United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 09-993**
	)	**Issued: November 5, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Uhrichsville, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 6, 2009 appellant timely appealed the February 6, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 25, 2007.

FACTUAL HISTORY

On May 19, 2008 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim for a lumbar spine injury that allegedly occurred on October 25, 2007. He was delivering a parcel to a home and when he bent down to place the item on the porch floor he felt a crack in his lower back, followed by pain in the low back region. Approximately two weeks after the incident appellant sought medical treatment. According to him, he sustained a herniated disc as

a result of the employment incident. Appellant continued to work following the claimed October 25, 2007 back injury.[1]

On November 9, 2007 appellant saw Dr. Robert E. Jones II, a Board-certified family practitioner. He complained of back pain and reported that he had hurt his back several weeks ago. The pain had recently worsened. Dr. Jones' diagnosis was "back pain" and he recommended that appellant obtain an x-ray. A November 21, 2007 lumbar x-ray revealed degenerative disc disease at L5-S1. Appellant returned to Dr. Jones on December 11, 2007 and he diagnosed "back pain with radiculopathy."

On January 23, 2008 appellant saw Dr. Georges Z. Markarian, a Board-certified neurosurgeon. Appellant complained of right-sided low back pain radiating into his buttock, lateral thigh and lateral ankle. His complaints dated back to November 2007. The pain reportedly started acutely. Dr. Markarian interpreted a recent lumbar magnetic resonance imaging (MRI) scan as showing a mild right-sided L5-S1 disc herniation. He noted that the disc herniation was not severe enough to currently warrant surgical intervention. Dr. Markarian recommended physical therapy and a follow-up visit in six weeks.

Appellant next saw Dr. Markarian on May 13, 2008. He reportedly had been doing reasonably well since his last visit in January 2008, but recently appellant's pain had significantly worsened and his leg was bothering him. On physical examination, Dr. Markarian noted a positive straight leg raise and significant weakness in appellant's leg. He recommended that appellant obtain a new lumbar MRI scan and return for follow-up once the scan was completed.

On May 19, 2008 appellant was treated in the Twin City Hospital emergency room. His diagnosis was back pain and lumbar spine herniated disc. Appellant reported injuring himself on October 25, 2007 while dropping off a parcel at a customer's house. He stated that he bent to set the parcel down and felt his lower back crack. The attending physician responded "Yes" to the preprinted form's question: "Is the injury causally related to the industrial incident?" However, the physician did not provide an explanation for the affirmative response. Appellant was released that same day and placed on light duty with a 10-pound lifting restriction.

A May 20, 2008 lumbar MRI scan showed degenerative disc disease at L5-S1 with disc protrusion. It was noted that appellant's condition had progressed when compared to an earlier lumbar MRI scan dated December 14, 2007. This latest study showed a marked effacement of the existing right S1 nerve root sleeve and attendant central spinal stenosis.

Appellant saw Dr. Markarian again on May 27 and June 4, 2007. Dr. Markarian reviewed appellant's latest lumbar MRI scan and recommended that he undergo a right L4-5 microdiscectomy.

By decision dated July 7, 2008, the Office accepted that the October 25, 2007 employment incident occurred as alleged. However, it denied the claim because the medical

[1] The employing establishment challenged the claim because of the more than six-month delay in reporting the injury and the fact that appellant continued to perform his regular duties following the alleged injury.

evidence did not demonstrate a causal relationship between the accepted employment incident and the diagnosed lumbar condition.

The Office subsequently received a July 9, 2008 prescription pad note from Dr. Markarian who provided a diagnosis of lumbar herniated disc and advised that appellant was scheduled for lumbar surgery on July 17, 2008.

Appellant requested a hearing, which was held on November 13, 2008. At a posthearing appellant submitted his medical records from the Department of Veterans Affairs (VA). The records reflected ongoing psychiatric treatment for service-connected post-traumatic stress disorder (PTSD). Although the VA medical records did not reflect treatment of appellant's lumbar condition, the psychiatric records for August 26 and 29, 2008 mentioned appellant having recently undergone back surgery. August 29, 2008 session notes with clinical psychologist, James D. Mullen, indicated that appellant reported that it had been hectic the last three months, during which he blew out a disc, had surgery and was laid up. Appellant told his therapist that it happened at work delivering a package.

In a decision dated February 6, 2009, the Office hearing representative affirmed the July 7, 2008 decision denying appellant's claim. The hearing representative similarly found that the medical evidence did not support that appellant sustained an injury as a result of the October 25, 2007 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

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

[2] 5 U.S.C. §§ 8101-8193 (2006).

[3] 20 C.F.R. § 10.115(e), (f) (2008); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). 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 factors. *Id.*

incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

The Office accepted that the October 25, 2007 employment incident occurred as alleged. The medical evidence of record does not establish that the October 25, 2007 employment incident either caused or contributed to appellant's claimed lumbar herniated disc. Neither Dr. Jones nor Dr. Markarian referenced the October 25, 2007 employment incident in any of their respective reports. In fact, they do not mention any work-related events or otherwise address the cause of appellant's lumbar condition. Consequently, the reports of Dr. Jones and Dr. Markarian are insufficient to establish that appellant sustained an employment-related back condition on October 25, 2007.

The May 19, 2008 emergency room treatment records represent the only medical evidence that specifically relates appellant's back condition to his employment. This evidence is also insufficient to establish an employment-related back condition. The emergency room health care provider who attributed appellant's back pain and lumbar herniated disc to the October 25, 2007 employment incident did not explain the basis for his or her opinion on causation. The individual simply responded "Yes" to a preprinted form question of whether the injury was causally related to the industrial incident.[6] A simple "yes" without further elaboration does not constitute a rationalized medical opinion on causal relationship. The physician must explain the basis for his or her opinion.[7] The emergency room treatment records do not explain how bending down to place a parcel on a porch floor either caused or contributed to appellant's lumbar herniated disc.

The only other mention of a work-related back injury appeared in appellant's VA medical records. While appellant's clinical psychologist is competent to treat his PTSD, Dr. Mullen is not in a position to offer any insight as to the cause of appellant's orthopedic condition.[8] Moreover, his August 29, 2008 reference to a work-related back injury appears to be no more than a recitation of the information appellant provided during their therapy session that day. Accordingly, Dr. Mullen's August 29, 2008 treatment notes and the VA medical records in general do not substantiate appellant's claim for an employment-related lumbar condition.

The Board finds that the Office properly denied appellant's traumatic injury claim in light of his failure to provide competent medical evidence demonstrating a causal relationship between the October 25, 2007 employment incident and his claimed lumbar condition.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] On May 19, 2008 appellant provided the same history of injury to the emergency room caregivers as he reported on his May 19, 2008 Form CA-1. Essentially, he was dropping off a parcel at a customer's home when he bent over to place the parcel down on the porch and felt his lower back crack.

[7] *Victor J. Woodhams*, *supra* note 3.

[8] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty on October 25, 2007.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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