United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 16-0606**
	)	**Issued: June 3, 2016**
DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND, Norfolk, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 10, 2016 appellant, through counsel, filed a timely appeal from an August 19, 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to the November 23, 2014 employment incident.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following issuance of OWCP's August 19, 2015 decision, appellant submitted new evidence to OWCP. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not review this evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 11, 2014 appellant, then a 59-year-old first assistant engineer, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2014 he experienced a sudden wrenching in his low back as a result of slipping on fuel oil that had spilled on a deck at work. He stated that this caused nerve pinching and subsequent pain in his right side, hip, back of the thigh, loss of strength in his left knee, toe dragging, and difficulty with sleep, sitting, and standing. Appellant stopped work on November 25, 2014.

Appellant submitted medical records from the employing establishment's health unit. A November 24, 2014 medical repatriation message contained an illegible signature and diagnosed sciatica.

In a medical summary form also dated November 24, 2014, Dr. Paul E. Zakowich, an employing establishment physician, noted that appellant complained of lumbar back pain radiating down the leg. He provided examination findings and diagnosed low back (lumbar) pain radiating down the leg, sciatica, and obesity. Dr. Zakowich concluded that appellant was not fit to perform his ship duties due to pain which prevented him from lifting, crawling, or kneeling.

In a December 15, 2014 industrial work status report, Dr. Peter B.T. Lum, a Board-certified physiatrist, noted November 23, 2014 as the date of injury. He diagnosed lumbar radiculopathy, lumbosacral joint sprain, lumbar muscle strain, and neck sprain. Dr. Lum placed appellant off work through January 9, 2015 due to incapacitating injury or pain. In a physical rehabilitation prescription dated December 15, 2014, he ordered physical therapy and massage/manual therapy to treat appellant's previously diagnosed conditions and assessment of neck muscle strain and lumbosacral vertebral subluxation at L5-S1.

The employing establishment controverted the claim. A supervisor's January 2, 2015 statement indicated that appellant had been treated for a chronic condition and did not inform the supervisor about the alleged incident until several weeks later when he left his ship and filed a Form CA-1.

By letter dated January 14, 2015, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence.

In a January 14, 2015 narrative statement, appellant described the November 23, 2014 incident. At the time of injury, he was walking around the engine room supervising maintenance jobs. Appellant stepped and slipped on fuel that had leaked from an engine. Third assistant engineer, Ola A. Lassley, heard his cry and asked if he needed assistance. Appellant waved him off and cleaned up the fuel oil. Although he was in considerable pain, he felt that he could walk it off. Appellant completed his daily routine by the close of business. Since he did not see his supervisor, George A. Bentley, IV, during the day, he did not mention his injury on that day. Appellant did not have an opportunity to mention his injury to Mr. Bentley on the next morning because he had a previously arranged appointment for a physical examination. He was examined by Dr. Zakowich who diagnosed sciatica and found him unfit for duty. Dr. Zakowich attempted to call Ariel Quicho, a medical services officer, but could not reach him. When appellant

returned to his ship, he informed Mr. Quicho about his injury and intent to file a Form CA-1. Mr. Quicho told him that he was being paid off the ship due to his work status. Appellant presumed that Mr. Quicho would relay this information to Mr. Bentley. He left the ship as instructed and dedicated the remainder of the day to seeking medical attention, transportation, and nearby lodging because he was not comfortable with flying in excess of 10 hours in his current condition. Appellant was treated by Dr. James H. Pardis, a chiropractor, on a daily basis for approximately 10 days. He subsequently flew home and sought medical treatment from Dr. Lum. Appellant believed that his low back injury was a precursor to his cervical pain. He stated that he had no other type of injury on or off duty or any prior symptoms.

In a December 15, 2014 cervical x-ray report, Dr. John H. Sanico, a Board-certified radiologist, noted no acute osseous injury. Degenerative changes were present. In a December 15, 2014 lumbosacral spine x-ray report, Dr. Sanico also found no acute osseous injury. He found minimal retrolisthesis at L2-3 and L4-5 and degenerative changes.

In a December 19, 2014 report, appellant's physical therapist provided a history that on November 23, 2014 appellant injured his back when he slipped and fell. She provided examination findings, assessed appellant's condition, and addressed his treatment plan.

In reports and prescriptions, Dr. Lum reiterated his prior diagnoses of lumbar radiculopathy, lumbosacral joint sprain, lumbar muscle strain, neck sprain, neck muscle strain, lumbosacral vertebral subluxation at L5-S1, and cervical vertebral subluxation. In a December 15, 2014 progress note, he provided a history that appellant slipped in an engine room at work, landed on his left knee, and held himself up on engine parts. Dr. Lum also provided his medical and occupational history, reviewed cervical and lumbar x-ray results, and reported examination findings. He opined that based on appellant's history, mechanism of injury, and his examination, appellant's injury was more than likely caused by the alleged work injury and, therefore, he sustained an industrial-related injury. In a December 19, 2014 report and an undated physical rehabilitation prescription, Dr. Lum ordered physical therapy and massage/ manual therapy to treat appellant's diagnosed lumbar and neck conditions. In a January 27, 2015 industrial work status report, he noted diagnoses and placed appellant off work through February 27, 2015 due to incapacitating injury or pain. In an undated attending physician's report (Form CA-20), Dr. Lum reiterated appellant's history of injury. He checked a box marked "yes" as to whether the diagnosed lumbar and cervical conditions were caused or aggravated by work activity. Dr. Lum advised that appellant was totally disabled from December 15, 2014 through February 27, 2015.

By decision dated February 20, 2015, OWCP denied appellant's claim, finding that he did not establish a factual basis for his claim and had not provided medical evidence sufficient to establish that the November 23, 2014 incident caused a diagnosed medical condition.

On March 25, 2015 appellant requested a review of the written record by an OWCP hearing representative.

In progress notes dated January 27 to June 17, 2015, Dr. Lum reiterated appellant's history of injury, his lumbar and cervical diagnoses, and his opinion that these conditions were more than likely caused by the employment incident. In a February 12, 2015 Form CA-20

report, he checked a box marked "yes" as to whether the diagnosed conditions were caused or aggravated by work activity. Dr. Lum found appellant totally disabled from December 15, 2014 to January 19, 2015. In a March 9, 2015 work status report, he advised that appellant could perform modified activity through April 17, 2015. On March 17, 2015 Dr. Lum opined that appellant sustained lumbar and cervical spine injuries due to the November 23, 2014 incident. In work status reports dated April 6 and June 17, 2015, he placed appellant off work on intermittent dates from April 6 to July 24, 2015 due to incapacitating injury or pain.

In a March 3, 2015 letter, Dr. Zakowich advised that appellant was examined on November 24, 2014 and that he complained of having intense lumbar back pain radiating down his leg. According to appellant, his back pain resulted from an unfortunate slip on the previous day. Dr. Zakowich diagnosed sciatica and declared him unfit for duty to work as a first assistant engineer, which involved kneeling, crouching, and lifting on a ship, due to pain.

In a March 11, 2015 letter, Dr. Pardis certified that appellant had chiropractic sessions from December 1 to 10, 2014 for spinal injuries suffered when he slipped at work on November 23, 2014.

By letter dated March 19, 2015, Dr. Joseph G. Morelli, a chiropractor, provided a history that on November 23, 2014 appellant slipped and fell on engine fuel oil while working on a military vessel. He noted his lower back, right leg, and neck complaints. Dr. Morelli provided appellant's medical, social and family background. He reported findings on examination and found that appellant suffered from a significant sprain/strain syndrome of the spine. The most significant symptomatic area was the thoracolumbar/lumbopelvic spines and to a lesser extent the cervicothoracic spine. Appellant had radicular-like symptoms throughout the right sciatic trajectory, most notably through the calf. Dr. Morelli ruled out lumbar disc herniation. He indicated that appellant presented with significant muscle spasms in the thoracolumbar paraspinal musculature and multiple spinal segmental dysfunctions in the lumbosacral, thoracolumbar, and cervicothoracic spines. Dr. Morelli expected him to continue to be totally disabled for the next 60 to 90 days depending on his response to care.

In progress notes March 18 and April 1 and 4, 2015, appellant's physical therapists addressed the treatment of his lumbar and cervical conditions.

In a July 16, 2015 progress note, Dr. Mark D. Shaieb, a Board-certified orthopedic surgeon, provided a history that appellant fell on his right knee and twisted his leg. He reported findings on physical examination and assessed obesity and mild-to-moderate degenerative arthritis in the patellofemoral and medial compartment with reported locking.

In an undated witness statement, Coworker Lassley related that at approximately 10:30 a.m. on November 23, 2014 he heard a cry of pain, surprise, or both while cleaning a ship. He left his task to investigate and found appellant on the deck with one leg out in front of him and the other leg behind him. Appellant looked to be in pain and in an uncomfortable position. Coworker Lassley offered to help him get up, but he motioned that he would be alright.

In an August 19, 2015 decision, an OWCP hearing representative affirmed the February 20, 2015 denial decision as modified. She found that appellant had established that the

November 23, 2014 incident occurred as alleged, but he had not established that the employment incident caused a diagnosed medical condition.

LEGAL PRECEDENT

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

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury caused by the November 23, 2014 employment incident. Appellant failed to submit sufficient medical evidence to establish that he had a back injury causally related to the accepted employment incident.

Appellant submitted series of reports from Dr. Lum. In his March 17, 2015 report, Dr. Lum opined that appellant sustained lumbar and cervical spine injuries due to the accepted November 23, 2014 employment incident. His report is unsupported by rationale and is

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

[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] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

conclusory. Medical opinions which contain no rationale or explanation are of little probative value.[10] Dr. Lum included progress notes dated December 15, 2014 to June 17, 2015 in which he found that appellant had lumbar radiculopathy, lumbosacral joint sprain, lumbar muscle strain, neck sprain, neck muscle strain, lumbosacral vertebral subluxation at L5-S1, and cervical vertebral subluxation. He provided a history of the accepted November 23, 2014 employment incident, reviewed the medical record, and reported findings on physical examination. Dr. Lum opined that appellant sustained an injury that was more than likely caused by the accepted work incident. The Board notes that this opinion is speculative in nature.[11] Dr. Lum did not explain how appellant's slip at work on November 23, 2014 caused or aggravated the diagnosed conditions.

In an undated and a February 12, 2015 Form CA-20 reports, Dr. Lum also supported causal relationship simply by checking a box marked "yes" that appellant's diagnosed lumbar and cervical conditions were work related. However, the Board has held that an opinion on causal relationship which consists only of a physician checking yes on a medical form report, without further explanation or rationale, is of little probative value.[12] Dr. Lum did not explain the medical reasoning providing the basis for his opinion.

Other reports from Dr. Lum did not provide an opinion supporting that the diagnosed conditions and disability were caused or aggravated by the accepted November 23, 2014 work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[13]

Similarly, reports from Dr. Zakowich, Dr. Sanico, and Dr. Shaieb did not provide a medical opinion on whether the diagnosed conditions were caused or aggravated by the accepted employment incident. Dr. Zakowich provided appellant's history of injury but he did not provide a medical opinion supporting that the diagnosed conditions and disability were caused or aggravated by the accepted November 23, 2014 employment incident. While Dr. Shaieb reported a history of the November 23, 2014 employment incident, he offered no medical opinion on the causal relationship between the diagnosed conditions and accepted work incident.

The remaining reports of record are of no probative value on the issue of causal relationship. The March 11 and 9, 2015 reports from appellant's chiropractors, Dr. Pardis and Dr. Morelli, which addressed appellant's history of injury, spinal condition, and treatment, are of no probative medical value as neither chiropractor diagnosed spinal subluxation or documented

[10] *F.T.*, Docket No. 09-919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[11] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[12] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[13] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

whether x-rays were taken.[14] The reports dated December 19, 2014 to April 4, 2015 from appellant's physical therapists are of no probative medical value as a physical therapist is not considered a physician as defined under FECA.[15] The November 24, 2014 medical repatriation message that contained an illegible signature and provided a diagnosis of sciatica has no probative medical value as it is not clear whether a physician as defined under FECA prepared the report. It is well established that medical evidence lacking proper identification is of no probative medical value.[16]

Appellant has not submitted medical evidence from a physician explaining how the November 23, 2014 work incident caused or contributed to a back injury. Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained a back injury causally related to the accepted November 23, 2014 employment incident.

On appeal, counsel contends that OWCP's August 19, 2015 decision is contrary to fact and law. For the reasons stated above, the Board finds that counsel's arguments are not substantiated.

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 has failed to meet his burden of proof to establish an injury causally related to the November 23, 2014 employment incident.

[14] 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Roy L. Humphrey*, 57 ECAB 238 (2005). The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *See Mary A. Ceglia*, 55 ECAB 626 (2004) (in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician as defined under 5 U.S.C. § 8101(2); a chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist).

[15] 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[16] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *R.M.*, 59 ECAB 690, 693 (2008); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board