United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
and	)	**Docket No. 17-1632**
	)	**Issued: January 3, 2018**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Lompoc, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2017 appellant filed a timely appeal from a July 6, 2017 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 has met his burden of proof to establish low back and bilateral leg conditions causally related to the accepted April 7, 2017 employment incident.

FACTUAL HISTORY

On April 18, 2017 appellant, then a 43-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2017, he injured his lower back and bilateral

[1] 5 U.S.C. § 8101 *et seq.*

legs when lifting and moving a metal door. A supervisor noted that appellant stopped work on April 8, 2017.

In a work status report dated April 13, 2017, Dr. Mark Pomerantz, Board-certified in occupational medicine, diagnosed appellant with lumbar sprain and sacroiliac sprain. Appellant related that he had opened a door and felt some discomfort, but was able to finish his shift. Dr. Pomerantz recommended that appellant stay off work through at least April 17, 2017, the date of a return visit.

Appellant submitted notes from physical therapists dated between April 10 and May 15, 2017.

On April 10, 2017 the employing establishment issued a Form CA-16, authorization for examination and/or treatment. The attached attending physician's report from Dr. Pomerantz diagnosed appellant with lower back strain, muscle spasm of the back, spondylosis of the lumbar spine, and sprain of the sacroiliac joint. He noted that appellant denied trauma, but he checked a box marked "yes" indicating that appellant's condition was due to an employment activity.

In reports dated April 17 through 24, 2017, Dr. Pomerantz continued to recommend that appellant stay off work through at least May 8, 2017, the date of a return visit. He noted that appellant's condition was slowly improving.

In a diagnostic report dated April 10, 2017, Dr. Linda Mulder, a Board-certified diagnostic radiologist, examined the results of an x-ray of appellant's lumbar spine. She noted an impression of minimal spondylosis in the lower lumbar spine.

On May 8, 2017 Dr. Pomerantz released appellant to full duty as of May 8, 2017. He reiterated his diagnoses of lumbar and sacroiliac strain, and noted that appellant was feeling much better.

By development letter dated June 7, 2017, OWCP informed appellant that his claim had been reopened for consideration because his medical bills had exceeded $1,500.00. It informed him of the evidence needed to establish his claim, noting that he had not yet submitted a physician's opinion as to how the claimed injury resulted in the diagnosed conditions. OWCP afforded appellant 30 days to submit additional evidence. No further evidence was received.

By decision dated July 6, 2017, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish causal relationship between his diagnosed conditions and the accepted April 7, 2017 employment incident. It noted that none of the medical reports submitted to the record contained a physician's clear and rationalized opinion on causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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

[2] *Id.*

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[5]

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and an accepted employment incident.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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.[9]

ANALYSIS

Appellant alleged that on April 7, 2017 he sustained injuries to his lower back and legs as a result of lifting and moving a metal door. The Board finds that he has not submitted sufficient

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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. 20 C.F.R. § 10.5(ee).

[4] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[6] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[8] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 37d9, 384 (2006).

[9] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical evidence to establish that the accepted employment incident of April 7, 2017 caused or aggravated his diagnosed lumbar sprain, sacroiliac sprain, muscle spasm of the back, and spondylosis of the lumbar spine.

In the attending physician's report of April 10, 2017, Dr. Pomerantz related diagnoses of appellant's lumbar conditions and noted that appellant denied trauma, but he also checked a box affirmatively indicating his belief that appellant's condition was due to an employment activity. The Board has long held that checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[10] It was especially important that Dr. Pomerantz explain his opinion regarding causal relationship in this report since he noted that appellant had denied that any trauma contributed to his conditions.

In a work status report dated April 13, 2017, Dr. Pomerantz diagnosed appellant with lumbar sprain and sacroiliac sprain. He remarked that appellant told him that appellant opened a door and felt some discomfort, but was able to finish his shift. While Dr. Pomerantz did recount the history of injury as related to him by appellant in his April 13, 2017 report, he did not clearly express a rationalized opinion connecting the accepted employment incident of April 7, 2017 to the diagnosed conditions. Medical opinion evidence should reflect a correct history and offer a medically sound explanation of how the specific employment incident or events physiologically caused injury.[11] The Board has also found that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.[12] Dr. Pomerantz offered no medical explanation as to how appellant's lifting and moving a metal door on April 7, 2017 caused the diagnosed medical conditions. The reports from Dr. Pomerantz are insufficient to establish that appellant's diagnosed conditions were causally related to the accepted April 7, 2017 employment incident.

The Board notes that appellant submitted physical therapy reports. The Board has held that notes signed by physical therapists have no probative value as physical therapists are not considered physicians under FECA.[13] OWCP also received a diagnostic report from Dr. Mulder. However, diagnostic reports which offer no opinion regarding causal relationship are of limited probative value.[14]

As such, the Board finds that appellant has not submitted sufficient evidence to establish low back and bilateral leg conditions causally related to the April 7, 2017 employment incident.

[10] *See A.C.*, Docket No. 16-0457 (issued October 27, 2017).

[11] *See A.W.*, Docket No. 17-1028 (issued October 25, 2017).

[12] *See P.J.*, Docket No. 17-0570 (issued October 26, 2017).

[13] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (stating that lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *See also J.L.*, Docket No. 17-1006 (issued August 14, 2017) (stating that physical therapists are not considered physicians under FECA).

[14] *E.B.*, Docket No. 17-0305 (issued July 10, 2017).

He has not submitted a rationalized opinion from a qualified physician relating his diagnosed conditions to the accepted employment incident.[15]

An award of compensation may not be based on appellant's belief of causal relationship.[16] 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.[17]

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 low back and bilateral leg conditions causally related to the accepted April 7, 2017 employment incident.

[15] On April 10, 2017 the employing establishment issued a Form CA-16, authorization for examination and/or treatment. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

[16] *See G.H.*, Docket No. 17-1387 (issued October 24, 2017).

[17] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 6, 2017 is affirmed.

Issued: January 3, 2018
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