United States Department of Labor
Employees' Compensation Appeals Board

O.S., Appellant	)	
and	)	**Docket No. 13-438**
	)	**Issued: July 15, 2014**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Albuquerque, NM, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2012 appellant filed a timely appeal from a June 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. 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

Whether appellant met his burden of proof to establish that he developed a lumbar injury in the performance of duty as a district ranger.

FACTUAL HISTORY

On May 6, 2010 appellant, then a 49-year-old district ranger, filed an occupational disease claim (Form CA-2) alleging that he developed low back pain which radiated down to his legs as a result of employment-related traveling which required him to drive frequently and sit at

[1] 5 U.S.C. § 8101 *et seq.*

many meetings. He stated that his issues with his back occurred over the past five years and was aggravated by long periods of sitting. Appellant also noted that in 2007, he slipped in the mud and fell during a site visit. He first became aware of his condition and of its relationship to his employment on May 20, 2005.

By letter dated September 30, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

Appellant submitted narrative statements where he reiterated that frequent travel to attend work meetings caused his back condition as he was required to sit for extended periods of time. In support of his claim, he provided his schedule of meetings, meeting notes and agendas, statements from coworkers and job description for a district ranger.

In a June 15, 2005 report, Dr. Dale Friar, a treating chiropractor, reported that appellant was being treated for a spinal condition that was causing him to have severe low back and leg pain. He recommended that appellant limit extended sitting and driving times.

In an attending physician's report (Form CA-20) dated October 20, 2009, Dr. Friar reported that appellant experienced severe low back pain radiating down to the leg which started after long hours of sitting and driving. He reported that he began treating appellant on June 7, 2005. Dr. Friar diagnosed lumbar spine dysfunction, multiple vertebral subluxations, lumbar disc protrusion and sciatic radiculopathy. He checked the box marked "yes" when asked if he believed the conditions were caused by appellant's employment activity.

In an October 27, 2010 report, Dr. Friar diagnosed lumbar spine dysfunction, multiple vertebral subluxations in cervical and lumbar spine confirmed by x-ray, lumbar disc protrusion, sciatic neuropathy, lumbar spine pain, cervicalgia and pain in the thoracic spine. He stated that appellant spent a great deal of time sitting at a desk and computer, as well as sitting during meetings. Dr. Friar noted that sitting tends to exacerbate low back and leg pain which overloads and dehydrates the discs requiring frequent unloading and movement to stay healthy. He further stated that the physical aspects of appellant's job involved prolonged sitting and having to maintain his posture. This caused overloads in the discs and created pressure changes to the disc which weakened the annular fibers and exacerbated a disc bulge, as well as deconditioned already weakened soft tissue supportive structures.

By decision dated January 3, 2011, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the established work-related events.

On December 28, 2011 appellant requested reconsideration of OWCP's decision. In his narrative statement, he reported that he reviewed his calendar documenting his past schedule of meetings and realized that he slipped and fell in the mud in late January or February 2006, not 2007 as he originally stated. Appellant further noted that in April 2006, he slipped and fell upon

exiting a government vehicle during a site visit. In support of his claim, he provided his monthly calendar documenting his schedule of meetings beginning in January 2006.[2]

In a September 28, 2006 report, Dr. Kris B. Saadeh, a Board-certified diagnostic radiologist, provided diagnostic findings based on a magnetic resonance imaging (MRI) scan of the lumbar spine which revealed narrowing of the spinal canal at L2-3 to L4-5, circumferential disc osteophyte complexes as L2-3 through L4-5 with a superimposed area of central and right paracentral disc extrusion at L3-4 and superimposed disc protrusion verses contained disc extrusion in the left lateral recess at L4-5.

In a November 20, 2006 medical report, Dr. Artur Pacult, a treating physician, reported that appellant had several episodes of back pain and bilateral lower extremity pain which began in 2005. He stated that the MRI scan of the lumbar spine revealed several disc degeneration levels, worse being at the L4-5 and L3-4 where they were superimposed on congenital stenosis, acquired disc bulge and focal herniation on the left at L4-5 and the midline at the L3-4. Dr. Pacult stated that appellant did not need treatment as he was asymptomatic but could have a possible flare up in the future which would require epidural injections.

In a December 28, 2011 addendum report, Dr. Friar stated that objective test findings established that appellant had a disc herniation with resulting sciatic radiculopathy which were confirmed by Dr. Saadeh's MRI scan report. He stated that research clearly states that a disc herniation is traumatic in nature and the direct result of an injury and not degenerative in nature. He stated that this was the causal relationship that existed between appellant's on-the-job injury and his current condition and diagnosis.

By decision dated February 22, 2012, OWCP affirmed the January 3, 2011 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to factors of his federal employment.

On March 2, 2012 appellant requested an oral hearing before the Branch of Hearings and Review.

By decision dated May 9, 2012, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that he was not entitled to a hearing as a matter of right because he had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that he sustained an injury causally related to factors of his federal employment.

On April 12, 2012 appellant requested reconsideration of the February 22, 2012 OWCP decision. He stated that he had established the initial onset of his injury as well as the subsequent work-related falls. Appellant stated that he was submitting a medical report from Dr. Pacult which would establish his work-related fall.

[2] The Board notes that a computer query of work-related injuries filed by appellant revealed no traumatic injuries filed in 2006.

In a March 19, 2012 medical report, Dr. Pacult reported that he treated appellant in 2006 for complaints of bilateral lower extremity pain that had developed in 2005 prior to his visit. He noted that appellant was not specific about his origin of pain but apparently there was an injury when he fell at work in February 2006, several months prior to his first visit. Appellant was eventually diagnosed and treated conservatively for a disc herniation at L4-5 on the left side and the midline at L3-4. Dr. Pacult stated that it was possible that appellant had a herniated disc at the time of the falling incident but that this was not documented in his chart. He further stated that, while the MRI scan was not 100 percent positive for a traumatic injury, appellant's injury could have happened at the time of trauma when he fell.

By decision dated June 21, 2012, OWCP affirmed its February 22, 2012 decision finding that the medical evidence of record failed to establish that appellant's diagnosed conditions were causally related to his work-related occupational exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, *supra* note 4.

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[7] The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

OWCP accepted that appellant's federal employment duties required prolonged sitting for travel and meetings. It denied his claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and his lumbar injury. The Board finds that the medical evidence of record is insufficient to establish that appellant's lumbar conditions are causally related to factors of his federal employment as a district ranger.

In a June 15, 2005 report, Dr. Friar reported that he was treating appellant for a spinal condition that was causing him to have severe low back and leg pain and recommended that appellant limit extended sitting and driving times. In an October 20, 2009 Form CA-20, he reported that appellant experienced severe low back pain after long hours of sitting and driving. Dr. Friar diagnosed lumbar spine dysfunction, multiple vertebral subluxations, lumbar disc protrusion and sciatic radiculopathy and checked the box marked "yes" when asked if he believed the conditions were caused by appellant's employment activity.

In an October 27, 2010 report, Dr. Friar diagnosed lumbar spine dysfunction, multiple vertebral subluxations in cervical and lumbar spine confirmed by x-ray, lumbar disc protrusion, sciatic neuropathy, lumbar spine pain, cervicalgia and pain in the thoracic spine. He stated that the physical aspect of appellant's job involved sitting where he spent a great deal of time at a desk, computer and in meetings. Dr. Friar noted that sitting tends to exacerbate low back and leg pain which overloads and dehydrates the discs, requiring frequent unloading and movement to stay healthy. He stated that as appellant's job required him to maintain a prolonged sitting posture, the discs were overloaded and pressure changes were created which weakened the annular fibers and exacerbated a disc bulge, as well as deconditioned already weakened soft tissue supportive structures.

In a December 28, 2011 addendum report, Dr. Friar stated that objective test findings *via* an MRI scan established that appellant had a disc herniation with resulting sciatic radiculopathy. He stated that research clearly states that a disc herniation is traumatic in nature and is the direct result of injury. Dr. Friar indicated that a disc herniation is not degenerative in nature as are disc

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[8] *James Mack*, 43 ECAB 321 (1991).

bulges. He stated that this was the causal relationship that existed between appellant's on-the-job injury and his current condition and diagnosis.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[9] As Dr. Friar diagnosed vertebral subluxations in the cervical and lumbar spine confirmed by x-ray, he is considered to be a "physician" under FECA with this specific diagnosis only.[10]

While Dr. Friar made other diagnoses, including disc herniation with resulting sciatic radiculopathy, lumbar disc protrusion, sciatic neuropathy, lumbar spine pain, cervicalgia and pain in the thoracic spine, he is limited only to the diagnosis and treatment of a spinal subluxation. He is not considered a physician for diagnosis and treatment of the other diagnosed conditions.[11]

With respect to the subluxation diagnosis, Dr. Friar's October 20, 2009 Form CA-20 provided a diagnosis of multiple vertebral subluxations. Though he checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by his employment, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[12]

While Dr. Friar's October 27, 2010 report addressed causation by noting that prolonged sitting overloads the disc and exacerbates a disc bulge, he failed to provide any opinion regarding the cause of appellant's spinal subluxation in relation to factors of his federal employment. He did not provide an explanation of how appellant's work duties of prolonged sitting would cause his spinal subluxation. Dr. Friar failed to adequately describe appellant's work duties, did not specify how long he worked as a district ranger and the periods and the frequency of prolonged sitting. 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.[13] Thus, Dr. Friar's reports are insufficient to meet appellant's burden of proof.

In a November 20, 2006 medical report, Dr. Pacult reported that appellant had several episodes of back pain and bilateral lower extremity pain which began in 2005. He stated that an MRI scan of the lumbar spine revealed several disc degeneration levels, worse being at the L4-5 and L3-4 with acquired disc bulge. Dr. Pacult stated that appellant did not need treatment as he

[9] *See Kathryn Haggerty*, 45 ECAB 383 (1994).

[10] A chiropractor may interpret his x-rays to the same extent as any other physician. 20 C.F.R. § 10.311(c). *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[11] *K.L.*, Docket No. 11-955 (issued October 18, 2011).

[12] *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

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

was asymptomatic but could have possible future flare ups. In a March 19, 2012 medical report, he reported that he treated appellant in 2006 for complaints of bilateral lower extremity pain that had developed in 2005. Dr. Pacult noted that appellant was not specific about his origin of pain but apparently there was an injury when he fell at work in February 2006, several months prior to his visit. Appellant was eventually diagnosed and treated conservatively for a disc herniation at L4-5 on the left side and the midline at L3-4. Dr. Pacult stated that it was possible that appellant had a herniated a disc at the time of the falling incident but that this was not documented in his chart. He further stated that although the MRI scan was not 100 percent positive for traumatic injury, his injury could have happened at the time of trauma when appellant fell.

The Board finds that the medical reports of Dr. Pacult are insufficiently rationalized. While Dr. Pacult treated appellant in 2006, he had no contact with appellant until five years later when he was asked to provide a supplemental report. His March 19, 2012 report merely recounted a February 2006 traumatic incident as described by appellant, even noting that he had no documentation of this incident in his chart. Moreover, Dr. Pacult stated that he was unsure if appellant had a herniated disc at the time of his fall, making it unclear if appellant sustained a disc herniation from a traumatic event, an occupational exposure or a preexisting condition. His opinion is vague and speculative as he fails to provide an unequivocal opinion on the cause of appellant's injuries. Dr. Pacult failed to provide a detailed medical history or adequately describe appellant's employment duties by noting the frequency of various physical movements and tasks. As he failed to provide any definitive opinion that the conditions were caused or aggravated by appellant's occupational employment duties, his medical reports fail to establish that appellant's injuries are a result of a work-related occupational exposure.[14]

On appeal appellant argues that his injuries were caused by his federal employment duties which began in 2005. He also argues that he established the 2006 traumatic incident when he fell and injured his back. In this instance, appellant has filed an occupational disease claim. As he is alleging that his injuries were produced by his work environment over a period longer than a single workday or shift, he must submit rationalized medical evidence from a physician which describes his employment duties and provides an explanation on how these duties caused him injury.[15] As noted above, Dr. Friar is only considered a physician under FECA with respect to the treatment and diagnosis of spinal subluxation.[16] Any opinion provided by him regarding the cause of appellant's other conditions is of no probative value.

If appellant is alleging that his injury was produced by a specific incident having occurred in January/February 2006 when he slipped and fell in mud, he should pursue his claim by filing a traumatic injury claim (Form CA-1) and submitting rationalized medical evidence

[14] *Supra* note 12.

[15] *Id.*

[16] *Supra* note 13.

from a physician which describes how the alleged traumatic incident caused him injury.[17] It is his burden to specify the nature of his claim.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a district ranger and his diagnosed lumbar and lower extremity conditions. Thus, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his lumbar and lower extremity conditions are causally related to factors of his employment as a district ranger.

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[17] A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).