United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 13-308**
	)	**Issued: April 1, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 21, 2012 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs (OWCP) dated November 6, 2012. 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 sustained a lower back injury in the performance of duty on September 7, 2010.

FACTUAL HISTORY

On September 15, 2010 appellant, then a 55-year-old supervisor, filed a claim for benefits, alleging that he sustained a ruptured disc at L4-5 while lifting mail containers on September 7, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

In a report dated October 7, 2010, Dr. Sameh Yonan, Board-certified in pain medicine, stated that appellant had been off work since September 7, 2010 due to back and leg pain. He advised that appellant had increased low back pain radiating down his left buttocks and leg and numbness in his right foot.

By letter to appellant dated February 1, 2011, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to the alleged September 7, 2010 work incident.

In a report dated February 25, 2011, Dr. Randy B. Reed, a chiropractor, stated that he began treating appellant on June 1, 2010 for complaints of severe low back pain and pain with numbness and tingling radiating down his left leg. Appellant had been doing repetitive lifting at work and began experiencing increasing, severe pain in his back on May 28, 2010. Dr. Reed stated that the pain had progressed to the extent that he could barely walk at the time of his initial visit. Appellant attempted to return to work after being off and injured it again at work on September 7, 2010. Dr. Reed determined that appellant had sustained a severe disc injury along with lumbar misalignments; *i.e.*, subluxation, with fixations. He stated that appellant underwent a magnetic resonance imaging (MRI) scan on June 10, 2010 which confirmed that he had a lumbar disc protrusion into the lateral recess of L4-5. Dr. Reed opined based on appellant's history, examination findings and MRI scan results that this injury was directly caused by the repetitive lifting at work.

In a February 25, 2011 report, Dr. Anthony F. Berardino, a chiropractor, stated that appellant had complaints of lumbar pain radiating to the left leg, thigh and buttocks. He related that appellant alleged that he sustained an injury on May 28, 2010 while loading mail for the letter carriers. This job required constant stooping and lifting mail sacks and buckets. Appellant underwent an MRI scan, which showed bulging discs in his lumbar spine, most prominently at L4-5. He was treated with epidural shots and medication.

In light of his improved condition, appellant attempted to return to work on September 7, 2010; however, the shooting pain returned and increased to the extent that he could not continue his work. Dr. Berardino stated that appellant's job with the employing establishment required constant bending and lifting of mail sacks which occasionally weighed more than 50 pounds. He advised that this persistent, constant stress to the spine could cause the microfibers in the disc to asymptomatically tear until a significant disc bulge produced the signs and symptoms appellant was currently experiencing. In light of these facts Dr. Berardino opined that appellant's signs and symptoms were causally related to the May 28, 2010 work incident.

On March 3, 2011 OWCP received progress notes from Dr. Yonan pertaining to an evaluation of June 8, 2010. This report diagnosed appellant with displacement of the lumbar intervertebral disc without myelopathy, thoracic or lumbosacral neuritis or radiuculitis and degeneration of the lumbar or lumbosacral intervertebral disc.

By decision dated March 18, 2011, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained a lower back injury in the performance of duty on September 7, 2010.

By letter dated April 1, 2011, appellant, through counsel, requested an oral hearing, which was held on June 27, 2011.

By decision dated August 5, 2011, OWCP's hearing representative affirmed the March 18, 2011 decision.

By letter dated March 15, 2012, counsel requested reconsideration. Appellant resubmitted the February 25, 2011 chiropractic reports from Dr. Reed and Dr. Berardino.[2] He did not submit any new medical evidence with his request.

By decision dated November 6, 2012, OWCP denied modification of the prior decision. It noted that appellant's March 15, 2012 request for reconsideration had been overlooked, therefore the case was given a merit review to preserve his appeal rights.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing that 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, that an 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.[4] 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.[5]

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. First, 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.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

[2] This copy of Dr. Berardino only contains the first page of the report.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[7] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(e).

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8]

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 his employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

It is uncontested that appellant experienced low back pain while lifting mail containers on September 7, 2010. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[10] Appellant has not submitted rationalized, probative medical evidence to establish that the September 7, 2010 employment incident caused a personal injury.

In support of his claim, appellant submitted June 8 and October 7, 2010 reports from Dr. Yonan, who advised that appellant had been off work since September 7, 2010 due to low back and leg pain; the pain had increased and was radiating down his left buttocks and leg. He also had numbness in his right foot. Dr. Yonan diagnosed displacement of the lumbar intervertebral disc without myelopathy, thoracic or lumbosacral neuritis or radiculitis and degeneration of lumbar or lumbosacral intervertebral disc. He, however, did not provide a history of injury. Dr. Yonan's reports did not contain a probative, rationalized opinion explaining how appellant's September 7, 2010 work incident caused any of these diagnosed conditions. The medical report from him did not explain how, medically, appellant would have sustained a lower back injury while lifting mail containers on September 7, 2010. Thus Dr. Yonan's opinion regarding causal relationship is of limited probative value.[11] He did not adequately describe appellant's work incident or explain how the incident would have been competent to cause the claimed condition. There is, therefore, no rationalized medical evidence in the record that appellant's low back injury was work related. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of September 7, 2010 caused or contributed to the claimed lower back injury.

Appellant also submitted February 25, 2011 chiropractic reports from Dr. Reed and Dr. Berardino. While these reports noted complaints of severe low back pain and numbness, and diagnosed lumbar disc protrusion at L4-5 based on MRI scan results, they do not constitute medical evidence pursuant to section 8101(2) because they do not provide a diagnosis of subluxation based on x-ray results. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[9] *Id.*

[10] *Supra* note 6.

[11] *William C. Thomas*, 45 ECAB 591 (1994).

of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.[12]

The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[13] Appellant did not provide a report from a physician which presented a diagnosis of his condition and sufficiently address how this condition was causally related to the September 7, 2010 work incident.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the September 7, 2010 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a lower back injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

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 failed to establish that he sustained a lower back injury in the performance of duty on September 7, 2010.

[12] 5 U.S.C. § 8101 (2); *see also Paul Foster*, 56 ECAB 208 (2004).

[13] *See Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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