bedrest and a lumbosacral orthotic. He opined that appellant would likely have to undergo a revision of the partially extruded artificial disc.

In a decision dated January 27, 2016, OWCP denied modification of its decision.

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

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.[4]

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

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

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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

ANALYSIS

OWCP accepted that while appellant was installing cherrymax rivets on the edge of the left wing of an aircraft on July 9, 2015 he pushed a rivet into a hole and felt low back pain. Appellant was diagnosed with lower back sprain, mechanical complication due to implant and internal device, postlaminectomy syndrome of the lumbar region, and lumbar degenerative disc disease. The Board finds that appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions were caused or aggravated by the July 9, 2015 work incident.

Appellant submitted a report from Dr. Soo dated July 14, 2015, who treated him for low back pain which began on July 9, 2015 after working on an aircraft wing where he was trying to push a rivet into a hole. Dr. Soo noted appellant's history was significant for artificial disc replacement surgery at L4-5 and L5-S1 in 2004. He diagnosed mechanical complication due to implant and internal device, postlaminectomy syndrome of the lumbar region, and status post artificial disc replacement at L4-5 and L5-S1. However, Dr. Soo merely repeats the history of injury as reported by appellant without providing any opinion regarding whether appellant's condition was work related.[6] To the extent that he is providing any opinion, Dr. Soo failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[7] Other reports from Dr. Soo dated July 28, 2015, diagnosed mechanical complication due to implant and internal device, shifted implant disc at L4-5 anteriorly and laterally, postlaminectomy syndrome of the lumbar region, and status post artificial disc replacement at L4-5 and L5-S1. Dr. Soo released appellant to light duty. These reports are insufficient to establish the claim as Dr. Soo did not address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[8]

Dr. King treated appellant on July 9, 2015 for back pain which developed after he pushed a rivet into an aircraft wing. Appellant reported a history of back surgery in September 2004 but noted that he had not experienced back pain since the surgery. Dr. King diagnosed lower back sprain, but did not otherwise provide his own rationalized opinion regarding the causal

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

[6] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

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

[8] *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).

relationship between appellant's condition and the accepted work incident.[9] Other reports from Dr. King dated July 9 and 10, 2015 noted that appellant was treated July 9, 2015 for a low back sprain and he was sent home. These records are insufficient to establish the claim as Dr. King did not provide an opinion on whether the accepted work incident caused or aggravated any diagnosed medical condition.[10]

On July 13, 2015 Dr. Beck treated appellant for a reported low back sprain on July 9, 2015. Appellant's history was significant for an L4-5 and L5-S1 fusion. Dr. Beck did not provide a history of injury[11] and he did not explain how installing cherrymax would have caused or aggravated the diagnosed conditions. In addition, he failed to explain why appellant's low back condition was not caused by nonwork-related factors such as the prior artificial disc replacement surgery in 2004 or age-related degenerative and arthritic changes.[12] Therefore, the medical record of Dr. Beck is insufficient to meet appellant's burden of proof.

Other reports from Dr. Mickle dated July 15, 2015 noted appellant's treatment for a low back strain which occurred on July 9, 2015. Appellant reported sustaining an on-the-job back injury on July 9, 2015. In a recommendation form, Dr. Mickle released appellant to work with restrictions. He noted by checking a box marked yes that appellant's condition was work related with a date of injury of July 9, 2015. The Board has held, however, that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[13]

Appellant submitted a report from Dr. Stetson dated October 15, 2015 noting that appellant was status post two level artificial disc replacement at L4-5 and L5-S1 and presented after having an episode of back pain in July after a twisting incident at work. Dr. Stetson diagnosed lumbar degenerative disc disease. He noted the CT scan of the lumbar spine revealed a partially extruded artificial disc at L4-5 and opined that appellant would likely have to undergo revision surgery. Dr. Stetson's report is insufficient to establish the claim as the physician did not provide a history of injury[14] or specifically address whether appellant's accepted work incident had caused or aggravated a diagnosed medical condition.[15]

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

[9] *Jimmie H. Duckett, supra* note 7.

[10] *Id.*

[11] *Frank Luis Rembisz, supra* note 6.

[12] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

[13] S*ee Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[14] *Frank Luis Rembisz, supra* note 6.

[15] *A.D., supra* note 8.

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.[16] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

The Board notes that the record contains a Form CA-16 authorization for examination and/or treatment (Form CA-16) which was completed by the employing establishment on July 13, 2015. The Board has held that where an employing establishment properly executes a Form CA-16, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[17] Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, it should further address this issue.[18]

On appeal appellant asserts that OWCP had improperly denied his claim and believes he submitted sufficient evidence to establish that on July 9, 2015 he sustained a low back injury while in the performance of duty. As noted above, the medical evidence of record does not establish that appellant's diagnosed conditions were causally related to the accepted employment incident. Appellant has not submitted a physician's report, based on an accurate history, which describes how the accepted work incident on July 9, 2015 caused or aggravated a low back condition.

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 a low back injury causally related to a July 9, 2015 employment incident.

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

[17] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

[18] *L.M.*, Docket No. 16-0188 (issued March 24, 2016).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2016
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