United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
and	)	**Docket No. 16-0248**
	)	**Issued: April 14, 2016**
DEPARTMENT OF THE AIR FORCE, RANDOLPH AIR FORCE BASE, Bexar, TX, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 25, 2015 appellant, through counsel, filed a timely appeal from an August 31, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met his burden of proof to establish a traumatic injury in the performance of duty.

FACTUAL HISTORY

On November 27, 2012 appellant then a 43-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1), alleging that on November 13, 2012, while moving his

[1] 5 U.S.C. § 8101 *et seq.*

belongings to another workstation, he injured his upper back, lower back, legs, and neck. He stopped work on November 16, 2012. The employing establishment controverted appellant's claim.

By letter dated December 4, 2012, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

In a statement dated November 26, 2012, appellant indicated that on November 13, 2012 he was moving his belongings to another department, and when he bent over to pick up a box, it slipped, and he jerked to keep the box from falling, and he felt pain in his low back and neck. He noted the pain radiated into his ankle.

Appellant submitted a September 14, 2012 work status form from a physician assistant who noted that appellant's lumbar spine had been treated and that he could return to work September 14, 2012 with restrictions.

In a November 21, 2012 report, Dr. James Key, a Board-certified orthopedist, treated appellant for neck pain. Appellant reported working as a mechanic and on November 13, 2012 he moved a box to a cubicle and felt neck and low back pain which radiated into both legs. Dr. Key noted appellant's history was significant for two prior low back surgeries on December 21, 2010 and February 28, 2012. On examination, findings included tenderness to palpation of the neck and low back, muscle spasms, limited range of motion of the lumbar and cervical spine, and positive straight leg test. Dr. Key diagnosed lumbar disc displacement, lumbar sprain and strain, and neck sprain and strain. He opined that after reviewing appellant's job duties and based on his physical examination, appellant sustained an on-the-job injury directly related to the performance of his job duties. In a work status report dated November 28, 2012, Dr. Key noted that appellant was under his care for a work-related injury which occurred on November 21, 2012. In duty status reports dated November 21 and December 10, 2012, he noted that appellant sustained a cervical and lumbar spine injury due to a lifting injury/incident and was disabled from work.

In a January 17, 2013 decision, OWCP denied appellant's claim for a traumatic injury finding the evidence did not support that the claimed events occurred as alleged.

On February 19, 2013 appellant requested reconsideration. His representative provided a statement addressing how the claimed injury occurred.

Appellant also provided additional medical evidence. In letters of disability dated December 10, 2012 and January 29, 2013, Dr. Key noted that appellant worked as a mechanic and on November 13, 2012 he was asked to move a box and felt neck and low back pain which radiated into both legs. He reiterated that appellant's history was significant for two low back surgeries on December 21, 2010 and February 28, 2012. Dr. Key recommended that appellant be off work due to his clinical presentation of increasing pain and dysfunction and difficulties with activities of daily living.

In January 29 and February 25, 2013 reports, Dr. Key treated appellant for neck and low back pain. He noted appellant's employment as a mechanic and that on November 13, 2012

appellant moved a box and felt a sudden discomfort to his neck and low back, which radiated into his legs. Dr. Key diagnosed lumbar and cervical disc displacement, lumbar sprain and strain, and neck sprain and strain. He again opined that, after reviewing appellant's job duties and his physical examination, appellant sustained an injury directly related to the performance of his job duties.

Appellant submitted a duty status report from Dr. Rojelio E. Solano, a chiropractor, dated April 26, 2013. Dr. Solano noted that he previously had a rupture and fusion at L5-S1 and that he was disabled from work. In reports dated April 29 to June 11, 2013, he noted that appellant complained of neck and low back pain which radiates into his hands and feet. Dr. Solano diagnosed lumbar fusion reinjury, cervical disc injury, muscle spasm, and inflammation. Appellant was treated by Dr. Ray Altamirano, Board-certified in family medicine, from April 26 to May 24, 2013 for low back pain after a lifting injury at work on November 13, 2012. Dr. Altamirano diagnosed L4-S1 back injury. Appellant also submitted physical therapy records.[2]

In a decision dated June 19, 2013, OWCP denied appellant's claim, as modified. It found that, although the claimed incident was accepted, it denied the claim because the medical evidence failed to establish that his diagnosed conditions were causally related to the accepted incident.

Appellant requested reconsideration. He submitted a July 22, 2013 MRI scan of the cervical spine which revealed posterior central, paracentral disc protrusion with thecal sac impingement, left posterolateral disc bulge, canal stenosis at C3-4, posterior central, paracentral disc protrusion with thecal sac impingement with canal narrowing at C4-5, C5-6 and C6-7, and posterior central bulge at C7-T1. A lumbar spine MRI scan of the same date showed posterior central, paracentral disc abnormality compatible with protrusion/disc osteophyte with thecal sac impingement and spinal stenosis, left posterolateral disc bulge, mild spinal stenosis at L3-4, posterior central, left posterolateral disc bulge, and postsurgical changes at L6-S1.

By report dated August 14, 2013, Dr. Leonel Reyes, a Board-certified family practitioner, noted seeing appellant for a November 13, 2012 traumatic injury to his neck and low back. Appellant reported feeling pain in his neck and lower back when he lifted a box on November 13, 2012 as he was moving his personal belongings from one cubicle to another. Dr. Reyes opined that appellant's cervical herniated disc, cervical radiculopathy, lumbar herniated disc, and lumbar radiculopathy were a direct result of the traumatic injury he sustained

[2] The medical evidence submitted also included diagnostic test results. A November 19, 2012 lumbar spine computerized tomography scan showed significant multilevel disc disease at L3-4 where a central disc bulge with osteophyte resulted in central spinal stenosis with impingement on the L4 nerve roots, and anterior interbody fusion at L5-S1 with bilateral foraminal crowding but no significant central spinal stenosis. A January 17, 2013 cervical spine x-ray reflected moderate spondylosis change, cervical muscle spasms, and atlantoaxial osteoarthritic change. A January 17, 2013 lumbar spine x-ray revealed completed fusion at L5-S1 with residual scoliosis, mild spondylosis change and mobility at four disc levels. A January 17, 2013 magnetic resonance imaging (MRI) scan of the cervical spine showed moderate-to-severe spondylosis changes with disc protrusion/herniations and osteophyte formation at C3 to 7, uncovertebral and facet hypertrophy with neural foraminal narrowing, and kyphosis suggesting anterior disc height loss. A January 17, 2013 lumbar MRI scan dated revealed completed fusion at L5-S1 with scarring at the nerve root and disc protrusion/herniations at L3-4 without spinal stenosis.

on November 13, 2012 when he lifted the box. He noted that appellant had a previous back injury while in the service and underwent lumbar surgeries on December 21, 2010 and February 28, 2012. Dr. Reyes noted that appellant was subsequently released to full duty with no restrictions. He opined that appellant's old injury had no relevance to the new traumatic injury he sustained on November 13, 2012 when lifting a box. Dr. Reyes noted that the new incident aggravated appellant's preexisting back condition.

In a decision dated November 1, 2013, OWCP denied modification of the decision dated June 19, 2013.

Appellant again requested reconsideration on November 27, 2013. In a November 18, 2013 report, Dr. Reyes noted a history of injury and diagnosed cervical herniated disc, cervical radiculitis, lumbar herniated disc, and lumbar radiculitis. He opined that appellant's cervical disc herniation, cervical radiculopathy, lumbar herniated disc, and lumbar radiculopathy were a direct result of the November 13, 2012 traumatic injury he sustained when he lifted a box of his belongings at work. Dr. Reyes noted that appellant had previous injury to his back while in the service and underwent lumbar surgeries on December 21, 2010 and February 28, 2012. He clarified appellant's work status after the lumbar surgeries and indicated that appellant had been under restrictions ever since the last surgery in 2012.[3] Dr. Reyes opined that appellant's old injury had no relevance to the new November 13, 2012 injury. He opined that the new incident aggravated appellant's preexisting back condition and was a new injury.

In a decision dated February 21, 2014, OWCP denied modification.

On April 17, 2014 appellant again requested reconsideration. He submitted an April 4, 2014 report from Dr. Reyes which provided clarification of the mechanism of injury. Appellant reported that on November 13, 2012 he was collecting his personal belongings in a box to move to another cubicle and was unplugging the electrical equipment and hit his head on the bottom of the desk. He reported the weight of the objects in the box was approximately 10 pounds and, as he went to lift the box, he jerked to the side to keep objects from falling from the box and had low back pain which radiated to his legs. Dr. Reyes opined that appellant's cervical disc herniation, cervical radiculopathy, lumbar herniated disc, and lumbar radiculopathy were a direct result of the November 13, 2012 traumatic injury when he hit his head at the bottom of the desk. He noted appellant's previous service-related injury and lumbar surgeries and that he had subsequently been released to full duty with no restrictions. Dr. Reyes reiterated that appellant's old injury had no relevance to the November 13, 2012 new injury.

In a decision dated July 16, 2014, OWCP again denied the claim and found that the history provided by Dr. Reyes in his April 4, 2014 report was not consistent with the history previously provided by appellant.

[3] Appellant provided a February 28, 2012 operative report from Dr. Frank Kuwamura, a Board-certified orthopedist, who performed an anterior lumbar interbody fusion at L5-S1 through retroperitoneal and diagnosed lumbar disc postlaminectomy syndrome at L5-S1 with bilateral leg radiculopathy, severe stenosis and degenerative disc disease at L5-S1.

On June 2, 2015 appellant's counsel again requested reconsideration. Appellant submitted a July 18, 2014 report from Dr. Ernesto Garza, a Board-certified general surgeon, who noted that Dr. Reyes was no longer practicing in that office and he was taking over appellant's care for his on-the-job injury and conditions due to that injury. Dr. Garza noted that appellant was undergoing conservative treatment with oral medications.

In a decision dated August 31, 2015, OWCP denied modification of the decision dated July 16, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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]

ANALYSIS

It is undisputed that, on November 13, 2012, appellant lifted a box of his belongings while moving from his cubicle to another workstation. However, he has not submitted sufficient medical evidence to establish that his diagnosed medical conditions were caused or aggravated by the November 13, 2012 incident.

In November 21, 2012 to February 25, 2013 reports, Dr. Key noted treating appellant for radiating neck and low back pain which began on November 13, 2012 when he lifted a box at work. He noted appellant's two prior back surgeries and diagnosed lumbar disc displacement,

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

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

lumbar sprain and strain, and neck sprain and strain. Dr. Key opined that after reviewing appellant's job duties and based on his examination, appellant sustained an on-the-job injury directly related to his job duties. In status reports dated November 21 and 28, and December 10, 2012, he noted treating appellant for a work-related lifting injury. In December 10, 2012 and January 29, 2013 letters of disability, Dr. Key noted that appellant related having neck and low back pain on November 13, 2012 after lifting a box of his belongings at work. Although he supported causal relationship, Dr. Key failed to provide sufficient medical rationale explaining the basis of his conclusion as to the causal relationship between appellant's diagnosed conditions and the workplace lifting incident.[7] Dr. Key did not explain how lifting a box would have caused or aggravated the diagnosed conditions or why the current lumbar and cervical conditions were not otherwise due to the preexisting lumbar surgeries or age-related degenerative changes. Therefore, the reports from Dr. Key are insufficient to meet appellant's burden of proof.[8]

Appellant was treated by Dr. Reyes on August 14, 2013 for a neck and low back injury which appellant reported occurred on November 13, 2012 while lifting and moving his belongings to another department. Dr. Reyes noted appellant's previous lumbar surgeries on December 21, 2010 and February 28, 2012 and advised that appellant was later released to full duty with no restrictions. He opined that appellant's old injury was unrelated to the new November 13, 2012 injury and noted that the new incident further aggravated his preexisting back condition. Dr. Reyes diagnosed cervical herniated disc, cervical radiculopathy, lumbar herniated disc, and lumbar radiculopathy as a direct result of the November 13, 2012 traumatic incident. On November 18, 2013 he reiterated his opinion on causal relationship, but clarified that, since his 2012 surgery, appellant had work restrictions. Dr. Reyes still maintained that appellant's old injury was not relevant to his current condition. On April 4, 2014 he provided clarification of the mechanism of injury, noting that, in addition to lifting a box of his belongings on November 13, 2012, appellant also hit his head on the bottom of a desk after he unplugged electrical equipment. Dr. Reyes opined that appellant's diagnosed cervical and lumbar conditions were a direct result of the traumatic injury he sustained on November 13, 2012 when he hit his head on the bottom of a desk. He also noted that appellant had been released to full duty following his 2010 and 2012 back surgeries.

Dr. Reyes' reports are insufficient to establish the claim as his reports were not based on an accurate or consistent history.[9] In his August 14, 2013 and April 4, 2014 reports, he stated that appellant was released to full duty after his February 2012 surgery while in his November 18, 2013 report, he acknowledged that appellant had restrictions after the most recent low back surgery. Furthermore, in his April 4, 2014 report, Dr. Reyes noted that appellant hit his head on the bottom of a desk. This history is markedly different than the history provided by appellant on the Form CA-1 and in a November 26, 2012 statement in which he reported gathering his belongings, but did not indicate that he hit his head. Thus, Dr. Reyes does not have

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[8] *See L.D.*, Docket No. 09-1503 issued April 15, (2010) (the 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] *See Frank Luis Rembisz*, 52 ECAB 147 (2000); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (medical opinions based upon an incomplete history have little probative value).

a consistent and accurate history. He attributes, at least in part, appellant's neck and back condition to having hit his head on desk, an event that is not supported by the evidence most contemporaneous with the claimed injury.[10] The need for an accurate history is particularly important where appellant has a preexisting condition in a part of the body for which he now claims compensation benefits. Dr. Reyes did not otherwise provide sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's cervical and lumbar conditions and the established factors of employment.[11] Consequently, his reports are of limited probative value and insufficient to establish the claim.

Appellant was treated by Dr. Altamirano on April 26, 2013 for low back pain after a lifting injury at work. Dr. Altamirano diagnosed L4-S1 back injury. In reports dated May 10 and 24, 2013, he noted that appellant sustained a low back reinjury on November 13, 2012. The Board finds that, although Dr. Altamirano noted that appellant was injured at work, he did not provide any medical rationale to explain the basis of his conclusory opinion regarding the causal relationship between appellant's lumbar and cervical conditions and the factors of employment.[12] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a July 18, 2014 report from Dr. Garza who noted that he was taking over the care of appellant for his on-the-job injury and his conditions due to the injury. This report is of limited probative value as Dr. Garza did not provide a history of injury[13] or specifically explain how the November 13, 2012 work incident caused or aggravated a diagnosed medical condition.

Appellant submitted reports from Dr. Solano, a chiropractor. However, these reports do not diagnose a spinal subluxation as demonstrated by x-ray.[14] Section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[15] As Dr. Solano did not diagnose a spinal subluxation based on x-ray, his reports cannot be considered as competent medical evidence under FECA.[16]

[10] The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence. *S.S.*, 59 ECAB 315 (2008).

[11] *See supra* note 7.

[12] *See T.M.*, Docket No. 08-975, issued February 6, 2009 (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[13] *Frank Luis Rembisz,* 52 ECAB 147 2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[14] Dr. Solano also did not address how the November 13, 2012 work incident caused a diagnosed medical condition.

[15] 5 U.S.C. § 8101(2).

[16] *See Susan M. Herman,* 35 ECAB 669 (1984).

Appellant submitted evidence from a physical therapist and a physician assistant. However, the Board has held that treatment notes signed by a physical therapist or physician assistant are of diminished probative value as these providers are not considered physicians under FECA.[17]

The remainder of the medical evidence is of limited probative value as it does not provide an opinion on the causal relationship between the November 13, 2012 work incident and appellant's diagnosed medical conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[18]

On appeal appellant's counsel asserts that OWCP improperly denied the claim and that the submitted medical evidence is sufficient evidence to establish that on November 13, 2012 appellant injured his lumbar and cervical spine when lifting a box and moving his belongings to another department. As noted above, the medical evidence is insufficient to establish that appellant's current diagnosed conditions were causally related to the employment incident. Appellant has not submitted a physician's report, based on an accurate history, which explains how the accepted work incident on November 13, 2012 caused or aggravated lumbar or cervical conditions.

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 did not meet his burden of proof to establish a traumatic injury in the performance of duty.

[17] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2).

[18] *A.D.*, 58 ECAB 149 (2006) (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).

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board