

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
D.H., Appellant)	
)	
and)	Docket No. 17-0465
)	Issued: June 21, 2018
DEPARTMENT OF STATE, FOREIGN)	
SERVICE, Washington, DC, 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 December 28, 2016 appellant filed a timely appeal from an October 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 lower back conditions causally related to the accepted March 11, 2016 employment incident.

FACTUAL HISTORY

On May 20, 2016 appellant, then a 35-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back on March 11, 2016 as a result of standing post for approximately five hours while in the performance of duty. He stated that he responded to an

¹ 5 U.S.C. § 8101 *et seq.*

emergency call, immediately put on his body armor and other defensive equipment, and stood post both inside and outside of an embassy for approximately five hours. Appellant indicated that he experienced significant sharp, stabbing pain in his lower lumbar spine area, which made it difficult to walk, stand, or even lay down. He did not stop work.

In a May 18, 2016 report, Dr. Robert Hood, a Board-certified neurosurgeon, noted that appellant suffered an acute onset of pain in March 2016 during anti-terrorist training while wearing protective equipment weighing 40 to 50 pounds for many hours.

On May 19, 2016 Dr. Bob Lorinser, a Board-certified family practitioner, indicated that appellant had significant low back pain “since in his twenties” and underwent a discectomy at L4-5 and L5-S1 in 2010 and bilateral selective lumbar rhizotomies in 2014. He noted that on March 15, 2016² appellant gradually experienced increased pain while working with an estimated 40 pounds of body armor and gear during drilling/training.

A magnetic resonance imaging scan of the lumbar spine dated June 9, 2016 revealed small right L3-4 foraminal disc extrusion and multilevel lumbar spondylosis most pronounced at L5-S1.

An x-ray of the lumbar spine dated June 9, 2016 demonstrated mild multilevel intervertebral disc space narrowing at L3-4, L4-5, and L5-S1 with mild facet arthropathy at L5-S1.

In a June 9, 2016 report, Dr. Hood diagnosed mechanical low back pain secondary to disc degeneration at L3-4, L4-5, and L5-S1 and mild facet arthritis at L4-5 and L5-S1. He noted that appellant had a long history of low back problems going back to his college years. Appellant had a baseline of fairly symmetrical low lumbosacral pain and paramedian pain without radicular symptoms at all and he never had relief, as well as significant leg symptoms. Dr. Hood reiterated that in March 2016 appellant was wearing heavy body armor and as soon as he started standing or walking, he had marked increased in his low back pain to a degree that he had not had for quite a while. Appellant had occasional sudden, sharp low back pain when changing positions such as getting out of a car, but it was not lasting. The more common daily pain was present with prolonged standing or walking.

In a July 8, 2016 development letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a June 13, 2016 report from Dr. Edgar Clinton Goldston, a Board-certified physiatrist, who diagnosed lumbar intervertebral disc degeneration and indicated that he had administered a lumbar epidural steroid injection.

On June 27, 2016 Dr. Hood reported that three days following the June 13, 2016 steroid injection by Dr. Goldston, appellant had no pain at all in his back. Thereafter, the pain gradually returned.

² Appellant’s claim form noted the date of injury as March 11, 2016. Therefore, the doctor’s note is found to contain an incorrect date.

In a July 25, 2016 report, Dr. Lorinser opined that appellant's chronic back pain was acutely aggravated without resolution from a work-related incident on March 15, 2016.³ He further opined that the event did not cause the known degenerative back condition, but appellant's symptoms were clearly associated with and aggravated by the March 15, 2016⁴ event.

By decision dated October 26, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a causal relationship between his diagnosed conditions and the accepted March 11, 2016 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, 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 medical condition for which compensation is claimed is causally related to the employment injury.⁵

OWCP's regulations define 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.⁶

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 or she actually experienced the employment incident at the time and 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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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

³ *Id.*

⁴ *Id.*

⁵ *See T.H.*, 59 ECAB 388 (2008).

⁶ 20 C.F.R. § 10.5(ee).

⁷ *Id.*

nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS

OWCP has accepted that the employment incident of March 11, 2016 occurred at the time, place, and in the manner alleged. The issue, therefore, is whether appellant's lower back conditions resulted from the accepted March 11, 2016 employment incident. The Board finds that appellant has not met his burden of proof to establish causal relationship.

In his reports, Dr. Hood diagnosed mechanical low back pain secondary to disc degeneration at L3-4, L4-5, and L5-S1 and mild facet arthritis at L4-5 and L5-S1. He noted that appellant suffered an acute onset of pain in March 2016 during anti-terrorist training while wearing protective equipment weighing 40 to 50 pounds for many hours. Dr. Hood indicated that appellant had a long history of low back problems for many years going back to his college years. He stated that in March 2016 appellant was wearing heavy body armor and as soon as he started standing or walking, he had marked increased in his low back pain to a degree that he had not had for quite a while. The Board finds that Dr. Hood failed to provide sufficient medical rationale explaining the mechanism of how standing post while wearing 40 to 50 pounds of body armor and other defensive equipment for approximately five hours at work on March 11, 2016 caused or aggravated appellant's lower back conditions. Dr. Hood noted that his conditions occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.⁹ His opinion was based, in part, on temporal correlation. However, the Board has held that 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 a causal relationship.¹⁰ The need for rationale is particularly important as the evidence of record indicates that appellant had preexisting lower back conditions. Dr. Hood did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the March 11, 2016 incident at work caused or contributed to the diagnosed conditions. Thus, the Board finds that the reports from Dr. Hood are insufficient to establish that appellant sustained an employment-related injury on March 11, 2016.

In his reports, Dr. Lorinser asserted that appellant gradually experienced increased pain while working with an estimated 40 pounds of body armor and gear during drilling/training. He further opined that the employment incident did not cause appellant's degenerative back condition, but his symptoms were clearly associated with and aggravated by the employment incident. Dr. Lorinser attributed appellant's conditions to a "March 15, 2016" employment incident. OWCP has not accepted a March 15, 2016 employment incident in this case. Moreover, Dr. Lorinser did not provide any medical rationale explaining how standing post while wearing body armor and

⁸ *Id.*

⁹ *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁰ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

other defensive equipment for approximately five hours at work on March 11, 2016 caused or aggravated his low back condition. The need for rationale is particularly important as the evidence indicates that appellant had a preexisting lower back condition.¹¹ For these reasons, the Board finds that the reports from Dr. Lorinser are insufficient to establish that appellant sustained an employment-related injury on March 11, 2016.

On June 13, 2016 Dr. Goldston diagnosed lumbar intervertebral disc degeneration and indicated that he had administered a lumbar epidural steroid injection. The Board has held that 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.¹² Thus, appellant has not met his burden of proof with this evidence.

Other medical evidence of record, including diagnostic test reports, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the accepted March 11, 2016 employment incident.¹³

The Board finds that appellant has not submitted rationalized medical evidence sufficient to support his allegation that he sustained an injury causally related to the accepted March 11, 2016 employment incident and failed to meet his burden of proof to establish a claim for compensation.

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 lower back conditions causally related to the accepted March 11, 2016 employment incident.

¹¹ See *P.H.*, Docket No. 16-0654 (issued July 21, 2016); *S.R.*, Docket No. 16-0657 (issued July 13, 2016).

¹² See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ 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 October 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2018
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