United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 19-0031**
	)	**Issued: April 18, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 4, 2018 appellant filed a timely appeal from a June 29, 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 lumbar condition causally related to the accepted August 31, 2016 employment incident.

FACTUAL HISTORY

On October 28, 2016 appellant, then a 63-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2016 he experienced pain in his left knee, hip, leg,

[1] 5 U.S.C. § 8101 *et seq.*

and back after carrying an 80-pound display 2,000 feet while in the performance of duty. He did not stop work at the time of the alleged incident.

A November 10, 2016 lumbar magnetic resonance imaging (MRI) scan revealed multilevel degenerative changes, especially at L3-4 and L5-S1.

Dr. Ved V. Aggarwal, a Board-certified anesthesiologist, treated appellant on December 13, 2016 for chronic low back and bilateral leg pain. Appellant reported that his pain started on August 31, 2016 after a lifting injury. Dr. Aggarwal noted findings of limited range of motion of the lumbar spine, reduced sensation at L3-5, reduced motor strength with ankle dorsiflexors and ankle plantar flexors bilaterally, and positive straight leg raising on the right. He diagnosed other chronic pain, low back pain, radiculopathy of the lumbar region, and other intervertebral disc degeneration of the lumbar region. Dr. Aggarwal recommended lumbar epidural steroid injections, physical therapy, and returned him to full-time work. On December 21, 2016 he performed a fluoroscopically-guided lumbar L5-S1 epidural steroid injection and diagnosed chronic low back pain, lumbar radiculopathy, and lumbar disc disease.

In a development letter dated January 23, 2017, OWCP informed appellant that when his claim was received, it appeared to be a minor injury which resulted in minimal or no time lost from work and, as the employing establishment did not controvert the claim, a limited amount of medical expenses were administratively approved. However, the merits of the claim had not been formally adjudicated. OWCP advised appellant that he needed to submit additional factual information and medical evidence in support of his claim for FECA benefits. It specifically requested that he submit a comprehensive narrative medical report from his treating physician that included a diagnosis and a reasoned explanation as to how specific work factors and/or incidents caused or contributed to the diagnosed condition(s). OWCP noted that the medical records indicated that he had a history of lumbosacral disc disease, degenerative changes, and bilateral radiculopathy and advised that his physician must provide a rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition. It afforded appellant 30 days for submission of the necessary evidence. In response to the development letter, OWCP received evidence which had previously been submitted.

By decision dated February 23, 2017, OWCP found that appellant established both components of fact of injury, *i.e.*, that an incident occurred and a condition had been diagnosed. However, it denied his traumatic injury claim because the medical evidence of record failed to establish that his lumbar condition was causally related to the accepted August 31, 2016 employment incident.

Dr. Aggarwal treated appellant in follow-up on January 17 and March 15, 2017 after lumbar epidural steroid injections on December 21, 2016 and February 15, 2017. He reported a 50 percent decrease in leg pain with the first injection, but the second procedure had not provided significant relief. Dr. Aggarwal noted findings of limited range of motion of the lumbar spine, reduced sensation at L3-5, reduced motor strength with ankle dorsiflexors and ankle plantar flexors bilaterally, and positive straight leg raising on the right. He diagnosed other chronic pain, low back pain, radiculopathy of the lumbar region, and other intervertebral disc degeneration of the lumbar region and returned appellant to full-time work.

In procedure notes dated February 15 and April 12, 2017, Dr. Aggarwal performed fluoroscopically-guided lumbar L5-S1 epidural steroid injections and diagnosed chronic low back pain, lumbar radiculopathy, and lumbar disc disease. He continued to treat appellant on May 9, June 16, July 19, September 25, and October 25, 2017, for chronic low back and bilateral leg pain. Appellant reported some relief from the injection, but was still in pain and had difficulty sleeping. Dr. Aggarwal diagnosed other chronic pain, low back pain, radiculopathy of the lumbar region, and other intervertebral disc degeneration of the lumbar region and continued his work full time. He administered additional selective nerve root blocks at left L5 and S1 on August 16 and December 8, 2017 and diagnosed lumbar disc disease, chronic low back pain, and left lumbar radiculopathy.

Appellant was treated by Dr. Odilon Alvarado, a Board-certified internist, on March 29, 2017, for right leg and low back pain that began on August 31, 2016. He reported pain after he lifted and carried a heavy object while in the performance of duty. Dr. Alvarado noted that this was the first occurrence of back pain and he treated appellant over 20 years.

On January 12, 2018 appellant requested reconsideration.

By decision dated June 29, 2018, OWCP denied modification of the February 23, 2017 decision.

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 United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[3] 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.[4] 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.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[6] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

[2] *Id.*

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[10] 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.[11] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[12]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted August 31, 2016 employment incident.

Dr. Aggarwal's report dated December 13, 2016, noted treating appellant for chronic low back and bilateral leg pain. Appellant reported that his pain started on August 31, 2016 after a lifting injury. Similarly, in reports dated January 17 to October 25, 2017, Dr. Aggarwal treated appellant after lumbar epidural steroid injections, which provided only temporary relief. He diagnosed other chronic pain, low back pain, radiculopathy of the lumbar region, and other intervertebral disc degeneration of the lumbar region. While he repeated the history of injury as reported by appellant, Dr. Aggarwal did not provide his own opinion regarding whether his condition was work related. To the extent that Dr. Aggarwal expressed his own opinion, he failed to provide a rationalized opinion regarding causal relationship between appellant's lumbar condition and the August 31, 2016 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale

[7] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[10] *T.H.*, *supra* note 6; *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[12] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

explaining how a given medical condition/disability was related to employment factors.[14] These reports are therefore insufficient to establish appellant's claim.

Dr. Aggarwal performed fluoroscopically-guided epidural steroid injections on December 21, 2016, February 15, April 12, August 16, and December 8, 2017 and diagnosed chronic low back pain, lumbar radiculopathy, and lumbar disc disease. However, these reports are of no probative value and are therefore insufficient to establish the claim as they do not specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15]

Dr. Alvarado treated appellant on March 29, 2017, for right leg and low back pain and noted that the pain began on August 31, 2016 after he lifted and carried a heavy object while at work. He reported having treated appellant for over 20 years and noted this was the first occurrence of this complaint. However, Dr. Alvarado appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that he is providing his own opinion, Dr. Alvarado failed to provide a rationalized opinion regarding the causal relationship between appellant's low back and right leg pain and the factors of employment believed to have caused or contributed to such condition.[16] Further, to the extent that Dr. Alvarado asserted that this was the first occurrence of this complaint in 20 years, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.[17] Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted a diagnostic MRI scan of the lumbar spine dated November 10, 2016. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.[18]

As appellant has not submitted rationalized medical evidence establishing that his lumbar condition is causally related to the accepted August 31, 2016 employment incident, he has not met his burden of proof.

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

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

[16] *Id.*

[17] *Kimper Lee*, 45 ECAB 565 (1994).

[18] *See J.M.*, Docket No. 17-1688 (issued December 13, 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 lumbar condition causally related to the accepted August 31, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2019
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