United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
and	)	**Docket No. 08-705**
	)	**Issued: July 15, 2008**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 31, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated November 28, 2007 in which the hearing representative affirmed a July 27, 2007 decision denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he developed a back condition while in the performance of duty.

FACTUAL HISTORY

On May 26, 2007 appellant, then a 58-year-old heavy mobile equipment repairer, filed an occupational disease claim alleging that he developed a back condition while in the performance of duty. He became aware of his condition on March 13, 2005. Appellant did not stop work.

In support of his claim, appellant submitted a statement and indicated that he experienced back pain during the past two years while disassembling turrets. He noted that he worked in a bending and crouched position while removing hardware from the rails and disassembling the ammunition storage doors. Appellant also submitted his job application and position description for a heavy mobile equipment repairer.

Appellant came under the treatment of Dr. Tinj J. Tai, Board-certified in occupational medicine, who treated appellant for low back pain. In reports dated April 19 to 25, 2007, Dr. Tai noted findings upon physical examination of good range of motion and negative straight leg raising test. She diagnosed low back pain. Dr. Tai noted that appellant did not identify a specific mechanism of injury; however, his supervisor reported that his low back pain was work related. She returned appellant to work light duty for one week with restrictions of no pushing, pulling, bending, squatting, climbing, lifting or above shoulder work. On April 25, 2007 Dr. Tai noted appellant's physical examination remained unchanged and diagnosed low back pain. She modified appellant's prior restrictions to include additional restrictions of seated work only and occasional walking. Appellant was treated by Dr. David W. Bennett, a Board-certified family practitioner, on April 19, 2007, for low back pain. In a note dated April 30, 2007, Dr. Bennett diagnosed low back strain and recommended an ergonomic evaluation of appellant's workstation and limited his lifting when his back was flexed. He opined that appellant's low back strain would resolve in three weeks. Also submitted were nursing notes dated April 30 and May 21, 2007, which noted appellant's treatment for low back pain. Appellant submitted a transcript for diesel mechanic courses he completed.

In a letter dated June 19, 2007, the Office advised appellant of the type of factual and medical evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. No further evidence was received.

In a decision dated July 27, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by his employment duties.

On August 9, 2007 appellant requested a review of the written record. He submitted a report from Dr. Bennett dated April 19, 2007 who treated him for low back pain. Appellant reported bending over into tanks. Dr. Bennett advised that appellant's neurological examination was negative and opined that his symptoms were muscular in nature. He recommended an ergonomic change at work. On June 28, 2007 Dr. Bennett noted appellant's complaints of pain in the spine on lateral motion and diagnosed degenerative joint disease of the spine and other joints. Appellant submitted nursing notes for treatment of low back pain. Also submitted was a report from Dr. Maurice Wainwright, a podiatrist, dated May 10, 2007, who treated appellant for painful toenails and diagnosed onychomyocosis.

By decision dated November 28, 2007, the Office hearing representative affirmed the decision dated July 27, 2007.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 timely filed within the applicable time limitation period of the Act, that the injury was sustained 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. 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.[1]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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 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.[2]

ANALYSIS

It is not disputed that appellant's duties as a heavy mobile equipment repairer included repeatedly bending while performing his work duties. It is also not disputed that appellant has been diagnosed with low back strain. However, appellant has not submitted sufficient medical evidence to support that the low back strain is causally related to specific employment factors or conditions. On June 19, 2007 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted treatment notes from Dr. Tai dated April 19 to 25, 2007 who treated appellant for low back pain. Dr. Tai noted an essentially normal physical examination and diagnosed low back pain. She noted that appellant did not identify a mechanism of injury; however, his supervisor reported appellant's low back pain was work related. Dr. Tai's reports

[1] *Gary J. Watling*, 52 ECAB 357 (2001).

[2] *Solomon Polen*, 51 ECAB 341 (2000).

are insufficient to establish the claim as the doctor appears merely to be repeating the history of injury as reported by a supervisor without providing her own opinion regarding whether appellant's condition was work related.[3] To the extent that the doctor is providing her own opinion, Dr. Tai failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[4] Additionally, the physician expressed uncertainty regarding the cause of appellant's condition, indicating that "no specific mechanism of injury was identified."

Other reports from Dr. Bennett dated April 19 to June 28, 2007 noted appellant's complaints of low back pain and diagnosed low back strain. He indicated that appellant "bends over into tanks." Dr. Bennett noted appellant's symptoms were muscular in origin and opined that appellant's low back strain would resolve in three weeks. However, he failed to provide a specific and rationalized opinion regarding the causal relationship between appellant's low back strain and the factors of employment believed to have caused or contributed to such condition.[5] For example, Dr. Bennett did not explain the process by which repetitive activities such as bending over into tanks would cause the diagnosed condition and why such condition would not be due to nonwork factors. Therefore, these reports are insufficient to meet appellant's burden of proof.

Also submitted were nursing notes which noted appellant's continued treatment for low back pain. The Board has held that treatment notes signed by a nurse are not considered medical evidence as a nurse is not a physician under the Act.[6] Therefore, this note is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including a report from Dr. Wainwright, a podiatrist, dated May 10, 2007, fail to provide an opinion on the causal relationship between appellant's job and his diagnosed low back strain. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[7] Causal relationships must be established by

[3] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[4] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[5] *Id.*

[6] *See Roy L. Humphrey*, 57 ECAB 238 (2005); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

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

rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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