United States Department of Labor
Employees' Compensation Appeals Board

E.H., Appellant	)	
and	)	**Docket No. 16-1786**
	)	**Issued: January 30, 2017**
DEPARTMENT OF VETERANS AFFAIRS, BLOOMFIELD VETERANS CENTER, East Orange, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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 September 7, 2016 appellant, through counsel, filed a timely appeal from a May 19, 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 to consider the merits of this case.

On appeal counsel contends that appellant had submitted sufficient medical evidence to establish that he sustained a back strain on March 14, 2014 or that OWCP should have further developed the medical evidence.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a traumatic injury causally related to the March 14, 2014 employment incident.

FACTUAL HISTORY

On March 17, 2014 appellant, then a 41-year-old technology specialist, filed a traumatic injury claim (Form CA-1) alleging that he developed a possible strain due to lifting heavy objects in the performance of duty on March 14, 2014.

Dr. Boqing Chen, a Board-certified physiatrist, examined appellant on March 18, 2014. He completed both a narrative report and a form report and listed appellant's history of injury as lifting heavy objects on March 14, 2014 which caused acute, severe, lower back pain. Dr. Chen opined that there was causal relationship between his acute onset back pain and the heavy lifting that he did on March 14, 2014. He indicated that appellant's condition was caused by lifting multiple objects weighing over 70 pounds. Dr. Chen subsequently completed a narrative report on March 25, 2014 and described his employment incident on March 14, 2014 as moving three heavy objects, each weighing more than 75 pounds, while at work. He found that appellant was experiencing severe back pain with radiation to his feet. Dr. Chen indicated that appellant had a prior back injury, but that the pain from the previous condition had subsided after treatment. He diagnosed persistent and severe radicular low back pain likely from lumbar radiculopathy as well as low back pain likely from discogenic pain, facet joint pain, or sprain/strain.

On March 25, 2014 Dr. Wei Xu, a Board-certified physiatrist, completed a form report. He described appellant's work incident as lifting heavy objects on March 14, 2014 which caused acute severe lower back pain. Dr. Xu diagnosed acute low back pain and lumbar radiculitis. He concluded that appellant's condition was caused by lifting multiple heavy objects weighing more than 70 pounds. Appellant also submitted physical therapy notes.

Dr. Chen again examined appellant on April 22, 2014 and added the diagnosis of persistent and severe periscapular/rhomboids pain likely secondary to cervical radiculopathy. He also noted appellant's report of headaches originating from the employment incident. Dr. Chen repeated his findings and conclusions on May 20, 2014.

In a letter dated June 6, 2014, OWCP informed appellant that additional factual and medical evidence was necessary to establish his traumatic injury claim. It afforded him 30 days for a response.

Dr. Chen completed a note on June 30, 2014 describing appellant's ongoing symptoms of upper back pain and headaches. He reviewed appellant's cervical magnetic resonance imaging (MRI) scan which demonstrated a left central C6-7 disc herniation. Appellant's lumbar MRI scan demonstrated L5-S1 disc with lateral recess stenosis on the right.

By decision dated July 9, 2014, OWCP denied appellant's traumatic injury claim, finding that the factual evidence was insufficient to establish the events of March 14, 2014 which

appellant felt caused or contributed to his back conditions. It further noted that Dr. Chen had not provided clear diagnoses of a medical condition.

Appellant provided additional factual evidence on July 10, 2014. He explained that on March 14, 2014 he was directed to install printers which entailed moving six printers. Three of the printers weighed from 15 to 30 pounds and had to be moved to different rooms. The other three printers weighed over 75 pounds each and had to be unpacked from boxes. There was no help available, so appellant moved all the printers by himself. He noted that, while unpacking and lifting the heavier printers, he felt that he had pulled something in his back. After the initial pull, appellant's back pain increased and continued to worsen after he went home.

Appellant submitted a July 7, 2014 report from Dr. Chen describing appellant's employment incident of moving printers at work. He indicated that the weight of the printers varied between 15 and 75 pounds. Dr. Chen noted that appellant had a prior back injury on December 12, 2011, but that his back pain subsided after treatment. He reviewed appellant's three 2012 spine MRI scans and noted that these tests demonstrated a central disc herniation at L5-S1, moderate disc bulging at T5-6, and disc herniation at C6-7. Dr. Chen diagnosed radicular low back pain from lumbar radiculopathy and low back pain likely from discogenic pain or facet joint pain or sprain/strain. He opined that there was causal relationship between appellant's acute onset back pain and the heavy lifting that he performed on March 14, 2014.

OWCP provided appellant's factual statement to the employing establishment on July 18, 2014. On July 18, 2014 the employing establishment noted that the printers appellant lifted weighed 65 rather than 75 pounds.

Appellant requested a review of the written record from OWCP's Branch of Hearings and Review on August 6, 2014.

On August 8, 2014 OWCP received an addendum report from Dr. Chen, noting that his July 7, 2015 report had been updated to reflect his condition and work up to date. Dr. Chen continued to opine that appellant's symptoms were causally related to the March 14, 2014 incident.

In a note dated August 18, 2014, Dr. Chen found that appellant's symptoms had worsened with a return to work. He diagnosed severe radicular low back pain likely from a lumbar radiculopathy, low back pain likely from discogenic pain, facet joint pain, or sprain/strain, persistent periscapular/rhomboids pain likely secondary to cervical radiculopathy, and persistent and severe thoracic back pain.

In a February 4, 2015 decision, an OWCP hearing representative found that appellant had submitted factual evidence sufficient to establish that he installed six printers weighing between 15 and 65 pounds on March 14, 2014. She further found that appellant's physicians diagnosed sciatica, lumbar radiculitis, and cervical radiculitis as a result of lifting printers on March 14, 2014. However, the hearing representative found that the medical evidence of record did not contain medical rationale explaining how or why appellant's diagnosed condition resulted from his accepted employment incident. She noted that a medical opinion that a

condition is causally related to an incident because the employee was asymptomatic before the injury, without supporting rationale, was not sufficient to establish causal relationship.

Counsel requested reconsideration on January 15, 2016 and submitted additional notes from Dr. Chen dated April 29, July 21 October 21, and November 21, 2014. He contended that Dr. Chen established that appellant experienced a traumatic injury on March 14, 2014 while in the course of his employment. In the additional notes, Dr. Chen requested a lumbar MRI scan, indicated that appellant wished to return to light-duty work, and described appellant's history of injury including lifting objects weighing 75 pounds. He also added the diagnosis of bilateral carpal tunnel syndrome.

Counsel provided appellant's January 19, 2012 cervical MRI scan which showed a small central subligamentous disc herniation at C6-7 and mild disc bulging at C5-6. A thoracic MRI scan of the same date demonstrated moderate disc bulging at T5-6 and T6-7. The January 19, 2012 lumbar MRI scan presented evidence of central disc herniation at L5-S1 and mild disc bulging at L4-5.

In notes dated January 3, 17, and 24, February 7, and 14, April 10, and June 5, 2012, Dr. Chen reported that appellant experienced neck, mid thoracic, and lower back pain after a fall at work on December 12, 2011. He diagnosed right ankle sprain, thoracic spine sprain, lumbar spine sprain, and cervical sprain and reviewed appellant's three MRI scans. In his June 2012 report, Dr. Chen indicated that appellant had returned to full duty and indicated that he experienced 90 percent improvement of his symptoms. He diagnosed improving thoracic and low back pain.

Counsel submitted additional evidence in support of the request for reconsideration on March 10, 2016. In a note dated February 23, 2016 and an addendum dated March 8, 2016, Dr. Chen provided a detailed description of appellant's work incident including lifting printers weighing between 20 and 75 pounds on March 4, 2014. He noted that appellant felt a sudden pull in his low back with pain that developed immediately after lifting the heavier printers. Dr. Chen opined that appellant experienced a work-related injury. He diagnosed low back pain, radiculopathy of the thoracolumbar region, spondylosis with radiculopathy in the lumbar region, cervicocranial syndrome, spondylosis with radiculopathy in the cervical region, and cervicalgia.

By decision dated May 19, 2016, OWCP denied modification of the February 4, 2015 decision, finding that the medical evidence of record did not contain medical reasoning sufficient to establish that appellant's diagnosed conditions were causally related to his March 14, 2014 employment incident.

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, 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment

injury.[3] 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.[4]

OWCP defines a traumatic injury as: "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[5] 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. 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] 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.[7]

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[8] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the March 14, 2014 employment incident.

OWCP found that appellant, a technology specialist, established an employment incident on March 14, 2014 in that he was required to lift and move six printers weighing up to 65 pounds on that date. It further found that appellant's attending physician had provided medical evidence of conditions of sciatica, lumbar radiculitis, and cervical radiculitis which appellant felt were attributable to the March 14, 2014 lifting incident. However, OWCP denied appellant's claim finding that the medical evidence of record was not sufficiently rationalized to establish causal relationship between appellant's accepted employment incident and his diagnosed conditions.

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

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

[5] 20 C.F.R. § 10.5(ee).

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

[7] *J.Z.*, 58 ECAB 529 (2007).

[8] *T.F.*, 58 ECAB 128 (2006).

[9] *A.D.*, 58 ECAB 149 (2006).

The Board finds that the medical opinion evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and his accepted employment incident. Dr. Chen provided a series of reports describing the lifting incident on March 14, 2014 and opined that appellant's diagnosed conditions were related to this incident. However, he did not explain how or why he believed that the March 14, 2014 lifting incident caused or contributed to appellant's back conditions. While he noted that appellant had returned to full-duty work without further treatment after his 2012 back injuries, Dr. Chen did not explain the relationship between appellant's diagnosed conditions and his March 14, 2014 lifting incident. He did not describe how lifting printers weighing up to 65 pounds would have caused or contributed to appellant's diagnosed back conditions. The Board has held that a temporal relationship alone is insufficient to establish causal relationship between an employment incident and diagnosed conditions.[10] Furthermore, appellant's personal belief that his employment activities caused or contributed to his condition, is not sufficient, by itself to establish causal relationship.[11]

Counsel contends on appeal that Dr. Chen's report were sufficient to establish appellant's traumatic injury claim. The Board disagrees for the reasons listed above.

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 a traumatic injury causally related to the March 14, 2014 employment incident.

[10] *Louis T. Blair, Jr.*, 54 ECAB 348 (2003); *A.S.*, Docket No. 15-0972, 15-1005 (issued September 27, 2016).

[11] *See D.I.*, 59 ECAB 158, 162 (2007); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004); *L.L.*, Docket No. 16-0896 (issued September 13, 2016).

ORDER

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

Issued: January 30, 2017
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