United States Department of Labor
Employees' Compensation Appeals Board

F.C., Appellant	)	
and	)	**Docket No. 16-0743**
	)	**Issued: November 21, 2016**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, Employer	)	

Appearances:
Chris Kannady, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 3, 2016 appellant, through counsel, filed a timely appeal of an October 8, 2015 merit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 a traumatic injury causally related to a June 24, 2014 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 24, 2014 appellant, then a 50-year-old aircraft engine mechanical work inspector, filed an occupational disease claim (Form CA-2) alleging that on June 24, 2014 he was performing a two-man lift with a ladder when his back began to hurt. He explained that he was lifting above his head over the side of a ladder as a coworker was lifting from the ground. Appellant indicated that in the last year the employing establishment had ladders that made them lean over a platform to reach an engine. He advised that he had back spasms. Appellant finished his shift, then was off work for two weeks, and missed work intermittently thereafter.

In an August 20, 2014 statement, the employing establishment questioned appellant's claim because he referred to the date of June 24, 2014 as the date his injury occurred while performing a two-man lift. The employing establishment also noted that he referred to using ladders in the past year when he had to lean over a platform. It noted that it was unclear whether appellant was injured on June 24, 2014 as a one-time incident or whether he was alleging an injury that occurred over the past year.

In August 22, 2014 letters, OWCP requested additional information from appellant and the employing establishment. It advised appellant that additional factual and medical evidence was needed. OWCP also explained that a physician's opinion explaining how the reported work incident caused or contributed to appellant's condition was crucial to his claim.

OWCP received treatment notes dating from June 30 to August 26, 2014 from Dr. W.J. Choe, an internist. In his June 30, 2014 treatment note, Dr. Choe advised that appellant had "injury to lower back and middle portion of the back while lifting a bundle of tubes at work on Tuesday morning." He advised that appellant had hypertension and diabetes as well as hyperlipidemia. Appellant related to Dr. Choe that he felt pain shortly after the lifting and was having difficulty with sleep because of the pain and spasms. In a July 3, 2014 note, Dr. Choe advised that appellant had recent back pain and radiation of the pain from lifting at work. He indicated that appellant was "50 percent improving on day three of treatment." Dr. Choe saw appellant on July 21, 2014 and related that appellant had a work-related history of persistent back pain. He noted slight improvement after pain medication and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine.[3] On August 12, 2014 Dr. Choe recommended no lifting more than 15 pounds and return to work. He examined appellant on August 26, 2014 and continued the weight restriction.

By decision dated November 21, 2014, OWCP denied appellant's claim as he did not establish an injury as alleged. It found that the evidence did not support that the injury or events occurred as described. OWCP further found that the medical evidence did not diagnose a medical condition causally related to the alleged "work injury or event."

On December 3 and 16, 2014 counsel requested a hearing, which was held before an OWCP hearing representative on August 6, 2015. At the hearing, he confirmed that appellant was claiming a traumatic injury.

[3] A July 29, 2014 MRI scan of the lumbar spine, read by Dr. Laura Young, a radiologist, revealed mild discogenic and spondylitic changes of the lumbar spine.

On January 29, 2015 the employing establishment's directorate of the civilian force integration controverted the claim based upon the opinion of Dr. Edward T. King, an employing establishment physician specializing in preventive and occupational medicine. In an accompanying undated report, Dr. King reviewed appellant's history and recommended denial of the claim for lumbar sprain or strain and any related diagnoses. He opined that appellant's condition was preexisting and there was no evidence that "there had been more than a minor temporary exacerbation caused by his duties" at the employing establishment. Dr. King requested a careful evaluation of the claim and indicated that appellant's symptoms and complaints did not coincide with his diagnostic results. In an attached July 21, 2014 employing establishment treatment record, he noted that appellant was in for a recheck of lower back pain which he started experiencing when he assisted a co-worker with lifting a hydraulic tube bundle on "June 25, 2014." Dr. King advised that appellant's back continued to bother him and that he had tightness and a constant ache across the lower back. He noted that when he laid on his back, the main area of pain was more on the right.

The employing establishment provided other treatment records from its medical facility. On July 7, 2014 Dr. Edmond Hooks, an employing establishment internist, noted that appellant presented to report a June 24, 2014 injury that occurred when he was on a ladder lifting above his head. Appellant reported that his middle and lower back began to hurt. He related that he thought he would be okay and finished his shift, but the next day his pain was much worse. Appellant reported the incident to his supervisor, but was told to see his private physician as he could not get an appointment at the employing establishment clinic that day. Dr. Hooks noted midline lumbar spine pain on palpation especially at L3-4. He restricted appellant to sedentary duty. On August 13, 2014 Dr. Hooks advised that appellant was in for a return-to-work slip after being off for two weeks with lower back pain. He diagnosed back pain. On September 30, 2014 Dr. Hooks noted that appellant remained on restrictions.

In September 4, 2014 treatment notes, Dr. Philip Beck, an employing establishment osteopath specializing in occupational medicine, noted that appellant was in for a recheck of right lower back pain, which initially began sometime in August 2014. He noted that appellant had a prior back injury in 2008, but appellant informed him that he had not had back problems in a long time. Dr. Beck noted that the patient was in for follow up of "nonjob chronic back discomfort." On December 12, 2014 he saw appellant for follow up of nonjob chronic low back pain.[4]

In an October 21, 2014 report, Dr. Scott C. Robertson, a Board-certified neurosurgeon, noted that he saw appellant for complaints of lower back pain extending to the right hip, buttocks, and leg with some right leg numbness. Appellant denies any left leg numbness at that time, but reported some intermittent back pain and spasms. Dr. Robertson advised that

[4] The employing establishment also submitted prior treatment records including a January 5, 2009 record from Dr. Hooks who noted that appellant was reporting a job-related injury to his low back that occurred on December 24, 2008 when he was removing mounts from an engine stand. Dr. Hooks diagnosed job-related lumbago and released appellant to work with restrictions on lifting more than 10 pounds. On January 20, 2009 a record from Dr. Pankaj Sheth, an employing establishment occupational medicine physician, noted seeing appellant for a recheck. Dr. Sheth advised that appellant was improving and released him to work with limitations on lifting, pulling, or carrying more than 20 pounds. On March 18, 2009 he released appellant to work without limitations.

appellant's job required a lot of heavy lifting and going up and down ladders. He related that appellant injured his back initially at work on June 24, 2014 and had progressive back pain since. Appellant rated the pain at a 7 to 8 out of 10 and it was worse with activities. Dr. Robertson also related that appellant indicated it felt "like a knot in his back." He examined appellant and provided findings which included slight decreased range of motion and pain with forward flexion and extension, positive straight leg raising on the right, some dorsiflexion and planter flexion weakness, and grossly intact sensation. Dr. Robertson diagnosed mild lumbar spondylosis and disc degeneration, primarily at L4-5. He recommended a right-sided L4-5 selective nerve block.

On February 10, 2015 appellant explained that the only other back injury he had occurred at work approximately eight years ago. He noted his medical history and explained that on June 24, 2014 he felt his back begin to bother him. Appellant advised that he and a coworker were installing a hydraulic tube bundle, which weighed approximately 50 pounds. He explained that they were performing a two-man lift and explained that it was an awkward installation. Appellant described the process and advised that he had to reach over his head to install the bundle. He indicated that afterwards his back bothered him. Appellant noted that on June 25, 2016, he soaked in a spa tub and used a heating pad. On June 26, 2014 he saw Dr. Choe for lower back spasms, and lower back sprain. Appellant related that his original diagnosis by Dr. Choe was lower back sprain.

Appellant provided additional medical evidence. In a March 19, 2015 report, Dr. Choe noted appellant's status, stated that he was being followed by a neurosurgeon, and advised that he had not been at work since his injury.

OWCP also received treatment notes dating form April 2 to June 10, 2015 from Dr. Qualls Stevens, an osteopath Board-certified in neurosurgery. Dr. Stevens diagnosed back pain, lumbar disc displacement, and degeneration and radiculopathy. On April 2, 2015 he advised that appellant had persistent symptoms despite conservative treatment. Dr. Stevens recommended surgery. In an April 27, 2015 operative report, he noted performing an anterior lumbar interbody fusion at L4-5. In other notes he reported appellant's postsurgical status.

On August 14, 2015 counsel submitted additional medical evidence from Dr. W.J. Choe. In an August 11, 2015 report, Dr. Choe advised that the report was being written to clarify appellant's work-related injury of June 24, 2014. He indicated that he had followed appellant's medical care for many years. Dr. Choe explained that appellant had no significant medical condition to speak of with regards to his back or any or any other orthopedic condition and no prior injury to lower back prior to June 2014. He related that appellant came to his office two days after the injury, but was not able to get any relief with over the counter medications. Dr. Choe explained that appellant was initially seen by Dr. Yung Choe, who prescribed Norco as well as soma and Mobic to control the symptoms. However, appellant returned four days later, at which time x-rays were taken, a Medrol dose pack was given, and he was taken off to work. Dr. W.J. Choe explained that the treatment and care plans were well documented. He opined that he could see "no evidence of this person sustaining injury in any way other than what has occurred at work lifting a heavy bundle of metal tubes. [Appellant's] condition is the direct result of [the] work injury. I think it will be very difficult to repudiate these findings."

By decision dated October 8, 2015, an OWCP hearing representative affirmed as modified the November 21, 2014 decision, finding that the June 24, 2014 incident occurred as alleged. However, he further found that there was insufficient evidence of record to establish causal relationship as there was no medical rationale to support causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 timely filed within the applicable time limitation period of FECA,[6] and that an injury was sustained in the performance of duty.[7] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.[9] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[10] 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.[11]

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.[12]

[5] 5 U.S.C. §§ 8101-8193.

[6] *Joe D. Cameron*, 41 ECAB 153 (1989).

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

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

[9] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

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

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

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

ANALYSIS

There is no dispute that on June 24, 2014 appellant sustained an injury to his lower back while lifting over his head at work. Therefore, the Board finds that the first component of fact of injury is established, namely, that the claimed incident occurred at work as alleged.

However, with regard to the medical evidence, the Board further finds that it is insufficiently rationalized to establish the second component of fact of injury. The medical evidence contains no explanation of how the specific employment incident on June 24, 2014 caused or aggravated an injury.[13] The Board notes that this is particularly important in light of the preexisting back condition.

Appellant submitted evidence from Dr. W.J. Choe. In his August 11, 2015 report, Dr. W.J. Choe advised that he was writing to clarify appellant's work-related injury of June 24, 2014. He indicated that he had followed appellant's medical care for many years and explained that appellant had no significant medical condition to speak of with regards to his back or any other orthopedic condition and no prior injury to lower back prior to June 2014. However, the Board notes that the record contains evidence of a prior back condition. While Dr. Choe opined that "appellant's condition was the direct result of work injury," his report is of limited probative value as it is based on an incomplete or inaccurate history.[14] In his June 30, 2014 treatment note, he advised that appellant was "with injury to lower back and middle portion of the back while lifting a bundle of tubes at work on Tuesday morning." Dr. Choe indicated that appellant felt pain shortly after the lifting and was having difficulty with sleep because of the pain and spasms. In a July 3, 2014 note, he explained that appellant had recent back pain and radiation of the pain from lifting at work, but did not offer any opinion on causal relationship. Dr. Choe saw appellant on July 21, 2014 and related that appellant had a work-related history of persistent back pain. He did not explain how he arrived at this conclusion. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[15] In none of these reports did Dr. Choe provide an opinion, based on an accurate history, in which he provides medical rationale explaining why the June 24, 2014 work incident caused or contributed to a diagnosed medical condition. As such, his reports are of diminished probative value.

In an October 21, 2014 report, Dr. Robertson, noted that he saw appellant for complaints of lower back pain extending to the right hip, buttocks, and leg with some right leg numbness and bilateral buttocks pain and thigh pain. He offered diagnoses and advised that appellant's job required a lot of heavy lifting and going up and down ladders. Dr. Robertson related that appellant hurt his back initially at work on June 24, 2014 and was since having progressive pain

[13] *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).

[14] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[15] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

in the back. However, the Board finds this report is flawed as the physician does not appear to be aware of the previous back injury nor does he provide any medical rationale explaining how the specifically claimed work incident caused or aggravated a diagnosed condition.[16]

Appellant also provided reports from Dr. Stevens who performed surgery on April 27, 2015. However, these reports are of limited probative value as Dr. Stevens did not specifically address whether the June 24, 2014 work incident caused or contributed to appellant's low back condition.[17]

Also of record are reports from employing establishment physicians. Dr. King provided a July 21, 2014 report and an undated report. He noted that appellant was in for a recheck of lower back pain which he started experiencing when he assisted a coworker with lifting a hydraulic tube bundle on June 25, 2014. Dr. King advised that appellant's back continued to bother him and that he had tightness and a constant ache across the lower back. In an undated report, he asserted that there was no evidence that "there had been more than a minor temporary exacerbation caused by his duties" and indicated that appellant's symptoms and complaints did not coincide with his diagnostic results. The Board notes that he did not provide any medical reasoning to support that appellant' work duties caused or contributed to a low back condition.

On July 7, 2014 Dr. Hooks noted that appellant presented to report a June 24, 2014 injury that occurred when he was on a ladder lifting above his head. He, however, does not offer his own opinion that appellant had a work-related injury on June 24, 2014.

Other reports submitted by appellant from employing establishment physicians are of limited probative value in establishing the claim as they either predate the claimed injury or do not specifically support that appellant had a work-related injury on June 24, 2014.[18]

Other medical reports provided by appellant also do not specifically discuss how the June 24, 2014 activities at work caused an injury and, thus, are of limited probative value.

On appeal counsel made arguments in support of his claim that appellant has established causal relationship. However, as found above, the evidence was insufficient to establish causal relationship.

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.

[16] *See supra* note 12.

[17] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

[18] *See id.*

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a traumatic injury causally related to a June 24, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board