

ISSUE

The issue is whether appellant met his burden of proof to establish additional lumbar conditions as a consequence of the July 4, 2014 accepted employment injury.

On appeal counsel contends that OWCP denied compensation despite the facts of the case.

FACTUAL HISTORY

On July 4, 2014 appellant, then a 59-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a back injury as a result of lifting oversized luggage off the floor onto a screening table at work.

In a July 4, 2014 hospital report, Dr. Jordana Haber, an emergency medicine specialist, noted appellant's chief complaint of back pain and a history of his medical, family, and social background. She provided findings on examination and diagnosed backache.

In an August 4, 2014 prescription note, Dr. Diara S. Gross, a Board-certified physiatrist, ordered a magnetic resonance imaging (MRI) scan to rule out a herniated nucleus pulposus. An August 13, 2014 lumbar MRI scan report from Dr. Raymond Diamond, a Board-certified radiologist, provided an impression of a T12-L1 posterior right-sided subligamentous disc bulging, left facet hypertrophic change. His impression at L2-3 was posterior disc bulge, greater on the left, with hypertrophic change. At L3-4, there was posterior broad-based disc bulging extending centrally and to the right and left with right and left facet hypertrophic change with trace left facet fluid. At L4-5 Dr. Diamond observed a posterior broad-based disc herniation with flattening of the ventral thecal sac and extension into the right and left foramina with facet hypertrophic change and foraminal narrowing, as well as a posterior broad-based disc herniation with extension peripherally into the right and left foramina with facet hypertrophic change and foraminal narrowing, abutment of the exiting L4 roots. At L5-S1, appellant had grade I to II anterolisthesis posterior disc herniation extending to prominently narrowing the foramina with impingement on the exiting L5 roots, suspected L5 spondylolysis, and facet hypertrophic changes that were greater of the left.

Appellant also provided reports and progress notes beginning July 7, 2014 from appellant's physical therapists which detailed the findings of physical therapy sessions.

In a July 7, 2014 report, Dr. Stella Mansukhani, a physiatrist, noted that appellant presented with chief complaints of low back pain and anxiety. She also noted a history of the July 4, 2014 incident and appellant's background. Dr. Mansukhani indicated that he had not returned to work following the employment incident. She reported findings on physical and musculoskeletal examination and assessed status post work-related injury on July 4, 2014, lumbar spine sprain/strain, rule out herniated disc, and anxiety. Dr. Mansukhani related that, if the above history was true and accurate as given by appellant, then there was a causal relationship between his work-related injury on July 4, 2014 and his complaints.

By letter to appellant dated October 3, 2014, OWCP indicated that when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work, that the employing establishment did not controvert the claim, and that based on these criteria, the payment of a limited amount of medical expenses was administratively approved. However, the merits of the claim had not been formally considered. OWCP reopened appellant's claim because he had not returned to work in a full-time capacity. Appellant was afforded 30 days to submit evidence, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed medical condition.

In discharge instructions dated July 4, 2014, Dr. Haber reiterated her diagnosis of backache from her July 4, 2014 hospital report.

In disability certificates dated July 7 and August 6, 2014 and in an August 4, 2014 report Dr. Mansukhani reiterated her diagnoses of lumbar sprain/strain, rule out herniated disc, and status post work-related injury on July 4, 2014. She assessed clinically-improved anxiety. Dr. Mansukhani advised that appellant was unable to work from July 7 to August 17, 2014, but could return to work on August 18, 2014 with restrictions. On September 16, 2014 she reviewed lumbar MRI scan results and provided examination findings. Dr. Mansukhani assessed lumbar spine disc bulge and disc herniation. She indicated that appellant had returned to work with restrictions.

On October 30, 2014 Dr. Demetrios Mikelis, a physiatrist, noted appellant's complaint of low back pain, a history of the July 4, 2014 incident, and a summary of his medical treatment. He reported findings on musculoskeletal physical examination and reviewed the results of an August 12, 2014 lumbar MRI scan. Dr. Mikelis diagnosed herniated lumbar intervertebral disc, lumbar radiculopathy, and spondylolisthesis.

In narrative statements dated July 5 and September 3, 2014 and a memorandum dated September 8, 2014, appellant noted that he had returned to work with restrictions on August 18, 2014, but his current work duties exceeded his restrictions.

By decision dated November 12, 2014, OWCP accepted that the July 4, 2014 incident occurred as alleged, but it denied appellant's claim finding that the medical evidence of record did not establish that the diagnosed medical conditions were causally related to the accepted employment incident.

By letter dated November 24, 2014, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative regarding the November 12, 2014 decision. The hearing was held on June 3, 2015.

In a July 17, 2015 decision, OWCP's hearing representative affirmed the November 12, 2014 decision, as modified, finding that the medical evidence of record was sufficient to establish that appellant sustained a lumbar sprain due to the accepted July 4, 2014 employment incident based on Dr. Mansukhani's July 7, 2014 report. However, he found that the medical evidence of record was not sufficiently rationalized to establish that the other diagnosed lumbar conditions were causally related to the accepted work incident.

In a December 10, 2014 report, received on October 20, 2015, Dr. Mansukhani advised that there was a causal relationship between appellant's low back pain and his July 4, 2014 employment incident.

On October 27, 2015 counsel requested reconsideration of the July 17, 2015 decision. He submitted an appellate decision of the employing establishment (Office of Professional Responsibility Appellate Board), dated August 5, 2015, which suspended appellant for 14 days in lieu of his removal for acts unbecoming his job position, reinstated him as a transportation security officer, and awarded him back pay, excluding the period for the suspension. Counsel contended that the decision established that OWCP's hearing representative's decision was based on incorrect information or information that was no longer valid.

In a letter dated November 2, 2015, OWCP advised appellant that, based on the July 17, 2015 decision, his claim was accepted for lumbar sprain.

In a November 11, 2015 interim note, Dr. Yolande Bernard, an emergency medicine specialist and an associate of Dr. Mansukhani, noted a history of the July 4, 2014 employment incident and appellant's medical treatment. She indicated that he presented with a request for a note to continue restricted work duty. Dr. Bernard denied his request since he had not been treated for one year by her medical practice.

On December 17, 2015 Dr. David H. Delman, Board-certified in both emergency medicine and internal medicine, reported appellant's complaint of continued back pain which radiated to his left leg with episodic numbness, tingling, pins and needles sensation, and weakness. He also reported his vocational history and difficulties with activities of daily living (ADLs). Dr. Delman provided findings on physical, musculoskeletal, and sensory examination. He assessed status post work-related injury on July 4, 2014 and lumbar spine myofascial derangement with multiple disc bulges and disc herniations, and possible L5 spondylolysis. Dr. Delman advised that there was a direct causal relationship between appellant's July 4, 2014 work-related injury and his complaints, injuries, and disabilities. He concluded that appellant could continue performing limited-duty work.

In a January 7, 2016 report, Dr. Mikelis noted appellant's complaint of ongoing back pain radiating into his left lower extremity with numbness and tingling despite therapy. He provided findings on musculoskeletal physical examination and reviewed the results of an August 12, 2014 lumbar MRI scan report. Dr. Mikelis reiterated the diagnoses of herniated lumbar intervertebral disc, lumbar radiculopathy, and spondylolisthesis from his October 30, 2014 report, and noted appellant's restrictions.

By letter dated May 4, 2016, counsel requested that the claim be expanded to include herniated disc problems.

On July 27, 2016 Dr. Sebastian Lattuga, a Board-certified orthopedic surgeon, noted a history of the accepted July 4, 2014 work incident and appellant's back pain. He reported findings on musculoskeletal examination, diagnosed herniated lumbar intervertebral disc, lumbar radiculopathy, and spondylolisthesis, and listed appellant's restrictions. In a letter dated July 27, 2016, Dr. Lattuga advised that appellant could return to limited-duty work with these restrictions.

By decision dated September 16, 2016, OWCP denied modification of the July 17, 2015 decision. It found that there was insufficient rationalized medical evidence to establish that appellant's diagnosed lumbar conditions were causally related to the accepted July 4, 2014 employment injury of lumbar sprain.

LEGAL PRECEDENT

Once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.³

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁴

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ 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 employee.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

OWCP accepted that on July 4, 2014 appellant sustained an employment-related lumbar sprain. By letter dated May 4, 2016, counsel requested that the claim be expanded to include herniated disc conditions.

³ Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014); *Melissa M. Frederickson*, 50 ECAB 170 (1998).

⁴ *Charles W. Downey*, 54 ECAB 421 (2003).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The Board finds that appellant has not met his burden of proof to establish other lumbar conditions as a consequence of his accepted employment injury.

Dr. Mansukhani's December 10, 2014 report found that there was a causal relationship between appellant's low back pain and the July 4, 2014 work injury. However, low back pain is a symptom, not a specific medical diagnosis.⁸ Furthermore, Dr. Mansukhani's opinion on causal relationship is of limited probative value as it is not supported by rationale and is conclusory.⁹ He did not explain how appellant's back condition, other than the accepted lumbar sprain, was caused by the accepted July 4, 2014 employment injury. Dr. Mansukhani's July 7 and August 6, 2014 disability certificates and August 4, 2014 report found that appellant had lumbar spine disc bulge and disc herniation. He also found that appellant was disabled for work from July 7 to August 17, 2014 and could return to limited-duty work with restrictions on August 18, 2014. Dr. Mansukhani did not, however, offer an opinion stating that the diagnosed lumbar conditions and resultant disability were a consequence of the accepted work injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Additionally, the Board notes that appellant has not filed a specific claim for compensation for disability as a result of his accepted lumbar sprain.

Dr. Delman's December 17, 2015 report noted appellant's complaints, listed findings, and diagnosed an injury to the lumbar spine with myofascial derangement, multiple disc bulges and disc herniations, and possible L5 spondylolysis. He opined that there was a direct causal relationship between the July 4, 2014 work-related injury and appellant's back pain complaints, injuries, and disabilities. While Dr. Delman provided an opinion on causal relationship, it is of limited probative value as he did not provide any rationale for his conclusory opinion.¹¹

Dr. Haber's July 4, 2014 hospital report and discharge instructions provided a diagnosis of backache. However, he did not directly relate the diagnosed condition to the accepted July 4, 2014 employment injury, and thus his opinion is of diminished probative value and insufficient to meet appellant's burden of proof.¹² Similarly, the reports from Drs. Diamond, Mikelis, and Lattuga are of diminished probative medical value as none of these reports contained an opinion on the causal relationship between the diagnosed lumbar conditions and the July 4, 2014 accepted lumbar sprain.¹³

⁸ See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

⁹ *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).

¹⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹¹ See cases *supra* note 9.

¹² See cases *supra* note 10.

¹³ *Id.*

Neither Dr. Gross' August 4, 2014 prescription for a lumbar MRI scan nor Dr. Bernard's November 11, 2015 note denying appellant's request for a work restriction note provided a firm diagnosis of a particular medical condition¹⁴ or an opinion on whether any diagnosed condition was a consequence of the July 4, 2014 employment-related injury.¹⁵

Appellant submitted physical therapy reports and progress notes. However, the Board has held that physical therapists are not considered physicians under FECA, and therefore, their opinions do not constitute medical opinion evidence and have no weight or probative value on medical matters.¹⁶

Appellant has the burden of proof to establish a claim for a consequential injury through the submission of rationalized medical opinion evidence. He has not submitted evidence from a physician who, based on an accurate factual history, found that he had additional lumbar conditions as a consequence of his July 4, 2014 work injury and supports his or her opinion with medical reasoning. Consequently, appellant has not met his burden of proof.

On appeal, counsel contends that OWCP denied compensation despite the facts of the case. As found above, appellant did not submit sufficiently rationalized medical evidence to establish that he sustained additional lumbar conditions that were caused, aggravated, or a consequence of the accepted 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 failed to meet his burden of proof to establish additional lumbar conditions as a consequence of the July 4, 2014 accepted employment injury.

¹⁴ See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

¹⁵ See cases *supra* note 10.

¹⁶ 5 U.S.C. § 8101(2); *C.E.*, Docket No. 14-710 (issued August 11, 2014); *Jane A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2017
Washington, DC

Christopher J. Godfrey, 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