United States Department of Labor
Employees' Compensation Appeals Board

O.M., Appellant	)	
and	)	**Docket No. 13-13**
	)	**Issued: February 22, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, San Juan, PR, 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 October 1, 2012 appellant filed a timely appeal from the September 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying 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 an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On June 19, 2012 appellant, then a 39-year-old health technician, filed an occupational disease claim alleging that he sustained degenerative disc disease in the performance of duty. He first became aware of his condition and its relation to his work on October 1, 2006. Appellant stopped work on February 13, 2012 and returned on February 17, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

By letter dated January 26, 2012, OWCP advised appellant that additional factual and medical evidence was needed.

In a statement dated May 24, 2012, appellant described his symptoms which included leg pain and numbness in the lower back, both legs, neck and hands which occurred over a period of time performing his duties. He listed standing for periods of over 12 hours during surgery shifts, and transporting patients in and out of the operating room, to their beds or the parking lot in wheelchairs. Appellant explained that the lack of breaks, bending and twisting during open heart surgery, holding retractors and long shifts contributed to his condition. He noted that on one occasion he fell because his legs failed to hold him after more than eight hours of continuous standing and a subsequent surgery.

In a May 29, 2012 statement, Ileana Fernandez, a nurse manager, noted that appellant never complained of low back pain or demonstrated any difficulty performing his duties. She advised that on February 13, 2012 appellant worked his tour without complaint from 9:30 hours to 18:00 hours. Ms. Fernandez explained that he was activated at 22:30 hours and came to work with low back pain. She advised that appellant was off until February 17, 2012 and returned to work with no physical limitations.

In a May 15, 2012 form report, Dr. Mari T. Garcia Rondon, an osteopath specializing in neurology and pain medicine, advised that appellant could work for eight hours a day with restrictions. Appellant was evaluated due to leg pain, leg paresthesias and low back pain. Dr. Garcia Rondon indicated that appellant had lumbar discogenic disease at L5-S1, low back pain, shortening of hamstring muscles, myofascial pain and deficiency of B12 levels. In a separate treatment note, she noted that appellant was evaluated for low back pain. Dr. Garcia Rondon diagnosed low back pain and lumbago and advised that appellant's back pain was exacerbated by prolonged standing in his job as a surgical technician. Neurological examination showed normal motor strength in the upper extremity and lower extremity. Dr. Garcia Rondon had decreased pinprick sense in the distal portion of the legs.

In a February 14, 2012 emergency room report, Dr. Graciela L. Ortega, an internist, advised that appellant presented with leg and buttock pain and was diagnosed with sciatic neuropathy. She noted that appellant stood in his job for more than six hours which caused an exacerbation of his symptoms. In a May 24, 2012 work restriction form, Dr. Cesar C. Gomez, a physiatrist, provided work restrictions. OWCP also received laboratory and diagnostic testing reports and nursing records.

By decision dated September 17, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish that his back condition was causally related to the accepted work activities.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his 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.[2] 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.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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.[4]

ANALYSIS

The evidence establishes that appellant claimed a lumbar condition due to work activities such as standing, bending and twisting during surgery and transporting patients. Appellant submitted insufficient medical evidence to establish that his lumbar condition was caused or aggravated by these activities or other factors of his federal employment.

On May 15, 2012 Dr. Garcia Rondon noted that appellant had lumbar discogenic disease at L5-S1, low back pain, shortening of hamstring muscles, myofascial pain and lumbago. She stated generally that appellant's back pain was exacerbated by prolonged standing and his position in his job. In a February 14, 2012 emergency room report, Dr. Ortega diagnosed sciatic neuropathy and noted that appellant stayed standing at his job for more than six hours which caused the exacerbation of the symptoms. While both physicians give some limited support for causal relationship, neither physician adequately explained how standing or other job duties caused or aggravated his back condition.[5] Neither physician provided a full medical history of appellant's back condition or treatment. As noted, part of appellant's burden of proof includes the submission of rationalized medical evidence based on a full and accurate history supporting causal relationship between diagnosed conditions and employment factors.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[4] *Id.*

[5] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

Other medical reports such as work restriction reports and reports of testing are insufficient to establish the claim because these reports did not specifically address whether appellant's job duties caused or aggravated a diagnosed condition. 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.[6] The nursing records are also insufficient to establish the claim. Section 8101(2) of FECA[7] provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Health care providers such as nurses are not physicians under FECA. Thus, a nurse is not competent to give a medical opinion.[8]

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.[9] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is insufficient medical evidence explaining how appellant's employment duties caused or aggravated his back condition. Appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.

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 causally related to factors of his federal employment.

[6] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

[7] *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[8] *See Bertha L. Arnold*, 38 ECAB 282 (1986).

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

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2013
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