United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 17-0042**
	)	**Issued: December 27, 2016**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL SHIPYARD, Portsmouth, VA, 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 October 14, 2016 appellant filed a timely appeal from a September 30, 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his lumbar condition was causally related to the accepted June 1, 2016 employment incident.

FACTUAL HISTORY

On June 2, 2016 appellant, a 49-year-old boilermaker, filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back in the performance of duty on June 1, 2016. At that time, he was working on a nuclear-powered ballistic missile submarine, water jetting

[1] 5 U.S.C. § 8101 *et seq.*

condenser tubes. Appellant experienced a sharp pain down both legs, his feet became cold and numb, and his lower back started to hurt. He stopped work on June 1, 2016.

On June 1, 2016 appellant was seen in the employing establishment health clinic by Dr. Ernest L. Fair, a Board-certified occupational medicine specialist. Dr. Fair reported that appellant had been working inside a workbox lancing the main condenser when he started feeling numbness and tingling in both feet and pain in his lower back. He also noted that appellant had a history of chronic back pain and had received injections in 2013 at the Naval Medical Center -- Portsmouth (NMCP). Dr. Fair made a provisional diagnosis of low back pain and referred appellant to neurosurgery at NMCP. He also indicated that appellant was temporarily totally disabled.

Appellant returned to the employing establishment health clinic on June 6, 2016 for follow-up. Dr. Gary E. Caplan, a Board-certified occupational medicine specialist, released him to sedentary or modified light-duty work. Appellant subsequently returned to work performing office duties with a 15-pound lifting restriction.

In a July 28, 2016 report, Dr. Qi Lin, a Board-certified pain management specialist, diagnosed lumbar radiculopathy, osteoarthritis of the spine with radiculopathy -- lumbar region, chronic lower back pain, and lumbosacral disc degeneration. He noted that the onset of appellant's back injury was many years prior, but worsened since June 2016.

In an August 10, 2016 attending physician's report (Form CA-20), Dr. Fair reiterated his diagnosis of low back pain and opined that appellant was totally disabled for the period June 1 to 5, 2016.

In an August 29, 2016 letter, OWCP advised appellant that the evidence received thus far was insufficient to establish entitlement to FECA benefits. It requested additional factual and medical evidence and afforded appellant 30 days to submit the required evidence.

OWCP subsequently received additional employing establishment treatment records, including several diagnostic studies of appellant's lumbar spine. An August 6, 2006 magnetic resonance imaging (MRI) scan showed disc herniation and degenerative disc disease at L4-5 in association with a mild annular bulge, loss of the normal lumbar lordosis, and perhaps minimal bilateral L5 lateral recess narrowing. A January 24, 2013 computerized tomography (CT) scan of the lumbar spine was normal, and a February 25, 2013 lumbar CT scan revealed an L4-5 disc extrusion and left sacroiliac joint osteophytes. Additionally, an April 18, 2014 MRI scan of the lumbar spine demonstrated a borderline disc protrusion at L3-4 without impingement and an L4-5 disc herniation.

OWCP also received medical reports and physical therapy treatment records from January 2013 through October 2014. The relevant treatment records, dated January 24, February 26, March 4, April 4, June 25, September 13, October 23, 2013, March 5, July 8, and October 6, 2014, were from NMCP's pain management, neurosurgery, and chiropractic clinics. Appellant's diagnoses included sciatica, lumbago, lumbar neuritis, lumbosacral disc degeneration, and herniated intervertebral lumbar disc. The treatment records also indicated that appellant received a series of caudal epidural steroid injections in 2013 and 2014.

In a July 6, 2016 report, Dr. John Engler, a Board-certified neurologist, noted that appellant had a long, multi-year history of low back and right hip region pain described as stiffness with rare radiation into the lower extremity. He further noted that one month prior appellant had developed a severe onset of new symptoms, including burning and cramping in the bilateral lateral thighs and pain into the right lateral calf which occurred intermittently. Dr. Engler noted that appellant's diagnostic studies showed an annular tear at L4-5 with severe central canal stenosis. He diagnosed lumbar spinal stenosis. Dr. Engler believed appellant's acute back pain was from the annular tear, which likely exacerbated his preexisting canal stenosis and was secondarily causing the claudication symptoms. He referred appellant for additional physical therapy and recommended additional lumbar epidural steroid injections.

By decision dated September 30, 2016, OWCP denied the claim as the medical evidence submitted was insufficient to establish a causal relationship between appellant's conditions and the June 1, 2016 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[3] The second component is whether the employment incident caused a personal injury.[4] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[5]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[6]

[2] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[5] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[6] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[7]

ANALYSIS

OWCP has accepted that the employment incident of June 1, 2016 occurred at the time, place, and in the manner alleged. The issue is whether appellant's lower back condition resulted from the June 1, 2016 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship.

The record is replete with medical evidence demonstrating a preexisting lumbar condition. Appellant's lumbar MRI scans revealed an L4-5 disc herniation as early as August 2006. Additionally, records from NMCP revealed that appellant received treatment for several lumbar-related conditions during the period January 2013 through October 2014. His prior diagnoses included sciatica, lumbago, lumbar neuritis, lumbosacral disc degeneration, and herniated intervertebral lumbar disc.

When Dr. Fair examined appellant on June 1, 2016 following the condenser tube water jetting incident, he noted that appellant had a history of chronic back pain for which he received injections in 2013. He diagnosed low back pain in his initial June 1, 2016 treatment notes, and he provided the same finding/diagnosis in his August 10, 2016 attending physician's report (Form CA-20). However, low back pain is a symptom, not a specific medical diagnosis.[8] Furthermore, Dr. Fair did not provide an explanation of how the June 1, 2016 employment incident either caused or contributed to appellant's current lumbar complaints. He noted that appellant was previously diagnosed with L4-5 disc herniation, and experienced an exacerbation secondary to a new injury incurred while at work on June 1, 2016. The mere fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[9] Temporal relationship alone will not suffice.[10] Accordingly, Dr. Fair's June 1 and August 10, 2016 reports are insufficient to establish that appellant's claimed lumbar condition is causally related to the accepted June 1, 2016 employment incident.

In his July 6, 2016 report, Dr. Engler noted appellant's long, multi-year history of low back and right hip complaints. He also noted that one month prior, appellant experienced a severe onset of new symptoms, including burning and cramping in the bilateral thighs and pain into the right lateral calf, which occurred intermittently. Dr. Engler noted that appellant's diagnostic studies showed an annular tear at L4-5 with severe central canal stenosis. He

[7] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[9] 20 C.F.R. § 10.115(e).

[10] *See D.I.*, 59 ECAB 158, 162 (2007).

diagnosed lumbar spinal stenosis. Dr. Engler believed appellant's acute back pain was due to the annular tear, which likely exacerbated his preexisting canal stenosis and was secondarily causing the claudication symptoms. A physician's opinion on causal relationship must be based on a complete factual and medical background and must be supported by medical rationale.[11] Dr. Engler did not indicate whether there was a causal relationship between appellant's current condition and the June 1, 2016 employment incident.

In his July 28, 2016 report, Dr. Lin diagnosed chronic lower back pain, lumbar radiculopathy, lumbosacral disc degeneration, and osteoarthritis of the lumbar spine with radiculopathy. He asserted that appellant's condition had an onset many years prior, but worsened since June 2016. The Board finds that Dr. Lin failed to provide sufficient medical rationale explaining the mechanism of how work on water jetting condenser tubes at work on June 1, 2016 caused appellant's lower back condition to worsen. The need for rationale is particularly important as the evidence of record indicates that appellant had a preexisting lower back condition. As noted, a temporal relationship alone will not suffice for purposes of establishing causal relationship.[12]

Appellant also submitted copies of physical therapy notes. However, reports from a physical therapist do not rise to the level of competent medical opinion evidence under FECA.[13]

The Board finds that the evidence of record fails to establish a causal relationship between the June 1, 2016 employment incident and appellant's diagnosed lumbar condition.[14] Accordingly, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his lumbar condition is causally related to the June 1, 2016 employment incident.

[11] *Victor J. Woodhams, supra* note 4.

[12] *See D.I., supra* note 10.

[13] *Supra* notes 6 and 7.

[14] Appellant's personal belief that his employment activities either caused or contributed to his condition is insufficient, by itself, to establish causal relationship. 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2016
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