United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 16-0928**
	)	**Issued: February 14, 2017**
DEPARTMENT OF TRANSPORATION, FEDERAL AVIATION ADMINISTRATION, Long Beach, CA, Employer	)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 1, 2016 appellant filed a timely appeal from a February 19, 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.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty causally related to accepted factors of his federal employment.

FACTUAL HISTORY

On December 22, 2015 appellant, then a 53-year-old air traffic control specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained a lumbar muscle spasm and

[1] 5 U.S.C. § 8101 *et seq.*

lower back pain in the performance of duty. He noted that he had to climb 194 steps to access his work area as the work elevator had been out of service since November 10, 2015. Appellant noted that his pain began the first week of December and was "escalating." He indicated that he first became aware of his condition on December 17, 2015. Appellant stopped work on December 18, 2015. The employing establishment noted that prior to submitting his claim appellant was prescheduled for annual leave from December 18, 2015 through January 24, 2016. It noted that appellant first sought treatment from a chiropractor, but had not had any x-rays taken. The employing establishment also indicated that appellant had been apprised of the limitations with regard to chiropractic treatment.

By letter dated December 29, 2015, OWCP informed appellant of the evidence needed to support his claim and requested that he submit such evidence within 30 days. It specifically requested that he provide an opinion of a physician, supported by a medical reasoning, as to how his work activities caused or aggravated his claimed condition. OWCP explained that medical evidence must be submitted by a qualified physician. It advised that under FECA, a "physician" includes chiropractors only if there is a diagnosed spinal subluxation as demonstrated by x-ray to exist.

OWCP received a doctor's first report of injury or illness dated December 22, 2015 from Dr. Randal C. Roberts, a chiropractor. Dr. Roberts advised that appellant last worked on December 17, 2015. He also checked a box marked "yes" in response to whether he had previously treated appellant. Dr. Roberts indicated that the exposure occurred due to "repetitive climbing and descending 194 stairs 3 to 5 times per workday." He determined that appellant's subjective complaints included low back pain and muscle spasm. Dr. Roberts provided objective findings which included: spasms on the left lumbar spine; antalgic posture and gait; lumbar ranges of flexion 15 out of 60 degrees; extension 10 out of 25 degrees and bilateral "pos kemps." He noted that x-ray and laboratory results included two view lumbar subluxation of L3-4, L4-5, and L5-S1. However, a copy of the x-ray diagnostic results was not included with Dr. Roberts' report. Dr. Roberts checked the box marked "yes" in response to whether the findings and diagnosis were consistent with appellant's account of the injury or illness and the diagnosed subluxation of the lumbar spine L3 on L4, L4 on L5 and L5 on S1. He recommended further chiropractic treatment and advised that appellant could not perform his regular work as he could not climb stairs. Dr. Roberts advised a return to regular duty on January 25, 2016.

In a January 25, 2016 return to work order, Dr. Roberts indicated that appellant could perform regular duty.

By decision dated February 19, 2016, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish that the claimed medical condition was causally related to the accepted work-related events. OWCP found that the chiropractor diagnosed subluxation, but he failed to support his findings with copies of the diagnostic test results. It further found that the chiropractor failed to provide a medical opinion as to how the injury was causally related to his federal employment duties.

LEGAL PRECEDENT

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.[4]

Under section 8101(2) of FECA, 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 and subject to regulation by the Secretary.[5] Implementing regulations indicate that the diagnosis of spinal subluxation must appear in the chiropractor's report, and a chiropractor may interpret his or her x-rays to the same extent as any other physician.[6] To be given any weight, the medical report must state that

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Id.*

[5] 5 U.S.C. § 8102(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

[6] 20 C.F.R. § 10.311(b)(c).

x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.[7]

ANALYSIS

Appellant alleged that he developed a lumbar condition due to climbing 194 steps to access his work area on a daily basis since an elevator outage commencing on November 10, 2015, until he stopped work on December 18, 2015. OWCP accepted, and the evidence supports, that appellant had to climb 194 steps to access his work area due to the elevator outage. However, the Board finds that appellant submitted insufficient medical evidence to establish that his condition was caused or aggravated by these activities or any other specific factors of his federal employment.

Appellant submitted a December 22, 2015 report from Dr. Roberts, a chiropractor. Dr. Roberts noted that x-ray and laboratory results included two view lumbar subluxation of L3-4, L4-5, and L5-S1. The December 22, 2015 report therefore constitutes competent medical evidence pursuant to FECA.[8] Although OWCP found that the report was not from a physician because Dr. Roberts did not submit the x-ray film or an x-ray report, and support his findings with copies of the diagnostics, this was incorrect. OWCP regulations provide that a chiropractor may interpret his own x-rays to the same extent as any other physician and do not require that an x-ray film or x-ray report be submitted. Instead, the regulations provide that the x-ray or a report of the x-ray be made available for submittal upon request.[9] The record before the Board does not indicate whether OWCP ever requested an x-ray or x-ray film report from Dr. Roberts.

Although Dr. Roberts' December 22, 2015 report is competent medical evidence, it is insufficiently rationalized to establish a causal relationship between appellant's diagnosed subluxations of the lumbar spine at L3-4, L4-5 and L5-S1 and his employment duties. While he noted that the exposure occurred due to "repetitive climbing and descending 194 stairs 3 to 5 times per workday" he failed to explain how this activity caused or contributed to appellant's diagnosed subluxations. The Board notes that he checked a box marked "yes" in response to whether the findings and diagnosis were consistent with appellant's account of the injury or illness. However, the checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[10] As Dr. Roberts has not fully explained the processes by which appellant's work as an air traffic control specialist would have caused or aggravated the diagnosed conditions, and therefore his December 22, 2015 report is insufficient to establish appellant's claim. The Board finds that appellant has failed to establish that his subluxation of the lumbar spine at L3-4, L4-5, and L5-S1 were causally related to factors of his federal employment.

[7] *Id*. at § 10.311(c).

[8] *See Linda L. Mendenhall*, 41 ECAB 532 (1990).

[9] *Supra* note 7.

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

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[11] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[12]

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving his back, appellant has not met his burden of proof to establish a medical condition causally related to factors of his federal employment.

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 an injury in the performance of duty causally related to accepted factors of his federal employment.

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2017
Washington, DC

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

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

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