United States Department of Labor
Employees' Compensation Appeals Board

B.G., Appellant	)	
and	)	**Docket No. 10-1959**
	)	**Issued: June 1, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Brandywine, MD, Employer	)	

Appearances:
Douglas Sughrue, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2010 appellant, through his representative, timely appealed the May 3, 2010 merit decision of the Office of Workers' Compensation Programs, which denied his traumatic injury claim. 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 sustained an injury in the performance of duty on August 6, 2008.

FACTUAL HISTORY

Appellant, then a 58-year-old letter carrier, has an accepted claim for a lumbar sprain and lumbar disc displacement, which arose on March 29, 2000. He has undergone two surgical procedures with respect to his lumbar spine, one in September 2000 and another in

[1] 5 U.S.C. §§ 8101-8193.

October 2006. On October 22, 2008 appellant filed a recurrence (Form CA-2a) under claim File No. xxxxxx488 alleging a recurrence of disability beginning August 6, 2008. He indicated that he was lifting a bag of circulars when he had a "pop" in the middle of his back where all the fusion was. The Office determined that the August 6, 2008 lifting incident appellant described was more appropriately characterized as a new traumatic injury rather than a recurrence of his March 29, 2000 injury. It advised appellant accordingly, and processed his Form CA-2a as a new claim with an August 6, 2008 date of injury.

The medical evidence included a partial report dated April 23, 2008 from Dr. William C. Lauerman, a Board-certified orthopedic surgeon, who had been treating appellant since 2000. The report identified March 29, 2000 as the date of injury. Dr. Lauerman noted that appellant had been struggling at work. Appellant's complaints included back pain after lifting for a prolonged period, as well as pain going down his left leg. He reportedly had tripped and stumbled on several occasions. On physical examination, appellant could toe walk but was completely unable to heel walk. Dr. Lauerman noted weakness in appellant's left quadriceps, which was unchanged since August 2007. Plain x-rays obtained that day showed appellant's implants to be in good position. Some loosening was noted around the proximal screws, but he appeared to have a very nice abundant fusion mass. Dr. Lauerman indicated that he was very worried about appellant's worsening pain and his falls and wanted to minimize the risk of further injury and any further development of spinal stenosis. To this end, he advised appellant to limit his lifting to 20 pounds. While appellant could work full time, he needed to take a 10-minute break after every 2 hours of standing. Dr. Lauerman advised appellant to stop, sit down and stretch. He also prescribed Neurontin, 300 milligrams (mg). The next page of the April 23, 2008 report was missing.

In an August 12, 2008 attending physician's report (Form CA-20), Dr. Bruce E. Mathern, a Board-certified neurosurgeon, noted a March 2000 date of injury and diagnosed lumbar strain. He reported that appellant injured his back in 2000 and had surgery in September 2000, which resulted in improvement. However, in 2005 the pain returned. Appellant had a second surgery in 2006, but he was no better. Dr. Mathern reported that a myelogram and computerized tomography (CT) scan showed moderate stenosis due to facet arthropathy at L2-3 and L3-4. He also noted the radiographic evidence showed an old calcified central disc, a solid fusion and no hardware complications. Dr. Mathern checked the box on the Form CA-20 indicating that appellant's condition was caused or aggravated by employment; however, his handwritten explanation was illegible. He also noted that appellant was currently working and that he had only seen him for purposes of providing a second opinion.

Dr. Mark J. Rosenberg, Board-certified family practitioner, submitted a Form CA-20 dated August 26, 2008. He too identified March 29, 2000 as the date of injury. Dr. Rosenberg noted a history of recurrent postoperative back and right leg pain, right leg weakness and falls. This also represented his diagnosis. Dr. Rosenberg's findings included antalgic gait and right leg weakness. He attributed appellant's condition to his employment, noting he had fallen at work on August 4, 2008. Dr. Rosenberg indicated that appellant was disabled beginning August 6, 2008 and extended through November 6, 2008. He also noted that appellant's symptoms continued and he was scheduled to see his back surgeon next month. Until then, Dr. Rosenberg recommended further physical therapy.

In a report dated September 17, 2008, Dr. Lauerman noted that appellant had a number of falls over the last couple of months, but was doing somewhat better the last few weeks. While appellant still complained of significant pain left leg weakness, he had not fallen in the last week and a half. He reported that he had been falling with any sort of exertion. Dr. Lauerman noted that appellant had not been working the last few weeks, which had significantly improved his function and pain. Appellant's examination was basically unchanged. Dr. Lauerman reported that appellant's back was quite stiff with limited extension, and he had 4/5 weakness with his left quadricep, and 2/5 weakness of his left ankle and left toe dorsiflexors. Appellant's motor strength was normal on the right. X-rays obtained that day showed what appeared to be a nice, solid fusion. Dr. Lauerman also noted that a recent CT scan myelogram showed a right L3 screw to be slightly medially placed, which was appellant's asymptomatic side. There was also radiographic evidence of a large calcified disc at L3, L4 that dorsally displaced the thecal sac, which appeared to be a little decompressed. Dr. Lauerman also noted some foraminal narrowing, but no significant ongoing compression in the lateral recesses at any of the relevant nerve roots. Appellant was not interested in pursuing any further surgery, and Dr. Lauerman did not view anything on the myelogram that would be amenable to surgical intervention at the time. Dr. Lauerman recommended that appellant try wearing an ankle-foot orthosis, which might help with his tendency to fall and provide symptomatic relief of his leg pain. He also recommended that appellant remain off work for the next six months so as to improve his strength. Dr. Lauerman indicated that there was significant risk of injury with appellant's persistent falls, which were certainly made more likely with the requirements of his job. He planned to reevaluate appellant in six months, at which time Dr. Lauerman would consider changing appellant's work status if his condition were to improve.

Dr. Lauerman also provided a November 4, 2008 report, a part of which was redacted. He identified March 29, 2000 as the date of injury. When Dr. Lauerman saw appellant in consultation on June 28, 2000, appellant reported having injured his back at work lifting mail. He indicated that appellant had numbness in his left leg, associated left leg weakness, and he dragged his foot when he walked. Dr. Lauerman diagnosed lumbar spinal stenosis. He also noted that appellant had undergone surgery in September 2000 and October 2006, both of which were related to his original injury of March 29, 2000. Following the latest surgery, appellant had physical therapy and work hardening, and returned to work on September 6, 2007 with residual left leg weakness. Dr. Lauerman had recommended that appellant not work for six months to try to improve his strength. He further indicated that there was a significant risk of injury with appellant's weakness and persistent falls, which was made more likely with his job requirements.

In a decision dated February 4, 2009, the Office denied appellant's traumatic injury claim. Appellant had not established fact of injury. The Office found that the medical evidence did not establish that the claimed injury was a result of the August 6, 2008 "lifting incident when [appellant] heard a pop."

On February 2, 2010 appellant requested reconsideration. In a report dated January 26, 2010, Dr. Lauerman identified August 6, 2008 as the date of injury. He noted that appellant had been under his care since the initial spinal fusion in September 2000. Dr. Lauerman also noted that appellant had undergone a second surgery in October 2006 and did very well afterwards. He recounted his treatment of appellant up through September 17, 2008, at which time appellant reported having repeatedly fallen in August and September 2008. Dr. Lauerman reiterated that

he had advised appellant to stop work altogether. He next saw appellant March 2009 and then again in August. Dr. Lauerman noted that appellant continued to have weakness and back pain. When he saw appellant on March 17, 2009, he recommended that he attempt to return to work with restrictions. Dr. Lauerman further noted that the same restrictions outlined in an April 2, 2009 duty status report remained in effect. He indicated that, since appellant's injury in August 2008, appellant complained of back pain as well as significant pain and weakness in his left leg resulting in falls. On physical examination, appellant had limited range of motion of the back, with significant weakness in his left leg including 4/5 weakness of his left quadricep, and 2/5 weakness of his left ankle and left toe dorsiflexors. His treatment since August 2008 consisted of modified activities, medications and rehabilitation. Dr. Lauerman diagnosed spinal stenosis, which he noted was "exacerbated by the fall at work in August 2008." Appellant's prognosis was poor and Dr. Lauerman was not at all optimistic that appellant would be able to continue to work even part time (six hours a day) with restrictions. Dr. Lauerman did not have any further recommendations as to treatment or testing. He also noted that he was "aware of the particulars of [appellant's] work injury on [August 6, 2008], when [appellant] was lifting a bag of circulars and felt and heard a pop in his back. This injury would [likely] cause, and I believe did cause, an aggravation of [appellant's] spinal injuries and condition."

By decision dated May 3, 2010, the Office denied modification of the February 4, 2009 decision. It found that the newly submitted evidence did not resolve the deficiencies in the record regarding causal relationship.

LEGAL PRECEDENT

A claimant seeking benefits under the Act 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.[2]

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" is established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury.[4]

[2] 20 C.F.R. § 10.115(e)(f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

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

ANALYSIS

On appeal, counsel argued that the August 6, 2008 lifting incident aggravated appellant's preexisting lumbar condition. He further argued that Dr. Lauerman's January 26, 2010 report was sufficient to satisfy appellant's burden of proof.[5] The Office accepted that the August 6, 2008 lifting incident occurred as alleged. In its February 4, 2009 decision, the Office denied the claim because there was no medical evidence indicating that appellant's injury was the result of a lifting incident when he heard a pop. On reconsideration, it again noted that the issue was causal relationship. Counsel is under the mistaken impression that the Office did not find the August 6, 2008 employment incident established. The issue before the Board is not whether the incident was factually established, but whether appellant's diagnosed lumbar condition is causally related to the August 6, 2008 employment incident when he lifted a bag of circulars and either heard or felt a "pop" in the middle of his back where he had previously undergone spinal fusion.

The earliest report of record from Dr. Lauerman, dated April 23, 2008, included a diagnosis of spinal stenosis, thus demonstrating that appellant's lumbar stenosis predated the August 6, 2008 employment incident. Dr. Mathern and Dr. Rosenberg saw appellant on August 12 and 26, 2008, respectively, and both physicians identified a March 2000 date of injury. Neither doctor attributed appellant's then-current lumbar and/or lower extremity complaints to an August 6, 2008 lifting incident. Dr. Lauerman's September 17 and November 4, 2008 reports also did not identify an August 6, 2008 lifting incident as a cause or contributing factor to appellant's ongoing lumbar and left leg complaints. The September 17, 2008 report listed "March 29, 2008" as the date of injury and the November 4, 2008 report noted March 29, 2000 as the date of injury.[6] It was not until his January 26, 2010 report that Dr. Lauerman referenced an August 2008 injury. Dr. Lauerman indicated that appellant's spinal stenosis was "exacerbated by the fall at work in August 2008." The Office has not accepted, nor does the record establish, that appellant fell at work on August 6, 2008.[7] As noted, the current claim is for an injury resulting from an August 6, 2008 employment-related lifting incident. Dr. Lauerman claimed to have been aware of the "particulars of [appellant's] work injury on [August 6, 2008], when he was lifting a bag of circulars and felt and heard a pop in his back." He further stated that this injury "would [likely] cause, and I believe did cause, an aggravation of [appellant's] spinal injuries and condition." Counsel believes this report should suffice for purposes of establishing entitlement under the Act.

The Board disagrees with counsel's assessment regarding the sufficiency of Dr. Lauerman's latest report. According to Dr. Lauerman, appellant aggravated his preexisting lumbar stenosis when he fell at work in August 2008 and also when he lifted a bag of circulars on August 6, 2008. He failed to explain how either or both August 2008 incidents purportedly exacerbated appellant's underlying lumbar condition. An opinion on causal relationship must be

[5] Counsel alternatively argued that appellant's current lumbar stenosis was a consequence of the March 29, 2000 employment injury under claim File No. xxxxxx488. As the Board does not have jurisdiction over claim File No. xxxxxx488, this latter argument will not be addressed with respect to the current appeal.

[6] Counsel noted that the Office did not reference the September 17, 2008 report in either of its decisions.

[7] Dr. Rosenberg noted that appellant had fallen at work on August 4, 2008. However, the current claim was not filed as a result of an alleged August 4, 2008 fall at work.

based on a complete factual and medical background.[8] 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.[9] Dr. Lauerman's January 26, 2010 report is insufficient to satisfy appellant's burden of proof because Dr. Lauerman failed to explain how the August 6, 2008 lifting incident exacerbated appellant's preexisting lumbar stenosis. Consequently, the medical evidence of record is insufficient to demonstrate a causal relationship between appellant's diagnosed lumbar condition and his accepted August 6, 2008 employment incident.

CONCLUSION

Appellant failed to establish that he sustained an injury in the performance of duty on August 6, 2008.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[8] *Victor J. Woodhams*, *supra* note 4.

[9] *Id.*