United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 09-111**
	)	**Issued: April 8, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Homestead, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 16, 2008 denying his claim. Pursuant to 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 met his burden of proof in establishing that he sustained a back condition on November 23, 2007, as alleged.

FACTUAL HISTORY

On November 28, 2007 appellant, then a 52-year-old city carrier/acting supervisor, filed a Form CA-1, traumatic injury claim, alleging that he felt a pull in his left buttocks on November 23, 2007 when he turned to get out of a swivel chair, stood up and then bent down to pick up a "hod." On November 26, 2007 Dr. James T. Campagna, a Board-certified family practitioner, treated appellant for low back pain. On December 27, 2007 he referred appellant for physical therapy of the lumbar spine. Appellant submitted several requests for authorization

for physical therapy a November 27, 2007 physical therapy, plan of care noting a diagnosis of lower lumbar strain and left gluteal pain, physical therapy and chiropractic reports and the results of a January 9, 2008 lumbar magnetic resonance imaging (MRI) scan.

In a January 4, 2008 report, Richard J. Prough, Jr., a chiropractor, noted that appellant was turning in a chair to pick up mail on November 23, 2007 and experienced immediate low back pain with left leg numbness and pain. He diagnosed: lumbar subluxation; sacral subluxation; lumbar disorder without myelopathy; and sciatica. Dr. Prough's report did not address whether x-rays were taken.

In two letters dated February 21, 2008, the Office advised appellant of the factual and medical evidence needed to support his claim as well as the limitations of chiropractic services under the Federal Employees' Compensation Act. Appellant was afforded 30 days to submit the required evidence.

In a February 21, 2008 note, Dr. Campagna diagnosed "back pain/injury" and advised that appellant was to continue back evaluation. The Office received requests for authorization for additional physical therapy and progress notes.

By decision dated March 25, 2008, the Office denied the claim, finding that fact of injury was not established. It found that appellant did not submit clarifying factual information to support that the November 23, 2007 work event occurred as alleged and no medical evidence from a qualified physician was submitted which provided a diagnosis related to the claimed injury.

On April 7, 2008 appellant requested a review of the written record. He advised that on November 28, 2007,[1] he was the delivery supervisor and was sitting at the supervisor's desk when he got up to pick up mail which weighed approximately 30 pounds. Appellant stated that he felt something pop in his back or hip and thought he had pulled a muscle. When the pain became worse, he went to Dr. Campagna, who confirmed a bulging disc on an MRI scan. Appellant indicated that Dr. David Oliver-Smith, a Board-certified neurosurgeon, recommended four weeks of physical therapy, but he had to stop the therapy when his claim was denied. He stated he had been working full time since his injury.

In a March 10, 2008 statement, Beth A. Hickey, customer service supervisor, confirmed that on November 23, 2007 appellant stood up out of his chair and squatted down to pick up mail which weighed approximately 30 pounds. The Office received duplicate copies of the MRI scan report, medical slips and physical therapy notes.

In a February 28, 2008 medical slip, Dr. Campagna stated that appellant hurt his back at work in November 2007 while lifting 30 pounds of mail. He reiterated that the MRI scan revealed a bulging disc.

In a March 4, 2008 report, Dr. Oliver-Smith described the November 23, 2007 injury as occurring when appellant bent over to pick up mail and felt a pop in his back. He noted that

[1] This date appears to be in error as appellant previously indicated the injury occurred on November 23, 2007.

appellant had a history of a prior back surgery 20 years earlier with resolution of his symptoms. Dr. Oliver-Smith indicated the MRI scan findings and described his findings on examination. He opined that appellant had "left buttock pain and lateral hip pain [were] most likely the result of the stenosis at the L4-L5 level and disc protrusion producing bilateral nerve root impingement."

By decision dated July 16, 2008, an Office hearing representative affirmed the denial of the claim on the grounds causal relationship had not been established. The hearing representative found that the November 23, 2007 incident occurred as alleged but that the medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of establishing 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 the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

Section 10.5(ee) of Office regulations defines 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.[5] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. An employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence opinion required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician(s) rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must: be based on a complete

[2] 5 U.S.C. §§ 8101-8193.

[3] *Anthony P. Silva*, 55 ECAB 179 (2003).

[4] *See Ellen L. Noble*, 55 ECAB 530 (2004).

[5] 20 C.F.R. § 10.5(ee); *See Ellen L. Noble, supra* note 4.

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *M.W.*, 57 ECAB 710 (2006).

factual and medical background of the claimant; be one of reasonable medical certainty; and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8] 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.[9]

ANALYSIS

The Office accepted that the November 23, 2007 lifting/bending incident occurred in the performance of duty. The Board finds, however, that the medical evidence of record is insufficient to establish that appellant sustained an injury caused by this incident.

Dr. Campagna first treated appellant for low back pain arising on November 26, 2007 from the work incident. In a February 28, 2008 medical slip, he stated that appellant hurt his back at work in November 2007 lifting 30 pounds of mail and that an MRI scan revealed a bulging disc. However, Dr. Campagna did not provide any medical rationale explaining the mechanics of how appellant's back condition was caused or aggravated by the November 23, 2007 lifting/bending incident. His opinion is insufficiently rationalized to establish causal relationship.[10]

On March 4, 2008 Dr. Oliver-Smith noted that the November 23, 2007 injury occurred when appellant bent over to pick up mail and felt a pop in his back. He opined that appellant's pain was most likely the result of the stenosis at the L4-L5 level and disc protrusion producing bilateral nerve root impingement. However, Dr. Oliver-Smith did not offer an opinion as to how appellant's work factors caused or aggravated his low back pain or the diagnosed low back condition. Thus, his opinion is of limited probative value in establishing causal relationship.[11]

Richard J. Prough, a chiropractor, noted the history of injury and diagnosed lumbar subluxation, sacral subluxation, lumbar disorder without myelopathy and sciatica. However, he is not a physician as defined under the Act as he did not diagnosis a subluxation of the spine as demonstrated by x-rays. As a result Mr. Prough's opinion is of no probative value.[12] The physical therapy reports submitted by appellant are also insufficient to establish his claim as

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Bobby J. Parker*, 49 ECAB 260 (1997).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[10] *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[11] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which 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] 5 U.S.C. § 8101(2); *see generally Theresa K. McKenna*, 30 ECAB 702 (1979).

physical therapists are not physicians under the Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.[13]

The MRI scan study merely provided a diagnosis of appellant's back condition. As the diagnostic study does not provide any opinion as to the cause of his back condition, it is of diminished probative value and is insufficient to establish his claim.[14]

Appellant was advised by the February 21, 2008 Office letters of the necessity to submit medical evidence addressing how the accepted incident would cause or contribute to his claimed back condition. He did not submit such evidence. Therefore, appellant failed to meet his burden of proof in establishing causal relationship.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a back condition on November 23, 2007.

[13] *See Jane A. White,* 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term physician. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[14] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board