United States Department of Labor
Employees' Compensation Appeals Board

H.H., Appellant	)	
and	)	**Docket No. 16-0897**
	)	**Issued: September 21, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, New York, NY, 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 March 30, 2016 appellant filed a timely appeal from a March 15, 2016 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 met his burden of proof to establish an injury on January 26, 2016 causally related to the accepted employment incident.

FACTUAL HISTORY

On January 27, 2016 appellant, then a 52-year-old interior designer, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2016 he sustained a back and shoulder

[1] 5 U.S.C. § 8101 *et seq.*

injury when a bookcase, books, shelves, and folders fell on him while he was in his office. Appellant first received medical care on January 27, 2016 and stopped work on January 28, 2016. On the reverse side of the form, the employing establishment controverted the claim.

In a January 27, 2016 emergency room (ER) report, Dr. Lisa J. Nocera, Board-certified in emergency medicine, reported that appellant presented to the ER after a bookshelf with folders of papers fell onto his back. Appellant complained of mild low back pain. Dr. Nocera noted no midline spinal pain or focal neuro deficits. Appellant was released to work on January 28, 2016.

In a January 28, 2016 attending physician's report (Form CA-16), Dr. Nashaat Morgan, Board-certified in internal medicine, reported that appellant sustained an injury on January 26, 2016. She noted low back tenderness and diagnosed myalgia two degree trauma. Dr. Morgan checked the box marked yes when asked if the condition was caused or aggravated by the employment activity, noting post-traumatic. Appellant was restricted from working until February 8, 2016 when he could resume light duty.

In a January 28, 2016 duty status report (Form CA-17), Dr. Morgan reported that appellant reached for a file on his bookshelf when the shelves and items on the shelves fell on him. She noted low back pain and diagnosed traumatic back injury. Appellant was restricted from working for one week.

By letters dated February 1 and 2, 2016, the employing establishment controverted the claim.

By letter dated February 5, 2016, OWCP notified appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond. In another letter of that same date, OWCP requested that the employing establishment provide additional information pertaining to the January 26, 2016 employment incident.

By letter dated February 10, 2016, appellant responded to OWCP's questionnaire and described the January 26, 2016 employment incident in detail. He explained that he was pulling a folder from the lower shelf of the bookcase when the two upper shelves collapsed on his back and shoulder. Appellant further reported that his supervisor was present when the incident happened.

The employing establishment responded to OWCP's development letter on February 16, 2016, stating that appellant was retrieving a file folder from the bookshelf in his office when the bookshelf fell apart. It noted that all of the items on the bookshelf fell to the floor when appellant was setting and retrieving a file from the lower shelf of the bookshelf, falling on his back.

In a January 28, 2016 medical report, Dr. Morgan reported that appellant complained of back pain after a pile of files fell at his workplace. She noted impaired gait and unable to lift objects or bend forward. Dr. Morgan reported a prior medical history of low back pain, hyperlipidemia, radicular pain, lumbar disc degeneration, sciatica, osteoarthritis, and

hypertension. She diagnosed traumatic back injury, hypertensive heart disease, and osteoarthritis.

In a February 4, 2016 diagnostic report, Dr. Christopher Pierpont, a Board-certified diagnostic radiologist, reported that lumbosacral review of the spine revealed no fracture or subluxation. In another report of that same date, he reported that a thoracolumbar view of the spine revealed no fracture or subluxation.

In a February 4, 2016 Form CA-17, containing an illegible signature, appellant was diagnosed with back strain and musculoskeletal strain. Findings noted were decreased range of motion of the spine. Appellant was advised to resume light-duty work.

In a February 9, 2016 medical report, Dr. Morgan reported that appellant sustained a traumatic injury on January 26, 2016 when a pile of books and other heavy stuff fell on his back at work. She diagnosed back pain secondary to myalgia, no vertical fracture or disc herniation to the spine, hypertensive heart disease, and osteoarthritis.

In a February 9, 2016 narrative report, Dr. Morgan reported that appellant was evaluated on January 28, 2016 due to an accident in his office on January 26, 2016 when a bookshelf fell on his back. She noted physical examination findings and explained that his condition was resolving since the employment incident first occurred. Dr. Morgan instructed appellant to take oral opioids as needed for pain and he was released to light-duty work until February 18, 2016.

By decision dated March 15, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted January 26, 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 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 are causally related to the employment injury.[2] 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.[3]

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.[4] The second

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

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

[4] *Elaine Pendleton*, *supra* note 2.

component is whether the employment incident caused a personal injury and generally can only be established by medical evidence.

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 supporting such a causal relationship.[5] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[6]

ANALYSIS

OWCP accepted that the January 26, 2016 employment incident occurred as alleged. The issue is whether appellant has met his burden of proof to establish that the incident caused back and shoulder injuries. The Board finds that he did not submit sufficient medical evidence to support that his diagnosed conditions are causally related to the January 26, 2016 employment incident.[7]

In support of his claim, appellant submitted medical reports and forms dated January 28 through February 9, 2016 from Dr. Morgan. Dr. Morgan explained that on January 26, 2016, appellant reached for a file on his bookshelf when the shelves and items on the shelves fell on him. She provided findings on physical examination and diagnosed low back pain, traumatic back injury, and myalgia. The Board finds that these diagnoses are of no probative value. It is not possible to establish the cause of a medical condition, if the physician has not stated a diagnosis, but only notes pain.[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.[9]

Dr. Morgan's January 28, 2016 attending physician's report checked the box marked "yes" to indicate that the January 26, 2016 employment incident caused or aggravated appellant's injury. The Board has held that a report that addresses causal relationship with a checkmark, without accompanying medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal

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

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

[7] *See Robert Broome*, 55 ECAB 339 (2004).

[8] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

[9] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

relationship.[10] Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions, Dr. Morgan's opinion is of limited probative value.[11] Moreover, while Dr. Morgan's attending physician's report opined that appellant's condition was work related, she failed to diagnose a medical condition which could be related to the January 26, 2016 employment incident. When a physician has not identified a medical condition which can be attributed to the employment incident it is not possible to progress to the issue of medical causation.

Dr. Morgan's reports noted a prior medical history of low back pain, hyperlipidemia, radicular pain, lumbar disc degeneration, sciatica, osteoarthritis, and hypertension. She also provided the additional diagnoses of hypertensive heart disease and osteoarthritis. The Board notes that given appellant's medical history, these are found to be preexisting conditions unrelated to the work injury. The reports of Dr. Morgan provide no support that appellant's hypertensive heart disease and osteoarthritis were caused or aggravated by the January 26, 2016 employment incident. Moreover, she did not address why appellant's complaints were not caused by his preexisting conditions.[12] 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] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[14] Thus, Dr. Morgan's medical reports do not constitute probative medical evidence because they fail to provide a firm medical diagnosis and do not adequately explain the cause of appellant's injury.[15]

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Nocera's January 27, 2016 ER report described the employment incident but failed to provide any diagnosis to support a work-related injury. Dr. Pierpont's February 4, 2016 diagnostic reports noted that an x-ray of the lumbar and thoracic spine revealed no fracture or subluxation. As the physician provided findings that appellant's diagnostic testing revealed normal, his reports provide support for no injury and is insufficient to establish a firm medical diagnosis.[16] The February 4, 2016 Form CA-17 diagnosed back and musculoskeletal sprain but

[10] *C.Y.*, Docket No. 14-2075 (issued March 2, 2015); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

[11] *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[12] A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition. *R.E.*, Docket No. 14-868 (issued September 24, 2014); *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

[14] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[15] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[16] *J.P.*, Docket No. 14-87 (issued March 14, 2014).

contained an illegible signature on the form. Consequently, this document is of no probative value and does not establish appellant's traumatic injury claim as it cannot be discerned on whether a physician signed or authored the document.[17]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[18] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[19] Appellant's honest belief that the January 26, 2016 employment incident caused his medical injury is not in question. But that belief, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the January 26, 2016 employment incident and a back or shoulder injury. Thus, appellant has failed to meet his burden of proof.[20]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury on January 26, 2016 causally related to the accepted employment incident.

[17] *See also Sheila A. Johnson*, 46 ECAB 323, 327 (1994); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

[18] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

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

[20] Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated the diagnosed conditions. *T.G.*, Docket No. 14-751 (issued October 20, 2014).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 15, 2016 is affirmed.

Issued: September 21, 2016
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