United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No.16-0014**
	)	**Issued: February 5, 2016**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Los Angeles, CA, 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 5, 2015 appellant filed a timely appeal of an April 14, 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to a May 19, 2014 employment incident.

FACTUAL HISTORY

On May 22, 2014 appellant, then a 65-year-old agriculture specialist, filed a traumatic injury claim (Form CA-1), alleging that on May 19, 2014, while sitting for a prolonged period in

[1] 5 U.S.C. § 8101 *et seq.*

a high chair without firm support for his legs, he experienced a sharp pain and was unable to walk. He stopped work on May 19, 2014.

Appellant was treated in the emergency room on May 20, 2014 by Dr. Adam Goodman, Board-certified in emergency medicine, for chronic intervertebral low back pain. Appellant reported experiencing low back pain for 20 years. Dr. Goodman diagnosed acute chronic low back pain and degenerative disc disease.

In a form report, Dr. Goodman noted that appellant was injured at work on May 19, 2014. He diagnosed acute and chronic low back pain and degenerative disc disease. Appellant submitted a return to work slip prepared by a nurse dated May 20, 2014 which noted that appellant was disabled for two days. In a medical memorandum dated May 23, 2014, Dr. Vincent J. Valdez, a Board-certified anesthesiologist, noted that appellant was treated and was temporarily totally disabled until May 28, 2014, when he could return to work with restrictions. In a return to work slip dated May 27, 2014, a physician assistant noted that appellant was excused from work for three days beginning May 27, 2014. In a return to work slip dated May 29, 2014, Dr. Wengang Zhang, a Board-certified internist, indicated that he could return to work on June 11, 2014.

Appellant was treated by Dr. Courtney Clamp, Board-certified in emergency medicine, on May 27, 2014, for low back pain radiating into the legs. He reported being injured at work one week ago when the chair he was using was not positioned correctly and he strained his back. Dr. Clamp noted findings of diffuse lumbar tenderness with left paraspinous spasm and positive left straight leg raises. He diagnosed muscle strain, contusion, disc disease, lumbago, and radicular leg pain.

Appellant came under the treatment of Dr. Navjeet Boparai, a Board-certified physiatrist, on June 6, 2014, for acute progressive pain in his lower back and legs. Appellant denied any specific injury but noted a spontaneous onset of pain on May 19, 2014. He reported working as an agriculture specialist and on the day of his injury he was sitting in an ill-fitting chair which was slippery and forward-inclined, prompting him to use his back and leg to hold himself in place without proper support. Appellant did not slip or fall, but noted stabbing pain and difficulty walking. His history was significant for preexisting low back pain since the 1990's and disc ruptures in 1991 and 1998. Dr. Boparai noted findings of left-sided antalgic gait, scoliosis, pelvic obliquity, restricted range of motion of the thoracic and lumbar spine, tenderness of the paravertebral muscles, tenderness at L4-5, and decreased light-touch sensation over the medial foot on the left side. He diagnosed lumbar radiculopathy, spinal/lumbar degenerative disc disease, hip pain, and hip bursitis. Dr. Boparai opined that appellant had preexisting low back pain since the 1990's but had a new injury to his lower back on May 19, 2014 that occurred spontaneously while sitting in an ill-fitted chair. He recommended further treatment and advised that appellant was unable to work.

By letter dated June 19, 2014, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow medical payments up to $1,500.00, but the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had not returned to full-time work, his claim would be formally adjudicated. It

requested that he submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed upper left thigh injury.

On July 10, 2014 OWCP referred appellant for a second opinion to Dr. John Hearst Welborn, Jr., a Board-certified orthopedic surgeon. It provided Dr. Welborn with appellant's medical records, a statement of accepted facts, as well as a detailed description of appellant's employment duties. In his July 30, 2014 report, Dr. Welborn noted reviewing the medical records and appellant's history and provided results on examination. Findings included tenderness of the right S1 joint, negative straight leg raises, no thigh or calf atrophy, and intact sensation. Dr. Welborn noted appellant's history was significant for previous low back pain starting in the 1980's after lifting an oxygen cylinder and bending over doing agricultural field research in 1999.[2] Appellant reported continued low back pain since 1999 and right leg pain since the 1980's. Dr. Welborn diagnosed lumbar degenerative disc disease. He opined that appellant's low back degenerative disc disease was not medically connected to his work. Dr. Welborn explained that appellant had preexisting low back pain and no mechanism of injury. He further explained there was no aggravation of a prior injury. Dr. Welborn opined that appellant had preexisting low back pain and degenerative disc disease due to a previous industrial injury and continued low back and leg pain from preexisting disc disease. He concluded that appellant could work full duty without restrictions but that he was off work due to his preexisting condition. In a work capacity evaluation, Dr. Welborn noted that appellant could work his usual job without restrictions.

In May 29 and June 11, 2014 reports, Dr. Zhang diagnosed low back pain, history of L3 disc herniation, malpositioning during work which caused a flare up of pain, hypertension, and obesity. He noted that appellant was disabled from June 11 to 25, 2014. A May 2, 2014 lumbar magnetic resonance imaging (MRI) scan revealed at L1-2, L2-3, L3-4, L4-5, and L5-S1 disc space, desiccated with evidence of an extruded disc herniation, moderate left L5 lateral recess stenosis, spondylosis, L2-4 foraminal compromise. A May 2, 2014 cervical spine MRI scan showed various degenerative findings including hypertrophic changes at C3-4, C4-5, C6-7, and C7-T1; and moderate-to-severe spinal stenosis at C3-4, C4-5, C5-6, and C7-T1.

In a June 19, 2014 report, Dr. Boparai treated appellant for chronic progressive low back pain over the past 25 years. Appellant reported being involved in a nonfederal work-related accident which occurred in 1988 and a subsequent back injury while working for a university biochemistry laboratory after lifting and holding an oxygen cylinder and ruptured a spinal disc. Dr. Boparai noted findings on physical examination of antalgic gait, scoliosis, pelvic obliquity, restricted range of motion, decreased light-touch sensation over medial foot on the left side. He diagnosed spinal/lumbar degenerative disc disease, lumbar radiculopathy, and facet arthropathy and recommended physical therapy. Appellant was returned to work on June 21, 2014.

In a September 11, 2014 decision, OWCP denied the claim as the medical evidence was insufficient to establish that the medical condition was causally related to the accepted work incident.

[2] These prior injuries did not occur during appellant's federal employment.

On September 8, 2014 appellant requested an oral hearing which was held before an OWCP hearing representative on December 17, 2014.

Appellant submitted an August 29, 2014 report from Dr. Valdez who treated him for a May 19, 2014 industrial injury. He noted findings of positive straight leg raise at 60 degrees on the right, decreased sensation over the right posterolateral thigh, positive myofascial triggers. Dr. Valdez diagnosed lumbar radiculopathy, with L3-4 and L4-5 discopathy. He recommended an L3-5 epidural under fluoroscopic guidance and continued modified duty. On September 26, 2014 Dr. Valdez reviewed the second opinion physician's report and disagreed that appellant's low back condition was secondary to 1998 to 1999 injury and degenerative discopathy. He noted that appellant worked for over 10 years after the 1999 injury. Dr. Valdez noted that appellant continued to have low back pain radiating to the bilateral legs in the L5 distribution. He noted findings of tenderness over L4 and L5, positive straight leg raises. Dr. Valdez diagnosed lumbar radiculopathy and L3-4, L4-5 discopathy.

Appellant submitted responses to an OWCP questionnaire dated July 14, 2014 and reiterated the facts surrounding the May 19, 2014 work incident. He noted having back pain for many years since the 1990's when he sustained a back injury, and then about 15 years earlier while performing repetitive bending.

In a decision dated April 14, 2015, an OWCP hearing representative affirmed the September 11, 2014 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 are 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]

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

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

[4] *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.[5]

ANALYSIS

It is undisputed that on May 19, 2015 appellant sat in a chair while at work. It is also undisputed that he was diagnosed with lumbar radiculopathy, spinal/lumbar degenerative disc disease, hip pain, and hip bursitis. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions were caused or aggravated by sitting in the chair at work on May 19, 2015.

Appellant submitted emergency room records dated May 20, 2014 where he was treated by Dr. Goodman for intervertebral low back pain. He reported chronic low back pain for 20 years. Dr. Goodman diagnosed acute chronic low back pain and degenerative disc disease. In a form report, he noted that appellant was injured at work on May 19, 2014. Dr. Goodman diagnosed acute and chronic low back pain and degenerative disc disease. The Board finds that, although Dr. Goodman noted that appellant was injured at work, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's low back condition and the factors of employment.[6]

On August 29, 2014 Dr. Valdez treated appellant for an industrial injury sustained on May 19, 2014. He noted positive findings on examination and diagnosed lumbar radiculopathy, with L3-4 and L4-5 discopathy. On September 26, 2014 Dr. Valdez disagreed with Dr. Welborn's determination that appellant's low back condition was secondary to 1998 to 1999 injury and degenerative discopathy. He noted that appellant worked for over 10 years after the 1999 injury without incident. This report is insufficient to establish the claim as appellant did not clearly explain the process by which sitting in a chair at work on May 19, 2015 would cause or aggravate the diagnosed conditions and why such conditions would not be due to his preexisting conditions. The need for rationale is particularly important since the record documents a history of prior back conditions.

Appellant was also treated by Dr. Boparai. On June 6, 2014 he reported to Dr. Boparai that on the day of his injury he was sitting in an ill-fitting chair at work for several hours. Dr. Boparai diagnosed lumbar radiculopathy, spinal/lumbar degenerative disc disease, hip pain, and hip bursitis. He noted that appellant had suffered from preexisting low back pain since the 1990's but reported a new injury to his lower back on May 19, 2014 which occurred spontaneously while sitting in an ill-fitted chair. However, Dr. Boparai appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that he is providing his own opinion, he has not provided a rationalized opinion explaining the causal relationship between appellant's diagnosed conditions and the factors of employment believed to have caused

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

[6] *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

or contributed to such condition.[7] Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Zhang dated May 29 and June 11, 2014 who treated him for right leg pain. Dr. Zhang related that appellant believed malpositioning during work caused a flare up of pain. He diagnosed hypertension and obesity. On May 27, 2014 appellant was treated by Dr. Clamp for lower back pain radiating down both legs. He reported being injured at work one week previously when working as an agricultural specialist at the airport. Apparently appellant's chair was not positioned correctly and he strained his back. Dr. Clamp diagnosed muscle strain, contusion, disc disease, lumbago, and radicular leg pain. These physicians appear to be repeating the history of injury as reported by appellant without providing their own opinion regarding whether appellant's condition was work related. Neither Dr. Zhang nor Dr. Clamp provided a rationalized opinion regarding the causal relationship between appellant's diagnosed conditions and the May 19, 2015 work incident.[8] Therefore, these reports are insufficient to meet appellant's burden of proof.

To further develop the claim, OWCP referred appellant to Dr. Welborn who found no evidence of causal relationship between appellant's degenerative disc disease and the work incident. Dr. Welborn noted appellant's history was significant for previous low back pain starting in the 1980's after a lifting incident while working in the private sector and in 1999 he had a recurrence of low back pain after bending over doing agricultural field research. He noted that appellant did not have an aggravation of a prior injury, rather, he had preexisting low back pain and degenerative disc disease due to previous nonfederal industrial injury and continued to experience low back and leg pain from the preexisting disc disease. Dr. Welborn noted that appellant was off work due to his preexisting condition. He found no basis on which to attribute appellant's current condition to his employment.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between the May 19, 2015 work incident and his diagnosed medical conditions. Thus this evidence is of limited probative value and insufficient to meet appellant's burden of proof.[9]

Appellant also submitted a return to work slip prepared by a nurse dated May 20, 2014 and a return to work slip dated May 27, 2014 prepared by a physician assistant. However, the Board has held that treatment notes signed by a nurse or physician assistant are not considered medical evidence as these providers are not considered physicians under FECA.[10]

[7] *Id.*

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *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).

[10] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

Consequently, OWCP properly found that appellant did not meet his burden of proof to establish his claim.

On appeal appellant asserts that OWCP had improperly denied his claim and he believed he had submitted sufficient evidence to establish that on May 19, 2014 he sustained low back pain and degenerative disc disease. As noted above, the medical evidence does not establish that appellant's diagnosed conditions were causally related to his employment.

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 his claimed conditions were causally related to a May 19, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 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