United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 10-1700**
	)	**Issued: April 22, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Memphis, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 7, 2010 appellant filed a timely appeal from a December 15, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to the Federal Employees' Compensation Act[1] 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 that he sustained an injury on June 4, 2009 in the performance of duty.

FACTUAL HISTORY

On June 17, 2009 appellant, then a 49-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on June 4, 2009 he sustained a lower back injury when he was

[1] 5 U.S.C. § 8101 *et seq.*

transporting a patient and reached across the bed so that the patient would not fall out. He notified his employer on June 10, 2009 of his injury. The employing establishment controverted the claim as appellant did not immediately report his injury to a supervisor.

By letter dated June 23, 2009, the Office informed appellant that no evidence had been received in support of his claim, requested additional factual and medical evidence, and asked him to respond to the provided questions within 30 days.

In an undated narrative statement, appellant reported that he was pulling a patient back in bed and felt a strain/pulling pain in his lower back. He continued to work because he was the only health technician assigned to that shift and the emergency room was at full capacity. The next day, the pain in appellant's lower back was unbearable, throbbing and radiating down to his leg. Appellant called his provider clinic at Veterans Administration Medical Center (VAMC) and was told by a nurse that he should take a couple days off from work. He went to the clinic on June 10, 2009 for clearance to return to work and was told that he could not return to work because he was still in pain. Appellant did not seek immediate medical attention because he thought the pain would go away with rest. He noted a prior history of back problems but had been doing fine until he strained his back on June 4, 2009.

On June 15, 2009 Dr. Margarethe Hagemann, Board-certified in internal medicine and chief of staff at VAMC, signed and approved appellant's progress notes for the period of April 30 to June 15, 2009. In an April 30, 2009 progress note, Dr. Carlos Cyrus, Board-certified in physical medicine and rehabilitation, reported that appellant was evaluated for a spine injection, complaining of central low back pain with intermittent radiation down the left posterior thigh. He noted a history of lumbar laminectomy without relief and multiple spinal injections with no relief. Dr. Cyrus noted that appellant did receive bilateral injections with good results. He diagnosed postlaminectomy syndrome of the lumbar region and sacroiliitis.

In June 6 and 8, 2009 progress notes, appellant contacted the VAMC requesting renewal of his medication for chronic pain management. In June 9 and 10, 2009 telephone calls, Chandra O'Brien, a registered nurse, noted that he called stating that he needed to be seen so that he could return to work. Ms. O'Brien indicated that appellant would need to be evaluated and would be restricted to no bending, twisting, turning or lifting over 25 pounds.

In a June 10, 2009 progress note, Dr. Hagemann stated that appellant came into the clinic reporting that he hurt his back the week before when he attempted to move a patient. Appellant reported that he went home at the end of his shift and could hardly move the following day, having to crawl to the bathroom. Dr. Hagemann noted that appellant was unable to stand up straight and that due to the repetitive motions of his job, *i.e.*, twisting, turning and lifting, he would be off work until June 24, 2009.

In a June 24, 2009 medical report, Dr. Moacir Schnapp, a treating physician, stated that appellant had a workers' compensation injury on June 4, 2009 which resulted in lower back pain. He noted appellant's medical history of problems with his lower back over several years. Dr. Schnapp reported that appellant experienced pain all the way across his back which was aching, sharp, throbbing and worse with standing and sitting for prolonged periods of time. He

noted that appellant was getting up with some difficulty and walking with some stiffness. Dr. Schnapp diagnosed lumbar spondylosis and sacroiliitis.

In a June 24, 2009 VAMC certification of visit, John Elli, a treating physician assistant, reported that appellant was having nerve blocks done on June 26, 2009 and could not return to work until the blocks were performed.

In a June 26, 2009 medical report, Dr. Schnapp performed a bilateral lumbar facet L4-5, L5-S1 block under fluoroscopic guidance and a bilateral sacroiliac joint injection under fluoroscopic guidance. He reported that the procedure was done to treat appellant's severe lower back pain.

By decision dated August 3, 2009, the Office denied appellant's claim finding that the medical evidence did not establish that the lower back condition was related to the accepted June 4, 2009 employment incident.

On August 19, 2009 appellant requested review of the written record.[2] In support of his request, he stated that, though he has had previous back problems, it had never kept him from his employment. Appellant noted that his June 4, 2009 episode occurred at work and was different from his usual back problems.

In a July 22, 2009 VEMA medical report, Physician Assistant Elli stated that appellant was seen at the clinic about one week after the work incident and was diagnosed with acute musculoskeletal strain of the lumbar region and suspected aggravation of underlying sacroilitis.

By decision dated December 15, 2009, an Office hearing representative affirmed the August 3, 2009 Office decision.

LEGAL PRECEDENT

An employee seeking benefits under the 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 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.[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]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

[2] Appellant also requested reconsideration of the Office decision on August 19, 2009. By letter dated September 16, 2009, the Office deleted the reconsideration request, sending the claim to the Branch of Hearings and Review.

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

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

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 a causal relationship between the condition, 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.[6] 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. 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.[7]

The term physician is defined under section 8101(2) and physical therapists are not physicians under the Act; therefore, their opinions do not constitute probative medical evidence.[8]

ANALYSIS

The Office accepted that the June 4, 2009 incident occurred as alleged. The issue is whether appellant established that the incident caused a back injury. The Board finds that he did not submit sufficient medical evidence to support that his lumbar condition is causally related to the June 4, 2009 employment incident.[9]

In a June 10, 2009 medical report, Dr. Hagemann stated that appellant came into the clinic reporting that he hurt his back the previous week when he attempted to move a patient at work. She noted that he was unable to stand up straight and was restricted from performing the repetitive motions of his job such as twisting, turning and lifting. Dr. Hagemann did not opine, however, that the condition occurred from the accepted one-time event. Further, she did not diagnose appellant's condition, identify its cause, or even mention the June 4, 2009 employment

[5] *Elaine Pendleton supra* note 2.

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

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

[8] 5 U.S.C. § 8101(2). *See Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

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

incident. 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.[10] Without medical reasoning explaining how the June 4, 2009 employment incident caused the back condition, the report is insufficient to meet appellant's burden of proof.[11]

In a June 24, 2009 medical report, Dr. Schnapp reported that appellant had a workers' compensation injury on June 4, 2009 and was having lower back pain. He diagnosed lumbar spondylosis and sacroilitis and noted that appellant had preexisting problems with his lower back for several years. On June 26, 2009 Dr. Schnapp performed a bilateral lumbar facet block and a bilateral sacroiliac joint injection. The Board finds that the opinion of Dr. Schnapp is not well rationalized. Dr. Schnapp did not provide an adequate explanation of how the accepted incident caused or contributed to appellant's diagnosed condition. While he noted that appellant underwent prior treatment for his back condition, Dr. Schnapp did not address how the June 4, 2009 incident aggravated appellant's sprain, lumbar spondylosis and sacroilitis. He noted in general that appellant had a work injury on June 4, 2009 but never stated that his work incident caused his back condition and failed to provide a well-rationalized opinion on causal relationship. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[12] Lacking a complete and accurate factual background, sufficient medical record review and rationale, Dr. Schnapp's reports are insufficient to establish that appellant's lumbar condition was causally related to the June 4, 2009 employment incident.

In an April 30, 2009 report, Dr. Cyrus stated that appellant had a history of lumbar laminectomy without relief. This evidence does not establish causal relationship because it is dated before the employment incident. Further, the report suggests that appellant's back condition resulted from a previous incident rather than a new traumatic injury.

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's back condition and the June 4, 2009 employment incident. Registered nurses, licensed practical nurses and physicians' assistants are not physicians as defined under the Act; therefore, their opinions are of no probative value.[13]

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.[14] An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.[15] Causal relationships must be established by rationalized medical opinion evidence.

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

[11] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

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

[13] 5 U.S.C. § 8102(2) of the Act provides as follows: (2) physicians includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

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

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

Appellant failed to submit such evidence and the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a traumatic injury on June 4, 2009 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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