United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 15-1892**
	)	**Issued: February 1, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, 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 September 14, 2015 appellant filed a timely appeal from an August 27, 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 a traumatic injury on January 16, 2015 in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 15, 2015 appellant, then a 56-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2015 he pulled his groin and abdomen when lifting heavy boxes. He did not stop work.

Appellant was examined in the occupational health unit of the employing establishment on January 20, 2015. In a handwritten report, with an illegible signature, it was noted that appellant was returned to work with restrictions of no heavy lifting, pushing, or pulling more than 15 pounds. Appellant was advised that he should be examined by a surgical specialist.

In a January 22, 2015 report, Susan Potts-Nulty, a certified nurse practitioner, noted that appellant was lifting a canister at work that weighed more than 50 pounds when he felt a pull. She reported a history of umbilical hernia and diagnosis of aggravated umbilical hernia. Ms. Potts-Nulty checked a box marked "yes" that indicated that appellant's condition was caused or aggravated by an employment activity. She reported that appellant was not disabled from work, but noted that he could not lift more than 15 pounds.

On February 20, 2015 appellant underwent an ultrasound of the abdomen by Dr. Esther Kim, a Board-certified diagnostic radiologist. Dr. Kim noted a history of umbilical hernia and reported a hernia of bowel loops seen in the umbilical area of the abdominal wall.

In a February 25, 2015 note, Ms. Potts-Nulty indicated that appellant could return to work full time with limitations of lifting no greater than 15 pounds without a device or assistance. She advised appellant to return to her office in three to four months.

Appellant was examined by Cheryl L. Powell, a physician assistant, who noted in a May 12, 2015 surgical consultation record that appellant had an umbilical hernia and recently injured himself when lifting a biohazard canister. She reported a preoperative diagnosis of reducible umbilical hernia. Ms. Powell reviewed appellant's history and provided examination findings. She counseled appellant about undergoing umbilical hernia repair surgery.

By letter dated May 22, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional evidence to establish that he actually experienced the January 16, 2015 incident as alleged and that he sustained a diagnosed condition causally related to the employment incident.

On June 2, 2015 OWCP received additional medical evidence. Appellant provided progress notes from Ms. Potts-Nulty dated January 22 to May 22, 2015. In January 21 and February 25, 2015 notes, Ms. Potts-Nulty related that appellant came in for a visit for a work-related injury and also noted that he had not been taking his insulin for his diabetes. Upon examination, she observed soreness in appellant's lower abdomen and noted a recent hernia. Ms. Potts-Nulty diagnosed umbilical hernia and hyperlipidemia. In a February 25, 2015 note, she advised appellant that he could return to full-time work with limitations of no lifting greater than 15 pounds unless with assistance.

In a February 19, 2015 note, Dr. Karim B. Nakhgevany, a Board-certified surgeon, examined appellant for umbilical hernia. He related that appellant was diagnosed a year ago, but

did not elect to have surgery. Dr. Nakhgevany reported that appellant worked for the employing establishment and that a month ago he was lifting boxes when he felt sharp, abdominal muscular pain. Upon examination, he observed a small, umbilical hernia in the abdomen, but no tenderness. Dr. Nakhgevany advised appellant that he could not recommend surgery.

Appellant was again examined by Dr. Nakhgevany, who reported in a May 5, 2015 note that he diagnosed reducible umbilical hernia with a soft and protuberant abdomen.

In a May 22, 2015 note, Carol Johnson, a registered nurse, indicated that appellant had no new complaints and requested a talking glucometer because he had difficulty seeing the numerical results on the accu-check glucometer.

In a decision dated June 29, 2015, OWCP denied appellant's claim, finding the evidence insufficient to establish that the January 16, 2015 incident occurred as alleged or that he sustained a diagnosed condition causally related to a work incident.

On July 20, 2015 OWCP received appellant's reconsideration request. In a handwritten statement, appellant explained that on January 16, 2015 he was handling waste and putting boxes on the truck as he did every night. He reported that there were more boxes that night and that they were really heavy with some weighing more than 45 pounds. Appellant stated that one box was so heavy that it almost slipped out of his hand. He was able to stop it from hitting the ground, but he felt a sharp pain in his stomach. Appellant noted that he did not know how bad the pain was until he got up the next morning and still felt the pain. He notified his supervisors that he needed to go to the employing establishment health unit. Appellant received medical treatment from the health unit and his own doctor. He was informed that he had sustained an umbilical hernia.

A July 13, 2015 attending physician's report, with an illegible signature, indicated a date of injury of January 20, 2015 and noted that the patient injured himself while lifting at work. A history of umbilical hernia since March 12, 2012 was provided and an abdominal hernia was diagnosed. A box marked "yes" was checked indicating that appellant's condition was caused or aggravated by the described employment activity.

Appellant also provided an order form dated July 9, 2015 for a magnetic resonance imaging (MRI) scan examination of the cervical and lumbar spine.

By decision dated August 27, 2015, OWCP denied modification of the June 29, 2015 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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[3] including that he or she sustained an injury in the performance of duty and that any

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which he or she claims compensation is causally related to that 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.[5] There are two components involved in establishing the 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.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[9] 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.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

Appellant alleged that on January 16, 2015 he felt a pull and sharp pain in his groin and abdomen when lifting heavy boxes at work. OWCP denied his claim finding that he did not establish that the January 16, 2015 incident occurred as alleged. The Board finds that the evidence submitted is sufficient to establish that on January 16, 2015 appellant was lifting heavy boxes at work and experienced a sharp pain.

OWCP determined that appellant had failed to meet his burden of proof to establish fact of injury because he did not respond to its questionnaire. The Board finds, however, that there is sufficient factual evidence to establish that on January 16, 2015 appellant felt a sharp pull and

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *James Mack*, 43 ECAB 321 (1991).

experienced pain in his abdomen and groin while in the performance of duty. Along with his reconsideration request, appellant provided a detailed description of the January 16, 2015 incident. He explained that on that night he was handling waste and loading boxes onto a truck as he did every night. Appellant noted that the boxes were heavier than usual that night, some weighing more than 45 pounds. He was able to stop one box from slipping out of his hand, but in doing so, he felt a sharp pain in his abdomen. Appellant sought medical treatment from the employing establishment health unit four days later. In addition, in a January 22, 2015 attending physician's report, Ms. Potts-Nulty, noted that appellant was lifting a canister at work that weighed more than 50 pounds when he felt a pull in his abdomen.

The Board has found that an injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[12] In this case, the Board finds that appellant has sufficiently described the January 16, 2015 incident which he believed caused a medical condition and there is no evidence on the record to contradict his statement. Appellant has not provided any inconsistent statements as to cast serious doubt on his version of the January 16, 2015 employment incident. Thus, under the circumstances of this case, the Board finds that the January 16, 2015 incident occurred as appellant alleged.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that his abdominal condition was causally related to the January 16, 2015 employment incident.

Appellant received medical treatment from Dr. Nakhgevany. In a February 19, 2015 surgical consult record, Dr. Nakhgevany related that appellant had been diagnosed a year previously with umbilical hernia, but had elected not to have surgery. He reported that a month previously appellant was working at the employing establishment lifting boxes when he felt sharp, abdominal muscular pain. Upon examination, Dr. Nakhgevany observed a small, umbilical hernia in the abdomen, but no tenderness. In a May 5, 2015 note, he diagnosed reducible umbilical hernia.

The Board notes that Dr. Nakhgevany provided an accurate history, examination findings, and a diagnosed condition of umbilical hernia. Although he described the January 16, 2015 lifting incident Dr. Nakhgevany did not provide any opinion on whether this event caused or contributed to appellant's medical condition. The Board has held 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.[13] Dr. Nakhgevany failed to opine or provide any medical explanation regarding whether appellant's umbilical hernia resulted from the January 16, 2015 incident. A medical opinion is especially needed in this case as the record reflects that

[12] *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

appellant had a preexisting hernia condition.[14] Likewise, Dr. Kim's February 20, 2015 ultrasound report also did not contain any opinion on the cause of appellant's umbilical hernia.

Appellant was also treated by Ms. Potts-Nulty, the nurse practitioner, and Ms. Johnson, the registered nurse. In a January 22, 2015 attending physician's report and medical notes dated January 21 and February 15, 2015, Ms. Potts-Nulty described the January 16, 2015 incident at work and reported a history of injury of umbilical hernia. She diagnosed aggravated umbilical hernia and indicated that appellant's condition was caused by the employment activity. These reports, however, are of no probative value to the issue of causal relationship as neither practitioners nor registered nurses are physicians as defined under FECA.[15] Similarly, the May 12, 2015 surgical consultation record by Ms. Powell, a physician assistant, also fails to establish appellant's claim because a physician assistant is not considered a physician according to FECA.[16]

Appellant also submitted a January 20, 2015 form from a physician with an illegible signature and a July 13, 2015 attending physician's report with an illegible signature. The Board has held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[17]

Causal relationship is a medical question that must be established by probative medical opinion from a physician.[18] In this case, the Board finds that none of the medical evidence appellant submitted constitutes rationalized medical evidence, based upon a specific and accurate history of employment conditions, which are alleged to have caused or exacerbated his medical condition.[19] Accordingly, the Board finds that while it is found that appellant has established fact of injury, OWCP still properly denied appellant's claim because he has not established a causal relationship between the work incident and his diagnosed 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.

[14] *See B.T.*, Docket No. 13-138 (issued March 20, 2013).

[15] Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). *See Paul Foster*, 56 ECAB 208 (2004) (when the Board found nurse practitioners were not physicians under FECA); *see also E.K.*, Docket No. 09-1827 (issued April 21, 2010) (when the Board noted reports from physician assistants and registered nurses were of no probative value as they are not physicians under FECA).

[16] *Id*.

[17] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[18] *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

[19] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury on January 16, 2015 causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: February 1, 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