

FACTUAL HISTORY

On April 10, 2015 appellant, then a 56-year-old vehicles operation maintenance assistant, filed an occupational disease claim (Form CA-2) alleging that on August 15, 2014 he sustained a herniated disc due to loading his work vehicle. He explained that he had an existing accepted claim under OWCP File No. xxxxxx164, and that he had suffered ongoing low back pain since returning to work in April 2011.³ Appellant stopped work on August 22, 2014.

OWCP received an August 25, 2014 report from Dr. Anatoly Rozman, a treating Board-certified physiatrist, indicating he was waiting on approval by OWCP for a lumbar spine magnetic resonance imaging (MRI) scan. Dr. Rozman noted that appellant continued to experience severe pain and had problems ambulating.

In a March 30, 2015 statement, appellant stated that his preexisting herniated disc had been aggravated by replacing and removing parts and tools from a maintenance vehicle on August 15, 2014.

By letter dated May 7, 2015, OWCP advised appellant that his case would be converted to a claim for a traumatic injury as the incident described in his March 30, 2015 statement occurred during the course of one work shift. It informed him that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required and was afforded 30 days to provide this information.

In response to OWCP's request, additional evidence was received.

In a September 8, 2014 report, Dr. Rozman noted evidence of degenerative disc disease with lumbar radiculopathy. He noted that he had previously sent a request to OWCP for approval of a lumbar spine MRI scan. A physical examination revealed severe lumbar paraspinal muscle spasm, pain on extension and flexion, decreased lower extremity sensation, and positive straight leg testing. Dr. Rozman reported that appellant continued to have pain and was unable to return to work due to his deteriorating condition.

In a February 12, 2015 neurological consultation report, Dr. Alexander Ivanov, a Board-certified internist with subspecialty certifications in cardiovascular disease and clinical cardiac electrophysiology, noted appellant was seen for long-standing complaints of low back pain radiating to his legs. Appellant related that his back had been bothering him since an employment injury which occurred approximately 20 years ago. Physical examination findings were provided and the lumbar spine MRI scan was reviewed. Dr. Ivanov diagnosed low back pain due to lumbar instability, lumbar foraminal stenosis, and lumbar radiculopathy. He recommended an L2-3 decompression and L5-S1 decompression and fusion surgery.

OWCP also received a March 23, 2015 permanent impairment rating by Dr. Rozman.

³ OWCP also noted that appellant had a 1986 claim under OWCP File No. xxxxxx164 which had been accepted for lumbar strain. Appellant filed a notice of recurrence of disability under the prior claim number on August 15, 2014, which was denied on April 16, 2015.

By decision dated July 16, 2015, OWCP denied appellant's claim. It found the medical evidence insufficient to establish a causal relationship between the diagnosed medical condition and the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, that an injury was sustained while 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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.⁷ 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.⁸ 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.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹¹ 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.¹²

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

¹⁰ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

Appellant alleged that he sustained a herniated disc on August 15, 2014 due to unloading equipment from his work vehicle. OWCP accepted that the August 15, 2014 incident occurred as alleged, but found that appellant had not established a diagnosed medical condition causally related to the claimed incident. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The determination of whether an employment incident caused an injury is generally established by medical evidence.¹³ The record is devoid of any medical evidence discussing the August 15, 2015 incident or diagnosing a medical condition causally related to the accepted incident. In support of his claim appellant submitted reports from Drs. Ivanov and Rozman. Dr. Rozman diagnosed degenerative disc disease with lumbar radiculopathy while Dr. Ivanov diagnosed lumbar instability, lumbar foraminal stenosis, and lumbar radiculopathy. Neither physician mentioned or discussed any medical condition due to loading a work vehicle on August 15, 2014.

The Board finds that appellant has not established that the August 15, 2014 employment incident resulted in an injury. OWCP advised appellant that he must provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and include a physician's opinion on the cause of his condition. Appellant failed to submit any such medical documentation in response to OWCP's request.

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁴ 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 the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.¹⁵ As there is no probative, rationalized medical evidence containing a medical diagnosis and explaining how the diagnosed condition was causally related to the accepted August 15, 2014 incident, he has not met his burden of proof.

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.

¹³ *J.J.*, *supra* at note 11; *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁴ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007) *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁵ *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish a herniated disc causally related to an August 15, 2014 incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2015 is affirmed.

Issued: June 23, 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