United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
	)	**Docket No. 18-0906**
and	)	**Issued: November 21, 2018**
	)	
FEDERAL JUDICIARY, U.S. DISTRICT COURT, Detroit, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 27, 2018 appellant filed a timely appeal from a January 9, 2018 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 a back condition causally related to the accepted April 13, 2016 employment incident.

FACTUAL HISTORY

On May 2, 2016 appellant, then a 30-year-old probation officer, filed a traumatic injury claim (Form CA-1) alleging that, on April 13, 2016, he injured the left side of his lower back when performing physical defense tactics while in the performance of duty. He claimed that during the

[1] 5 U.S.C. § 8101 *et seq.*

defense tactics training, he performed various movements with his hips, rear break falls (falling onto the lower part of the back), and ground techniques at numerous times and various speeds. Appellant did not stop work.

An April 29, 2016 medical report from Dr. Eliezer R. De Leon, an attending Board-certified internist, was received. Dr. De Leon noted that appellant was evaluated for low back pain. He related his medical background and discussed examination findings. Dr. De Leon preliminarily diagnosed appellant as having lumbar radiculopathy. He ordered diagnostic testing.

In an April 29, 2016 lumbar x-ray report, Dr. David J. Rossow, a Board-certified radiologist, found no evidence of lumbar compression fracture or significant disc space narrowing.

In a May 3, 2016 lumbar computerized tomography (CT) scan report, Dr. Ivan S. Katty, a Board-certified radiologist, provided an impression of minor degenerative disease. He recommended a lumbar spine magnetic resonance imaging (MRI) scan for further assessment.

Dr. Ronald J. Meade, a Board-certified radiologist, related in a May 14, 2016 report, that appellant had a history of lumbar radiculopathy, left leg, and sustained an injury while lifting two weeks ago. He provided an impression, based upon a lumbar MRI scan, of very minimal spondylotic changes in the lower lumbosacral spine.

By development letter dated February 17, 2017, OWCP advised appellant of the type of evidence necessary to establish his claim. It requested that he submit additional factual evidence to establish that he actually experienced the incident alleged to have caused the injury and a medical report from his attending physician which provided a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated his medical condition. OWCP also provided appellant a questionnaire for his completion regarding the nature of his injury, how the injury occurred, the immediate effects of his injury, and any prior similar disability or symptoms. It afforded him 30 days to submit additional evidence.[2]

By decision dated April 4, 2017, OWCP denied appellant's traumatic injury claim. It found that the evidence of record was insufficient to establish that the April 13, 2016 incident occurred as alleged because appellant failed to respond to the development questionnaire with the information relative to the claimed injury requested. OWCP also determined that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the injury and/or event(s). It explained that "pain" was a symptom, not a medical diagnosis.

On April 10, 2017 OWCP received appellant's completed development questionnaire dated March 22, 2017. The responses related that at the time of his injury appellant was at the Federal Law Enforcement Training Center in Charleston, South Carolina undergoing training to become a certified safety instructor. Appellant noted that students were taught a rear break fall which he explained as positioning oneself to fall backwards and then rolling onto one's back. As

[2] OWCP's February 17, 2017 development letter was returned as undeliverable. The employing establishment subsequently advised OWCP of appellant's current address and, on March 13, 2017, OWCP resent the development letter to his new address. It afforded appellant 21 days to submit the previously requested information.

he attempted the technique, he landed on the bottom portion of his back, which caused him "massive amounts of pain." Appellant indicated that he performed ground techniques, which included the rear break fall. He noted that the lower back and center of the back were used during this technique. Appellant related that the immediate effects of his injury included pain while sitting, laying, or standing. He immediately notified instructors that he could no longer perform the described technique. Appellant maintained that he did not sustain any other injuries during that time. He further maintained that an MRI scan report which indicated that he had a lifting injury was false. Appellant reported that between the date of injury and the date he first received medical attention he experienced extreme pain. His pain grew to a point where it was a struggle for him to get out of bed or a chair.

Appellant submitted a March 24, 2017 letter from Dr. De Leon. Dr. De Leon noted that appellant was seen in his office on March 22, 2017. He related that appellant indicated to him that his claim for an injury due to performing self-defense tactics (jujitsu) had been denied based on specific technical issues. Dr. De Leon reviewed imaging test results which revealed lumbar radiculopathy. He advised that this condition was a diagnosis and not a symptom. Dr. De Leon also advised that back pain was a symptom of lumbar radiculopathy. He indicated that there was no mention of a lifting injury in his request for imaging. Dr. De Leon related that appellant's injury happened as a result of a fall that occurred while he was performing defensive tactics, lifting an opponent. He maintained that it was not his job to explain to appellant that employment factors caused an injury. Dr. De Leon further maintained that it was not his function to inform him that a radiologist documented that he had sustained a lifting injury.

On April 24, 2017 appellant requested a telephone hearing before an OWCP hearing representative regarding the April 4, 2017 decision. The hearing was held on October 12, 2017.

By decision dated January 9, 2018, an OWCP hearing representative affirmed the April 4, 2017 decision, as modified. She found that appellant had submitted sufficient evidence to establish that the April 13, 2016 incident occurred as alleged. However, the claim remained denied because the medical evidence of record failed to provide a rationalized medical opinion sufficient to establish causal relationship between his diagnosed back conditions and the accepted 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[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[4]

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.[8] The claimant's personal belief that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[9]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted April 13, 2016 employment incident.

Appellant submitted a March 24, 2017 report from his physician, Dr. De Leon, who related that appellant sustained lumbar radiculopathy as a result of a fall that occurred while he was performing defensive tactics. The Board finds that, while Dr. De Leon's opinion is generally supportive of causal relationship, he did not provide adequate medical rationale explaining the basis of his opinion on causal relationship. Dr. De Leon failed to offer any rationalized medical explanation as to how the accepted April 13, 2016 employment incident caused appellant's diagnosed condition. As such, his opinion is of limited probative value.[11] The mere fact that a condition arises after an injury and was not present before an injury is insufficient to support causal relationship.[12] Dr. De Leon's remaining report dated April 29, 2016 failed to provide a specific

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *See M.J.*, Docket No. 17-0725 (issued May 17, 2018); *see also Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

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

[11] *See E.J.*, Docket No. 18-0207 (issued July 13, 2018); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[12] *See M.J.*, *supra* note 9; *Michael S. Mina*, 57 ECAB 379 (2006).

opinion as to whether appellant's diagnosed lumbar radiculopathy was caused or aggravated by the accepted work incident. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] For these reasons, the Board finds that Dr. De Leon's reports are insufficient to meet appellant's burden of proof.

Dr. Meade's May 14, 2016 report found very minimal spondylotic changes in the lower lumbosacral spine, based upon MRI scan. He noted a history that appellant had lumbar radiculopathy due to a lifting injury that occurred two weeks ago. The Board notes that neither the May 2, 2016 Form CA-1, nor appellant's subsequent statement referenced a lifting injury. In fact, appellant maintained in his response to OWCP's development questionnaire that the history of injury provided in the MRI scan report that he sustained a lifting injury was false. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[14] Apart from what appears to be an inaccurate history of injury, Dr. Meade similarly failed to definitively attribute appellant's diagnosed lumbar condition to the April 13, 2016 employment incident.[15] For these reasons, the Board finds that Dr. Meade's report is insufficient to establish appellant's claim.

Appellant also submitted diagnostic test reports. Dr. Katty's May 3, 2016 lumbar CT scan report and Dr. Rossow's April 29, 2016 lumbar x-ray report are of limited probative value. The Board has long held that diagnostic reports which offer no opinion regarding causal relationship are of no probative value.[16]

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a back condition causally related to the April 13, 2016 employment incident. Appellant, therefore, has not met his burden of proof.

On appeal appellant contends that he submitted sufficient medical evidence to establish that he sustained a work-related injury. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[17] Appellant's belief that his accepted employment incident caused an injury, however sincerely held, does not constitute medical evidence sufficient to establish the claim.[18]

For the reasons set forth above, the Board finds that the weight of the medical evidence of record does not establish that appellant sustained a back condition causally related to the accepted April 13, 2016 work incident.

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Supra* note 9.

[15] *Supra* note 12.

[16] *Id*.

[17] *D.D.*, 57 ECAB 734 (2006).

[18] *See B.P.*, Docket No. 17-1572 (issued April 12, 2018).

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 back condition causally related to the accepted April 13, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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