United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
	)	**Docket No. 11-2109**
and	)	**Issued: July 2, 2012**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 21, 2011 appellant filed a timely appeal from the September 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim. 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 that he sustained a traumatic injury in the performance of duty on February 3, 2011.

FACTUAL HISTORY

On February 16, 2011 appellant, then a 55-year-old sales and distribution employee, filed a traumatic injury claim alleging that on February 3, 2011 he sustained injury to his left shoulder when his finger became stuck in a collection box. He did not stop work. The employing

[1] 5 U.S.C. § 8101 *et seq.*

establishment controverted the claim, asserting that appellant had a preexisting nonemployment-related shoulder injury.

Appellant submitted a position description and a February 4, 2011 accident report. An August 3, 2010 report from Dr. Val Irion, an orthopedic surgeon, noted treating appellant for follow up of a left arthroscopic rotator cuff repair of April 5, 2010. An October 5, 2010 report from Dr. Karen Seale, a Board-certified orthopedic surgeon, advised that appellant was unable to work full duty with regard to his 70-pound lifting requirement.

In a February 24, 2011 treatment note, Dr. Susan Ebel, Board-certified in emergency medicine, noted that appellant was at work on February 3, 2011 when he was trying to open a lock with a screwdriver. The screwdriver slipped out and the lock caught his right hand and he used his left arm to pull his hand away from the lock. Appellant complained of left shoulder pain. Dr. Ebel noted appellant's prior history of rotator cuff surgery on the same shoulder. She examined appellant and indicated that he had a left shoulder injury. Dr. Ebel advised that appellant could work light duty.

In March 2, 2011 treatment notes, Dr. Keith Cooper, Board-certified in family medicine, noted that appellant had injured his left shoulder, the same one on which he had rotator cuff surgery two years earlier. He diagnosed shoulder region disease and rotator cuff disease. In a March 21, 2011 report, Dr. Victor Vargas, Board-certified in family medicine, diagnosed shoulder pain and subacromial impingement with bursitis. He advised that appellant had a history of prior left shoulder surgery. Dr. Vargas noted that this was a claim for a "work-related injury." He indicated that appellant was working full duty.

By letter dated April 12, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion explaining how the reported work incident caused or aggravated a left shoulder injury was crucial to his claim.

OWCP received a March 17, 2011 left shoulder arthrogram from Dr. Alan Udouj, a Board-certified diagnostic radiologist, who noted posterior changes in the left shoulder, with no evidence of rotator cuff tear. Dr. Udouj stated that the mild irregularity of the articular surface was likely related to scar tissue. An April 7, 2011 x-ray of the cervical spine read by Dr. Gary M. Guebert, a chiropractor, revealed no evidence of acute fracture or dislocation, postural changes consistent with muscle spasm and mild-to-moderate degenerative disc disease at C5-6 and C6-7.

In treatment notes dated March 25 to April 19, 2011, Dr. Melanie Spann, a chiropractor, prescribed restrictions of no lifting more than 10 pounds, and no bending, reaching or twisting due to a neck and mid-back injury. In an April 21, 2011 report, she diagnosed rib subluxation at T3 on the left, Grade 1 strain/sprain of the left rotator cuff muscles, Grade 2 strain/sprain of the cervical spine complicated by disc degeneration and vertebral subluxation complex. Dr. Spann advised that, when appellant "got his right hand stuck in the collection box, which was frozen up, and he used his left hand/arm to quickly free his right hand, this caused the rib subluxation and the strain/sprain to his neck and left shoulder. The injury and strain to his neck aggravated the degenerative disc in the cervical spine. The mid-back pain is produced from the rib subluxation and possibly from referred pain from the disc degeneration." An attached treatment record

indicated that cervical spine x-rays were taken on March 29, 2011 and thoracic spine x-rays on May 4, 2011. No x-ray findings were listed. She also placed appellant off work on May 11 through 18, 2011, due to neck and mid-back injury and continued to treat appellant.

In an April 11, 2011 report, Dr. Vargas advised that appellant was seen for follow up of left shoulder pain. He noted that his left shoulder pain and subacromial impingement with bursitis was improving. Dr. Vargas determined that appellant had muscle spasm in the left parascapular musculature and recommended his return to full duty without restrictions.

By decision dated May 18, 2011, OWCP denied appellant's claim on the grounds that he did not establish an injury as alleged. It found the medical evidence insufficient to establish an injury.

Appellant requested reconsideration on June 7, 2011. He submitted a May 13, 2011 thoracic spine x-ray report from Dr. Guebert, who found no evidence of acute fracture or dislocation. Postural changes consistent with muscle spasm as well as mild degenerative spondylosis were noted at T10 and T12. In a May 12, 2011 attending physician's report, Dr. Spann indicated that she believed appellant's condition was caused or aggravated by employment activity. She placed appellant off work from May 23, 2011 and noted work restrictions. A May 20, 2011 disability certificate from Dr. Spann placed appellant off work until May 30, 2011. On May 27, 2011 Dr. Spann indicated that appellant could return to work without restrictions.

In a May 27, 2011 addendum, Dr. Vargas noted that appellant "claimed symptomatology of left shoulder pain subsequently to injury during work." He advised that, when appellant was first seen, the major area of pain was around the parascapular musculature with examination suggesting subacromial impingement/bursitis. Dr. Vargas opined that the mechanism of injury that appellant related to him was "most likely consistent with the diagnosis above mentioned." He noted that appellant had a preexisting condition with prior surgery at the rotator cuff and that this "might just be an aggravation of subacromial pathology with rotator cuff tendinosis and associated muscle strain."

In a May 31, 2011 report, Dr. Spann noted that appellant related that on February 3, 2011 his right hand got caught in a collection box and he used his left arm to forcefully and quickly free his right hand for fear of his right hand being cut off. She noted that the situation created mid-back and shoulder pain, which was appellant's chief complaint. Dr. Spann diagnosed a rib subluxation at T3 on the left, a Grade 1 strain/sprain of the left rotator cuff muscles and a Grade 2 strain/sprain of the cervical spine which was complicated by disc degeneration and vertebral subluxation complex. She explained that she was responding to the comment that she did not provide a diagnosis of spinal subluxation as supported by x-ray. Dr. Spann explained that the diagnosis codes included a spinal subluxation and she was submitting a thoracic spine report to support this claim. She noted that a fracture or dislocation would be outside of her scope of practice as a chiropractor. The radiology report indicated that there was a left convexity of the thoracic spine which caused a mechanical effect on the facet joints on the concave side. Dr. Spann opined that this was a spinal subluxation and possible soft tissue injury could not be excluded on plain film imaging.

In a June 7, 2011 report, Dr. Guebert noted that a repeat lateral thoracic exposure was performed on May 31, 2001. He advised that this view demonstrated that thoracic kyphosis was decreased and vertebral body heights were maintained. Dr. Guebert noted that intervertebral alignment was anatomic in the neutral position, disc spacing was normal throughout and the intervertebral foramina were patent. He determined that there was no evidence of acute fracture or dislocation. Dr. Guebert advised that there were postural subluxations as previously noted.

By decision dated September 9, 2011, OWCP denied modification of its May 18, 2011 decision. It noted that the x-ray of the thoracic spine was taken months after the date of the alleged injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA and that an injury was sustained in the performance of duty.[2] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[6]

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[2] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[3] *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

[5] *Id*.

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

Appellant claimed a left shoulder injury when his finger became stuck in a collection box while working. There is no dispute that this incident occurred as alleged. The Board finds that his finger became stuck in a collection box as alleged.

The medical evidence of record is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that the activity of having his finger stuck in the collection box caused a personal injury on February 3, 2011. The medical evidence contains no firm diagnosis, no rationale[7] and no explanation of the mechanism of injury regarding the employment incident on February 3, 2011.

Dr. Vargas diagnosed shoulder pain and subacromial impingement with bursitis. He noted appellant's history of a prior surgery to the left shoulder and opined that this was a claim for a "work[-]related injury." The Board notes that Dr. Vargas did not explain how he arrived at this conclusion that his was a work-related injury. Without any reasoning to support the conclusion, this report is insufficient to meet appellant's burden of proof.[8] On May 27, 2011 Dr. Vargas opined that the mechanism of injury that the patient related to him was "most likely consistent with the diagnosis above mentioned." He noted that appellant had a preexisting left shoulder condition with prior surgery at the rotator cuff and that this "might just be an aggravation of subacromial pathology with rotator cuff tendinosis and associated muscle strain." The Board has held that an opinion which is speculative in nature is of diminished probative value in determining the issue of causal relationship.[9]

As defined under FECA, a "physician" includes a chiropractor only to the extent that her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[10] On May 31, 2011 Dr. Spann provided a diagnosis of spinal subluxation, noting that this was based on x-ray and provided a thoracic spine x-ray report to support her diagnosis. Thus, she is a physician under FECA. In an April 21, 2011 report, Dr. Spann diagnosed rib subluxation at T3 and vertebral subluxation complex. She explained that when appellant "got his right hand stuck in the collection box, which was frozen up," he used his left hand to free his right hand. Dr. Spann opined that this action caused the rib subluxation and the strain/sprain to his neck and left shoulder, which aggravated the degenerative disc in the cervical spine. She stated that "the mid-back pain is produced from the rib subluxation and possibly from referred pain from the disc degeneration." This report is insufficient to establish the claim as Dr. Spann did not adequately explain the

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[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *See George Randolph Taylor*, *id.*

[9] *Arthur P. Vliet,* 31 ECAB 366 (1979).

[10] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

process by which this incident caused or aggravated a spinal subluxation.[11] On May 31, 2011 Dr. Spann opined that the February 3, 2011 incident caused appellant's mid-back and shoulder pain and offered diagnoses that included a thoracic spine subluxation. She did not provide sufficient rationale to explain how the work incident caused or aggravated the subluxation or explain her opinion in light of earlier x-rays in which a spinal subluxation was not diagnosed.[12] In her May 12, 2011 attending physician's report, Dr. Spann indicated that she believed appellant's condition was caused or aggravated by an employment activity, but she did not explain the reasons why a spinal subluxation was caused or aggravated by the February 3, 2011 incident and this report is of limited probative value. Other reports and treatment records from Dr. Spann are insufficient to establish the claim as they did not offer any specific opinion as how the February 3, 2011 work incident caused or aggravated a spinal subluxation.

Treatment notes dated February 24, 2011 from Dr. Ebel noted appellant's history of injury at work on February 3, 2011. Dr. Ebel examined appellant and indicated that he had a left shoulder injury and prescribed light duty. However, she did not provide a specific diagnosis or provide an opinion addressing whether any diagnosed condition was caused or aggravated by the incident on February 3, 2011. Medical evidence which 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] Likewise, Dr. Cooper, in a March 2, 2011 treatment note, stated that appellant had injured his left shoulder two years earlier and that he had injured the same shoulder but he did not offer a specific opinion as to whether the diagnosed conditions were caused or aggravated by the February 3, 2011 incident. This is especially important in light of the previous shoulder injury. Other medical reports of record are insufficient as they either predate the February 3, 2011 incident or do not specifically address how that incident caused or aggravated a diagnosed medical condition.

Because the medical reports submitted by appellant do not sufficiently address how the February 3, 2011 incident caused or aggravated a shoulder or back injury, these reports are of limited probative value[14] and are insufficient to establish that the February 3, 2011 employment incident caused or aggravated a specific injury.

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[11] To the extent that Dr. Spann diagnosed conditions beyond the spine and supported that these conditions were caused or aggravated by the work incident, her opinion is of no probative value. *See George E. Williams*, 44 ECAB 530, 533 (1993) (the Board held that chiropractic opinions are of no probative value on conditions beyond the spine).

[12] The Board notes that OWCP improperly found in its September 9, 2011 decision that the thoracic spine x-ray referenced by Dr. Spann had no probative value as it was taken months after the date of the claimed injury and cited *Mary J. Briggs*, 37 ECAB 578 (1986) for this proposition. However, in *Linda L. Mendenhall*, 41 ECAB 532 (1990), the Board explained that it did not wish to impose an inflexible time limitation within which physicians must conduct diagnostic testing and overruled *Briggs* insofar as *Briggs* found that diagnostic tests not performed within a short time following an employment injury were *per se* entitled to little probative value. Instead, the Board found that a delay in diagnostic testing may affect the weight of the evidence. *See also Elizabeth S. Richardson*, 42 ECAB 346 (1991).

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

[14] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

On appeal, appellant argues that his physicians provided medical evidence which supports that his injury was work related. However, as explained, the medical evidence submitted is insufficient to meet appellant's burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2012
Washington, DC

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

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

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