United States Department of Labor
Employees' Compensation Appeals Board

C.N., Appellant	)	
and	)	**Docket No. 16-1597**
	)	**Issued: August 10, 2017**
DEPARTMENT OF THE TREASURY, BUREAU OF ENGRAVING & PRINTING, Washington, DC, Employer	)	

Appearances:
Stephen D. Scavuzzo, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 29, 2016 appellant, through counsel, filed a timely appeal from a February 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 that his lumbar condition is causally related to the accepted May 27, 2014 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 27, 2014 appellant, then a 49-year-old stationary engineer, filed a traumatic injury claim (Form CA-1) for a back injury he allegedly sustained earlier that day while carrying a hot water circulating pump down some stairs. He did not stop work.

In form reports dated June 3 and 17, 2014 and narrative reports dated June 3 and July 15, 2014, Stacy Konyar, a nurse practitioner, diagnosed lumbar strain and right L5 radicular symptoms. She identified May 27, 2014 as the date of injury and noted that appellant was injured carrying a more than 400-pound piece of equipment down a flight of stairs. Appellant was reportedly being aided by a coworker who lost his grip, thus leaving appellant to carry the item himself down the remaining steps. Ms. Konyar also noted that appellant was seen by the attending physician at employee health, and was later sent to the emergency department. On May 28, 2014 appellant reportedly saw Dr. Abel Borromeo, a chiropractor, for adjustments. Ms. Konyar noted that the employment incident aggravated appellant's low back pain and caused the pain to radiate into his right lower extremity. She reported that appellant had a prior history of low back pain and was last seen by Dr. Mark A. Landrio, a neurologist, on March 5, 2014. Ms. Konyar opined that appellant's work incident caused an acute onset of low back pain radiating to the right lower extremity.

Appellant submitted a July 29, 2014 lumbar magnetic resonance imaging (MRI) scan that showed congenital narrowing of the anterior-posterior diameter pedicles at all levels and early disc degeneration involving the L2-3 disc represented by loss signal activity. He also submitted an August 28, 2014 lumbar MRI scan which revealed a stable 5 millimeter (mm) intradural lesion at the L4-5 disc space level, L4-5 minimal disc bulge and small annular tear in the left foraminal region, and L2-3 mild disc bulge and posterior annular tear.

In an October 9, 2014 letter, OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiry.

Subsequently, appellant submitted physical therapy reports dated July 22 through October 27, 2014.

By decision dated November 13, 2014, OWCP accepted that the May 27, 2014 incident occurred as alleged, but denied the claim, finding that appellant failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that he had not established fact of injury.

On December 5, 2014 appellant requested reconsideration and resubmitted a narrative report dated June 3, 2014 from Ms. Konyar. She also submitted a June 17, 2014 narrative report, containing a discussion of his progress, similar to previously prepared reports by Ms. Konyar.

Appellant also submitted November 3, 2014 physical therapy treatment records and a November 5, 2014 report from Dr. Landrio, who diagnosed low back pain, obstructive apnea, bilateral carpal tunnel syndrome, and polyneuropathy.[3] Dr. Landrio reported that appellant was last seen in the office by his nurse practitioner, Ms. Konyar, on July 15, 2014 regarding his low

[3] Dr. Landrio attributed appellant's polyneuropathy to his adult-onset diabetes mellitus.

back and right lower extremity pain. He reported that appellant had "a history of low back pain extending into the right lower extremity status post physical therapy." Appellant was taking medicine and wearing a back brace. Dr. Landrio noted that appellant worked as a stationary engineer.

In a decision dated March 2, 2015, OWCP modified and affirmed the November 13, 2014 decision. It found that, although appellant established both components of fact of injury, he failed to establish a causal relationship between his diagnosed conditions and the accepted May 27, 2014 employment incident.

On November 11, 2015 counsel requested reconsideration and submitted physical therapy reports dated November 10 through December 29, 2014. He also resubmitted appellant's July 29 and August 28, 2014 lumbar MRI scans, as well as the June 3 and 17, 2014 narrative reports from Ms. Konyar, which counsel contended "were countersigned by Dr. Landrio and are equally probative."

By decision dated February 2, 2016, OWCP reviewed the merits of the claim, but denied modification of its prior decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[4] 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, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

[4] *Supra* note 2.

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[9] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[10]

ANALYSIS

The issue is whether appellant's lumbar condition resulted from the May 27, 2014 employment incident. OWCP accepted that the May 27, 2014 employment incident occurred as alleged and that there was a medical diagnosis in connection with the employment incident. However, it denied appellant's traumatic injury claim as the medical evidence was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident. The Board finds that appellant did not meet his burden of proof to establish causal relationship.

Following the May 27, 2014 employment incident, appellant was noted to have been seen at employee health and then evaluated in the emergency department. It was also noted that he had been treated by a chiropractor on May 28, 2014. However, records of the above-reference medical history are not part of the current record before the Board.

In his November 5, 2014 report, Dr. Landrio diagnosed low back pain, polyneuropathy, obstructive apnea, and bilateral carpal tunnel syndrome. He asserted that appellant had "a history of low back pain extending into the right lower extremity status post physical therapy." Dr. Landrio noted that appellant worked as a stationary engineer and was taking medicine and wearing a back brace. The Board finds that Dr. Landrio failed to provide any medical rationale explaining how the accepted employment incident on May 27, 2014 either caused or contributed to appellant's lumbar condition. A physician's opinion must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11] Again, the need for medical rationale is particularly important as the evidence of record indicates that appellant had a preexisting lumbar condition.[12] Thus, the Board finds that Dr. Landrio's November 5, 2014 report is insufficient to establish that appellant sustained an employment-related injury on May 27, 2014.

Ms. Konyar, a nurse practitioner, examined appellant on June 3, 2014 and provided a follow-up examination on June 17, 2014. She diagnosed lumbar strain and right L5 radicular symptoms due to carrying a piece of equipment that was greater than 400 pounds with a partner

[9] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[10] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[11] *Victor J. Woodhams*, *supra* note 7.

[12] In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e.

down a flight of stairs at work. Ms. Konyar noted that the coworker who was assisting appellant in moving the piece of equipment lost his grip, causing appellant to have to bear the entire weight down the remainder of the flight of stairs, which aggravated his low back pain and caused it to radiate into his right lower extremity. She reported that appellant had a history of low back pain and opined that the work incident caused an acute onset of low back pain radiating to the right lower extremity. She noted that appellant's condition occurred while he was at work. The notes of Ms. Konyar lack probative value as medical opinion evidence from nurse practitioners are not considered physicians under FECA.[13] For these reasons, the Board finds that Ms. Konyar's treatment records are insufficient to establish that appellant's diagnosed lumbar condition is causally related to the May 27, 2014 work incident. Although counsel contended that Dr. Landrio had countersigned Ms. Konyar's reports thereby rendering them "equally probative," the Board finds that the countersignature was illegible. The Board has held that a report bearing an illegible signature lacks proper identification and cannot be considered probative medical evidence.[14] Thus, the reports remain of no probative value and are insufficient to establish appellant's claim.

Appellant also submitted physical therapy treatment records. However, these records do not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA.[15] As such, this evidence lacks probative value and is insufficient to meet appellant's burden of proof.

Other medical evidence of record, including diagnostic studies, are of limited probative value and insufficient to establish the claim as they do not specifically address whether the diagnosed condition is causally related to the May 27, 2014 work incident.[16]

As appellant has not submitted rationalized medical evidence to support his claim he has failed to meet 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his lumbar condition is causally related to the May 27, 2014 employment incident.

[13] *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2).

[14] *See A.B.*, Docket No. 17-0545 (issued June 15, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See supra* note 9; *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists).

[16] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2017
Washington, DC

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

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

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