United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 16-0830**
	)	**Issued: October 14, 2016**
DEPARTMENT OF THE NAVY,	)	
Camp Lejeune, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 12, 2016 appellant filed a timely appeal from a February 5, 2016 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 a traumatic injury in the performance of duty on July 17, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence with his appeal to the Board. The Board cannot consider this evidence as its review is limited to evidence which was before OWCP at the time of its merit decision. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012).

FACTUAL HISTORY

On July 22, 2015 appellant, then a 64-year-old woodworker filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2015 he sustained an injury to his lower back when he bent over, stood up and pinched his lower back in the performance of duty. The employing establishment indicated that appellant was not in the performance of duty at the time of the incident as he was cleaning a small grill that weighed less than four pounds. The supervisor, Donnie Player, checked the box marked "no" in response to whether the knowledge of the facts about the injury agreed with statements of the employee and or witnesses. He noted that appellant had told him on July 21, 2015 that he had a back injury, but he believed that the back pain could have been from kidney stones, which appellant had admitted earlier. Appellant did not stop work.

By letter dated July 24, 2015, OWCP advised appellant that additional evidence was required to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

OWCP received a copy of appellant's light-duty assignment dated July 23, 2015, an imaging order, light-duty restrictions from Dr. Michael Mahan a Board-certified family practitioner, dating from July 20 to 22, 2015.

In a July 22, 2015 report, Gary Billings, a coworker, advised that he was working with appellant on July 17, 2015 cleaning up after a cookout when appellant commented that he had a pain in his back and it felt like it was tightening up. He noted that appellant continued working for the rest of the day but noticed that he seemed to favor his back more than usual. Mr. Billings advised that he did not ask to see the doctor and he continued to work.

Appellant stated on July 17, 2015 that he was bent over cleaning a grill from a cook out. He noted that he stood up and felt a pinch in his lower back. Appellant explained that he continued with what he was doing, ignoring the pain. He explained that when he got up the next day, he could not stand up straight and he was in a lot of pain.

In a July 22, 2015 statement, Mr. Player noted that on July 21, 2015 appellant had called him and told him he had a back injury. He noted that appellant had been off on Monday due to kidney stones and he wondered if appellant was really in pain from the kidney stones.

In a July 22, 2015 report, Dr. Earl Frantz, Board-certified in family medicine, noted that appellant was bending over to clean a grill and felt a pinching sensation in his lower back on July 17, 2015. Appellant reported pain radiating down both lower extremities, with the left greater than the right with a tingling sensation. Dr. Frantz reported that appellant had a long-standing history of back issues with radiculopathy, and he was currently having radiculitis and lower back issues and wanted to consider different invasive modalities. He diagnosed lumbar sprain and unspecified thoracic or lumbosacral neuritis or radiculitis. Dr. Frantz continued to treat appellant and provided several disability certificates. In a July 29, 2015 disability certificate, he recommended a return to full duty on August 2, 2015.

Dr. Matthew J. Swiber, a Board-certified anesthesiologist, saw appellant on August 18, 26 and 28, 2015 for treatment which included a spinal procedure and recommended a return to work on August 31, 2015.

By decision dated September 2, 2015, OWCP denied appellant's claim as the evidence of record was insufficient to establish that the events occurred as described. It noted that he did not respond to its questionnaire.

On September 29, 2015 appellant requested reconsideration. He noted that he had misplaced his doctor's notes and was submitting them. In a July 29, 2015 report, Dr. Frantz diagnosed low back pain, lumbar sprain, lumbar radiculopathy and thoracic or lumbosacral neuritis or radiculitis, unspecified. OWCP received copies of previously submitted reports.

By decision dated December 21, 2015, OWCP affirmed as modified the September 2, 2015 decision. It found that the witness statements and appellant's statements confirmed that the incident had occurred as alleged. However, the claim remained denied as there was insufficient evidence to establish the incident was in the performance of duty.

On January 8 and 12, 2016 appellant requested reconsideration. He argued that the cook out was held during his normal designated lunch period and the grill was used to cook items which were to be consumed at that time at his place of employment. Appellant provided statements from his Mr. Billings and his supervisor, Mr. Player. They agreed that the incident happened at the place of employment as stated.

On February 2, 2016 a telephone conference was held by OWCP with the employing establishment. It was confirmed that on July 17, 2015 appellant was cleaning a very small grill weighing less than four pounds and that he simply stood up and injured his back. The employing establishment confirmed that the incident occurred during an approved lunch break on the employment premises. It asserted that the matter should not be considered a recreational injury, but rather a single event on the premises of the employing establishment.

By decision dated February 5, 2016, OWCP affirmed as modified the prior decision. It denied the claim because the medical evidence of record failed to establish causal relationship between the work incident and a diagnosed medical condition.

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[3] and that an injury was sustained in the performance of duty.[4] These

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

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

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] 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.[8]

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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS

In this case, appellant alleged that on July 17, 2015 he sustained an injury to his lower back when he bent over to clean a small grill, stood up, and pinched his lower back during lunch on the employing establishment's premises. OWCP accepted that the claimed event occurred in the performance of duty.

However, OWCP found the medical evidence was insufficiently rationalized to establish that the accepted employment incident caused an injury. The medical evidence of record contains no reasoned explanation of how the specific employment incident on July 17, 2015 caused or aggravated an injury.[10]

Dr. Frantz provided a July 22, 2015 report but did not provide a specific and reasoned opinion regarding whether the accepted incident caused or aggravated a diagnosed medical condition.[11]

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

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

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

[8] *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

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

[10] *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).

[11] *See id.*; *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding 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).

Other reports in the record such as the disability certificates from various physicians did not offer any opinion as to how the July 17, 2015 activities at work caused or aggravated a right leg or back condition.[12]

Because the medical reports submitted by appellant do not address how the July 17, 2015 activities at work caused or aggravated a right leg or back condition, these reports are of limited probative value and are insufficient to establish that the July 17, 2015 employment incident caused or aggravated a specific injury.

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 not met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on July 17, 2015.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *Id.*