United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 15-1248**
	)	**Issued: June 14, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 13, 2015 appellant, through counsel, filed a timely appeal of a March 5, 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 an injury in the performance of duty on September 25, 2013.

FACTUAL HISTORY

On September 30, 2013 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 25, 2013 he missed a step and jammed his leg

[1] 5 U.S.C. § 8101 *et seq.*

causing pain in the thigh while in the performance of duty. He stopped work on September 28, 2013.

In a September 27, 2013 report, Dr. Sharon Lee Witt, an osteopath Board-certified in family medicine, diagnosed musculoskeletal back pain that was intermittent and worsening. Appellant explained that he had missed a step and there was an injury. Furthermore, the pain was aggravated by walking and relieved by rest. Appellant claimed the numbness worsened at night after work. She diagnosed piriformis syndrome and recommended that appellant stay off work for two days and return on September 30, 2013 with full duty.

In an undated attending physician's report (Form CA-20), Dr. James A. Applegate, Board-certified in family medicine, noted that appellant fell on a step and he diagnosed knee pain. He checked a box marked "no" in response to whether there was a history of preexisting disease and checked a box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. Dr. Applegate noted that appellant was totally disabled from October 1 to 14, 2013. In an October 1, 2013 duty status report, he diagnosed knee pain and indicated that appellant was able to return to restricted duties on October 14, 2013. In an October 1, 2013 report, Dr. Applegate advised that appellant remained disabled from work until October 31, 2013.

By letter dated October 21, 2013, OWCP informed appellant of the type of evidence needed to support his claim and he was afforded 30 days to submit such evidence.

In a September 27, 2013 disability certificate, Dr. Witt advised that appellant could not return to work for two days.

On October 1, 2013 Dr. Applegate noted that appellant had chronic hypertension and hyperlipidemia. Appellant had a trauma-type fall that had occurred at work six days earlier. Dr. Applegate diagnosed leg and knee pain. In an October 14, 2013 treatment report, he noted that appellant presented with thigh pain of three weeks duration that started with an injury. Dr. Applegate diagnosed hypertension, leg pain, and back pain. In a separate October 14, 2013 disability report, he noted that appellant was totally disabled and unable to return to work until October 31, 2013.

In an October 14, 2013 x-ray of the lumbar spine, Dr. Baljit Deol, a Board-certified diagnostic radiologist, found moderate-severe degenerative disease at L5-S1. In an October 14, 2013 x-ray of the hip, he found moderate degenerative disease of the right hip.

Dr. Applegate, in a report dated October 30, 2013, advised that appellant remained under his medical care and was unable to return to work. He diagnosed knee pain.

In an October 31, 2013 statement, appellant described his duties while delivering mail on the date of the incident and noted that he missed a step and landed with all his weight on his right foot and felt pain in his foot and leg. OWCP also received copies of previous reports, and physical therapy notes from October 3 to November 14, 2013.

By decision dated December 4, 2013, OWCP denied appellant's claim. It found that the medical evidence failed to demonstrate that the claimed medical condition was related to the established work events.

On December 16, 2013 appellant requested reconsideration. In a November 19, 2013 report, Dr. Bryan J. Pack, a Board-certified orthopedic surgeon, noted that on September 25, 2013 appellant missed a step, put all of his weight on his right foot, and had pain in the right foot, and leg ever since. He advised that appellant had pain in the right thigh and buttocks with numbness in the right foot. The lateral right knee was also painful. Appellant described the pain as constant, burning, and radiating down into the right foot, right buttock, and lateral right knee as well as down into the foot and up to the back. He indicated that the pain awakened him at night. Dr. Pack diagnosed trochanteric bursitis in the right hip, tendinitis, right hip, radiculopathy, and fracture acetabulum-closed. In a separate report also dated November 19, 2013, he placed appellant off work indefinitely. Dr. Pack continued to treat appellant. In a January 23, 2014 report, he advised that no treatment had been pursued by appellant and that he could not keep appellant off work for more than another two weeks. Dr. Pack indicated that appellant could at least perform seated work despite appellant indicating that this caused pain.

By decision dated February 20, 2014, OWCP denied the claim finding the medical evidence insufficiently rationalized to establish that appellant's condition was caused by work duties.

On March 11, 2014 appellant requested reconsideration. In reports dated February 12 and 19, 2014, Dr. Applegate noted appellant's history and diagnosed chronic pain syndrome. He related that appellant had not improved since the injury and should continue his restrictions.

In a March 10, 2014 report, Dr. Brian P. Giersch, a Board-certified physiatrist, noted appellant's history of injury and treatment. He examined appellant and found that appellant had a normal gait, negative straight leg test, and full range of motion in the hip. Dr. Giersch found good motor strength and sensation intact distally. He diagnosed "status post near fall with resultant right paralumbar, gluteal, and right lower extremity discomfort/sensory disturbance." Dr. Giersch recommended further diagnostic testing.

By decision dated June 2, 2014, OWCP denied modification of the prior decision. It found that the medical evidence was insufficient to establish that appellant's condition was caused by employment duties.

On June 5, 2014 appellant requested reconsideration. In an April 3, 2014 report, Dr. Giersch diagnosed persistent right lower extremity discomfort, primarily in the lateral thigh, with associated sensory disturbance. He noted that the differential included lumbar radiculitis, lateral femoral cutaneous neuropathy, or perhaps referred phenomenon from intrinsic hip pathology where there was some moderate hip arthritis seen. Dr. Giersch continued to treat appellant and submit reports.

In a June 6, 2014 report, Dr. Giersch explained that he had provided an opinion on causal relationship and advised:

> "Review of my notes would in fact, suggest that my differential diagnosis includes a lateral femoral cutaneous neuropathy and perhaps referred phenomenon from the back or hip. My ongoing diagnosis at this point is that of lateral femoral cutaneous neuropathy. Again, this would be the most likely etiology for his symptoms, which remains fairly well confined to the lateral thigh region at this time. This is related, by history provided by [appellant], to his near fall injury, which originally brought him to my medical attention."

He continued to treat appellant.

On July 8, 2014 Dr. Giersch noted that appellant had periods of time where he did not have any right leg symptoms and, when he did experience symptoms, they continued to be sensory symptoms. He reported that appellant did not note any significant giving out or motor weakness of the leg or significant back discomfort. Dr. Giersch diagnosed "probable right lateral femoral cutaneous neuropathy, improving" and adjusted appellant's restrictions to" limit the repetitive stair climbing only." OWCP also received copies of previously submitted reports.

By decision dated August 25, 2014, OWCP denied modification of the prior decisions. It found that while Dr. Giersch attempted to satisfy the issue of causal relationship by opining that the condition was related to the near fall injury, he failed to explain how he arrived at this conclusion. OWCP found that the report was unrationalized and of no substantial probative value.

On September 2, 2014 OWCP received a February 12, 2014 report, from Dr. Shelley Freimark, a Board-certified physiatrist who noted that, on September 25, 2013, appellant was delivering mail, missed a step, and stumbled, but did not fall. Dr. Freimark explained that appellant had complaints of right lateral thigh, buttock and hip pain, but no restriction of motion. She reviewed the x-rays taken on October 14, 2013 and noted an impression of mild lumbar spondylosis, known right hip acetabular fracture, and right lateral thigh pain without physical findings indicative of radiculopathy. Dr. Freimark advised that it did not appear that his pain was related to radiculopathy, but recommended additional testing.

On December 11, 2014 appellant's counsel requested reconsideration and submitted a November 20, 2014 report from Dr. Giersch who noted that appellant had a "misstep while working on September 25, 2013." Dr. Giersch advised that appellant experienced sudden right leg and low back discomfort along with numbness and tingling of the right thigh that occurred while walking down steps." He advised that the subjective complaints included numbness, tingling, and an itching sensation of the right anterior and lateral thigh, with occasional numbness in the right foot, and occasional low back discomfort. Dr. Giersch examined appellant and noted numbness confined to the lateral femoral cutaneous nerve distribution. He explained that the magnetic resonance imaging (MRI) scan of the lumbosacral spine revealed moderate congenital stenosis, superimposed degenerative changes, facet arthrosis, disc bulging, epidural lipomatosis, and possible ankylosing spondylitis. Dr. Giersch further explained that electromyography (EMG) scan studies were mildly abnormal with mild irritability in the

paraspinal muscles. He diagnosed lateral femoral cutaneous neuropathy and intermittent back pain. Dr. Giersch opined: "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described [by] the patient and described above." OWCP also received a copy of a previous report.

By decision dated March 5, 2015, OWCP denied modification of its prior decision. It found that appellant failed to submit a firm and rationalized opinion from a qualified physician to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 timely filed within the applicable time limitation period of FECA,[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[7]

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*.

[7] *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

Appellant has alleged that on September 25, 2013 he missed a step and jammed his leg causing pain in the thigh at work. OWCP accepted that the claimed incident occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established; the claimed incident in which appellant missed a step at work.

With regard to the second component of fact of injury, whether the incident caused an injury, the Board finds that the medical evidence is insufficiently rationalized to establish that appellant sustained a work-related condition September 25, 2013.

In an undated attending physician's report, Dr. Applegate noted that appellant fell on a step and diagnosed knee pain. He checked a box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. The checking of a box marked "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[8] In an October 1, 2013 report, Dr. Applegate noted that appellant had chronic hypertension and hyperlipidemia. He indicated that appellant had a trauma-type fall that occurred at work six days earlier and diagnosed leg and knee pain. Other than to note a trauma-type fall at work, Dr. Applegate did not discuss the cause of appellant's pain, and his report is of little probative value.[9] Further, the Board has held that a diagnosis of "pain" itself does not constitute the basis for the payment of compensation.[10]

In a June 6, 2014 report, Dr. Giersch explained that he had provided an opinion on causal relationship and advised:

> "Review of my notes would in fact, suggest that my differential diagnosis includes a lateral femoral cutaneous neuropathy and perhaps referred phenomenon from the back or hip. My ongoing diagnosis at this point is that of lateral femoral cutaneous neuropathy. Again, this would be the most likely etiology for his symptoms, which remains fairly well confined to the lateral thigh region at this time. This is related, by history provided by [appellant], to his near fall injury, which originally brought him to my medical attention."

The Board has held that opinions such as the condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion.[11]

In a November 20, 2014 report, Dr. Giersch noted that appellant had a "misstep while working on September 25, 2013." He advised that appellant experienced sudden right leg and low back discomfort along with numbness and tingling of the right thigh that occurred while

[8] *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

[9] *Id*.

[10] *John L. Clark*, 32 ECAB 1618 (1981).

[11] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

walking down steps." Dr. Giersch diagnosed lateral femoral cutaneous neuropathy and intermittent back pain. He opined: "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described the patient and described above." The Board finds that Dr. Giersch's opinion does not explain how he concluded that particular work activities caused or aggravated appellant's diagnosed conditions.

On September 27, 2013 Dr. Witt advised appellant missed a step and had an injury. She noted that he had worsening musculoskeletal back pain after the incident. In a November 19, 2013 report, Dr. Pack noted that on September 25, 2013 appellant missed a step and put all of his weight on his right foot and had pain in the right foot and leg ever since. Diagnoses included: right hip trochanteric bursitis, tendinitis, and radiculopathy. On February 12, 2014 Dr. Freimark noted that on September 25, 2013 appellant was delivering mail, missed a step, and stumbled, but did not fall. Thereafter, appellant had complaints of right lateral thigh, buttock and hip pain, but no restriction of motion. Although these reports provide general support for causal relation in that they indicate that he had symptoms following the September 25, 2013 work incident, none of these physicians provided medical rationale to explain how the various diagnoses were related to the work incident.

Appellant also submitted copies of physical therapy notes. Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[12] Physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.[13] Consequently, these reports are insufficient to establish his claim.

Other medical reports submitted by appellant are insufficient to establish appellant's claim as they do not specifically address how appellant sustained a work injury on September 25, 2013.[14]

Appellant may submit evidence or argument with a written request for reconsideration 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 an injury in the performance of duty on September 25, 2013.

[12] 5 U.S.C. § 8101(2).

[13] *Id.; J.M.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuck*, 57 ECAB 316 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

[14] *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board