United States Department of Labor
Employees' Compensation Appeals Board

T.E., Appellant	)	
and	)	**Docket No. 16-1090**
	)	**Issued: February 24, 2017**
THE FEDERAL RESERVE BOARD, FEDERAL RESERVE POLICE, Washington, DC, Employer	)	

Appearances:
Alan J. Shapiro, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 28, 2016 appellant, through counsel, filed a timely appeal from a March 9, 2016 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 back injury causally related to the accepted May 23, 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 June 11, 2014 appellant, then a 30-year-old law enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that on May 23, 2014 he strained his back when he picked up a dummy from the prone position on the floor and placed it in an emergency stair chair during a training exercise. He stopped work on May 25, 2014 and returned to full-time modified duty on August 11, 2014.

Dr. Justin Greene, an osteopath who specializes in emergency medicine, treated appellant in the emergency room and noted in a May 25, 2014 hospital record that appellant complained of lower mid back pain radiating into both legs. Appellant related that the pain began when he bent over to get dressed and felt two pops in his back. Dr. Greene reviewed appellant's history and reported that appellant had lumbar spine trauma. He provided a disability note which authorized appellant to return to work on May 30, 2014.

Appellant underwent a diagnostic examination of the lumbar spine by Dr. Ethiopia Teferra, a Board-certified diagnostic radiologist, who indicated in a May 25, 2014 report that appellant had no acute fracture or subluxation and no significant degenerative changes.

Dr. Izzat Chalabi, Board-certified in internal and nuclear medicine, began to treat appellant for complaints of lower back pain and in a May 29, 2014 narrative report, he noted current diagnoses of lumbar disc displacement without myelopathy, hyperlipidemia, muscle spasm, myalgia and myositis fibromyalgia, Vitamin D deficiency, allergic rhinitis, asthma, and back pain. Dr. Chalabi provided a disability note, which indicated that appellant was totally incapacitated and could return to work on June 11, 2014.

In a May 30, 2014 e-mail, K.D., a deputy chief and training manager, informed L.D., appellant's supervisor, that the mannequin used in the training activity weighed approximately 165 pounds. He explained that appellant was attending a training course on Friday, May 23, 2014, which involved lifting a mannequin into a stair chair and carrying the seated mannequin up and down a staircase. K.D. noted that appellant had not reported any injury to his instructor and provided satisfactory ratings in his postcourse evaluation. He included a copy of appellant's survey.

Appellant underwent a magnetic resonance imaging (MRI) scan by Dr. Joshua Pleasure, a Board-certified diagnostic radiologist, who provided a June 6, 2014 report. He observed disc bulges and small herniations at L3-4 and L4-5 with resultant mild spinal stenosis and neural foraminal narrowing.

Dr. Chalabi continued to treat appellant. In a June 11, 2014 disability status note, he indicated that appellant could return to light duty with restrictions of no lifting more than 15 pounds and no bending. Dr. Chalabi further reported in a June 12, 2014 note that appellant had a small herniation and mild narrowing of the spinal canal. In a June 18, 2014 disability status note, he expressed that appellant was totally incapacitated. Dr. Chalabi again mentioned in an August 8, 2014 disability status note that appellant was totally incapacitated, but could return to light duty on August 11, 2014. In an August 25, 2014 disability status note, Dr. Chalabi related that appellant could return to full duty on August 26, 2014.

Appellant was treated in the employing establishment's employee health unit by Dr. David Lukcso, Board-certified in internal and occupational medicine. In a July 30, 2013 health record, it was noted that appellant's back pain was progressively worsening. Dr. Lukcso noted that on May 20, 2013 appellant had previously been in a motor vehicle accident and did not seek immediate medical care. He provided physical examination findings and diagnosed back pain. In an August 26, 2014 progress note, Dr. Lukcso examined appellant again and related that on Friday, May 23, 2014 appellant picked up a simulator dummy and put it in a chair. He noted that the following Saturday appellant did not work, but that on Sunday, while appellant was getting dressed for work, he bent down to put on his socks and heard popping noises in his back. Dr. Lukcso discussed that a lumbar MRI scan examination revealed two herniated discs. He provided examination findings and diagnosed disc desiccation at L3-4 and L4-5, small herniated discs at L3 and L4, and chronic back pain.

In an August 25, 2014 report, Derrick Martin, a physical therapist, mentioned an injury onset date of May 23, 2014 and noted diagnoses of spinal stenosis and lumbago. He related that appellant's strength and range of motion had improved significantly since starting physical therapy. Mr. Martin mentioned that appellant's primary concern was whether he would be able to wear his utility belt and go back to regular duty. Upon examination of appellant's lumbar spine, he observed decreased tenderness with palpation and no pain with resisted trunk movements. Mr. Martin recommended that appellant continue with physical therapy.

Dr. Chalabi provided a September 26, 2014 letter to the employing establishment and noted that appellant was last seen in his office on August 25, 2014. He explained that at that time appellant had completed his physical therapy and was considered to be completely recovered from the injuries that he sustained earlier at work. Dr. Chalabi related that appellant was released to full duty.

By letter dated September 29, 2014, OWCP advised appellant that the evidence of record was insufficient to establish his claim. It requested that he respond to specific questions in order to substantiate that the May 23, 2014 incident occurred as alleged and that he provide medical evidence to establish a diagnosed condition causally related to the alleged incident. Appellant was afforded 30 days to submit this additional evidence.

On October 28, 2014 OWCP received appellant's response to its development letter. Appellant related that he first received treatment in the emergency room on May 25, 2014 because he was unable to stand, walk, or drive and had his first examination with Dr. Chalabi on May 29, 2014. He referred to Dr. Chalabi's statement as evidence of a medical diagnosis and opinion as to how the reported work incident caused or aggravated a medical condition.

In an undated statement, appellant also provided an outline of events surrounding his work injury. He related that he was injured on May 23, 2014. Appellant explained that he did not report any injury to the instructor because his back injury became apparent to him gradually, through soreness over the weekend. He acknowledged that he provided satisfactory remarks regarding the week long in-service training and asserted that his remarks referred to the quality of the training itself. Appellant related that on Saturday, May 24, 2014, he was sore and tired all day, but did not work. He explained that on Sunday, May 25, 2014, while he was getting ready for work, he bent over to put on his socks and heard two popping sounds in his lower back.

Thereafter, appellant experienced pain through his back, legs, hips, and spinal cord. He provided a signed statement from his parents that he did not work on Saturday and that on Sunday he went to the emergency room because he was unable to walk or stand. He listed the medical records he submitted and described the treatment he received following the May 23, 2014 employment incident. Appellant asserted that Dr. Chalabi provided a complete history of injury and medical diagnoses including lumbar disc displacement, muscle spasm, myalgia, and back pain.

Dr. Chalabi continued to treat appellant. In an October 3, 2014 disability status note, he related that appellant was cleared for full duty with no restrictions, but had since experienced a resurgence of pain in his lower back and was placed back on light duty.

In an October 28, 2014 narrative report, Dr. Chalabi related that on May 29, 2014 he treated appellant for severe lower back pain. He reiterated that on May 23, 2014 appellant lifted a training dummy from a prone position during his in-service training exercise and that on May 25, 2014 he bent down to tie his shoe when he felt pain in his back and heard two pops. Dr. Chalabi explained that from the examination and appellant's description of pain he diagnosed lumbar disc displacement without myelopathy, muscle spasm, myalgia, and myositis. He indicated that he had reviewed appellant's MRI scan examination results and observed disc bulges and small herniations at L3-4 and L4-5 with resultant mild spinal stenosis and neural foraminal narrowing. Dr. Chalabi remarked that appellant was in a week of job-related training that involved rigorous exercising, including lifting a training dummy weighing more than 150 pounds. He explained that appellant's injury of herniated discs would have prevented him from being able to lift such a weight and that the injury could have occurred with a delayed manifestation of the herniated discs similar to patients who were injured in car accidents. Dr. Chalabi reported that he was a general practitioner, and if OWCP needed the opinion of a specialist, then appellant should be referred to an orthopedic specialist. He related that although appellant's condition had improved with treatment, appellant was not capable of returning to full duty.

OWCP denied appellant's claim by decision dated December 5, 2014. It found that he had failed to adequately respond to OWCP's development questionnaire and failed to describe the May 23, 2014 incident in sufficient detail to establish that the employment incident occurred as alleged. OWCP further found that the medical evidence submitted was insufficient to establish a diagnosed condition causally related to the employment incident.

On December 10, 2014 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative. The hearing was held on June 10, 2015. Counsel explained that he was submitting medical evidence from Dr. Leonid Selya, a Board-certified orthopedic surgeon, which provided a detailed narrative report satisfying the causation element. He further alleged that Dr. Chalabi's memorandum dated October 28, 2014 also supported causal relationship. Counsel asserted that inconsistent histories were not necessarily a bar to a claim and did not disprove that the incident had occurred as described. He also discussed the medical evidence of record which he believed supported appellant's claim.

Appellant testified that he had worked as a law enforcement officer with the employing establishment for the past six years. He described the May 23, 2014 incident consistent with his previous statements.

In a November 5, 2014 report, Dr. Selya, related appellant's complaints of moderate pain in the low back and buttocks and appellant's history of injury. Upon examination he observed mid-lumbar tenderness to palpation and negative nerve root tension. Lumbar extension was 10 degrees and forward flexion was 40 degrees. Dr. Selya related that a lumbar spine MRI scan revealed desiccated L3-4 and L4-5 discs with a small, central disc herniation without significant stenosis. He diagnosed herniation of nucleus pulposus at L3-4 and L4-5 and chronic discogenic low back pain with intermittent lumbosacral radiculopathies. Dr. Selya recommended epidural injections.

Dr. Richard Brouillette, a Board-certified anesthesiologist, specializing in pain medicine, treated appellant, and in a May 5, 2015 medical form, noted appellant's symptoms of low back pain. He indicated a diagnosis of lumbar radiculitis and checked a box marked "yes" indicating that appellant's condition was work related.

In a June 3, 2015 report, Dr. Menet discussed that appellant sustained acute worsening of low back pain after a May 23, 2014 training exercise. He discussed the medical treatment appellant had received and noted that a June 6, 2014 MRI scan of the lumbar spine showed small disc herniation at L3-4, which resulted in mild spinal stenosis and neuroforaminal narrowing. Upon examination of appellant's lumbar spine, Dr. Menet observed tenderness to palpation involving the bilateral paralumbosacral fascia. Straight leg raise testing was negative. Dr. Menet diagnosed lumbosacral sprain/strain with radiculopathy and disc herniation at L3-4. He recommended referral to interventional pain management. In a disability note, Dr. Menet indicated that appellant could work light duty.

S.R., an occupational health specialist for the employing establishment, provided a July 8, 2015 letter in response to appellant's hearing testimony. She noted that the instructor informed the class before the training exercise that if anyone had a back problem he or she should not lift the mannequin. S.R. also noted that appellant did not mention that he experienced an "ouch moment" to the instructor or the training staff when he lifted the mannequin. She mentioned that he injured his back while getting ready for work. The employing establishment provided appellant's survey about the May 23, 2014 training exercise and several e-mails from various employees regarding appellant's workers' compensation claim.

By decision dated September 3, 2015, an OWCP hearing representative affirmed the December 5, 2014 denial decision with modification. She found that the evidence of record demonstrated that the May 23, 2014 employment incident occurred as alleged and that appellant had a diagnosed back condition. The hearing representative, however, denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his back condition was a result of the May 23, 2014 incident.

On December 14, 2015 appellant, through counsel, requested reconsideration. Counsel noted that he was including a November 19, 2015 note from Dr. Menet which had not previously been considered.

In a November 19, 2015 report, Dr. Menet related that on May 23, 2014 appellant sustained an injury when he lifted a dummy at work and experienced worsening lower back pain. He mentioned that he examined appellant on June 3, 2015 and recommended interventional pain

management due to appellant's persistent symptoms. Dr. Menet remarked that a previous MRI scan revealed mild spinal stenosis and neural foraminal narrowing consistent with his symptoms of lumbosacral spine with radiculopathy. He opined that due to appellant's "mechanism of injury, persistent symptoms on physical presentation … [appellant's] injury is directly related and caused by his injury of May 23, 2014 with all medical treatments, physical therapy, and chiropractic treatment causally related and medically necessary."

By decision dated March 9, 2016, OWCP denied modification of the September 3, 2015 decision. It found that Dr. Menet's medical report did not contain sufficient medical rationale to support his conclusion of causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the 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.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] The employee may establish that the employment incident occurred as alleged, but fail to show that his disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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

[3] *Id*.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

the employee.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant alleged that on May 23, 2014 he injured his back when he picked a dummy up off the floor and placed it in an emergency stair during in-service training at work. OWCP has accepted that the employment incident occurred as alleged and found that the evidence confirmed a diagnosed back condition. It denied appellant's claim, however, finding insufficient medical evidence of record to establish that his back condition was causally related to the May 23, 2014 employment incident. The Board finds that appellant has failed to meet his burden of proof to establish that his back condition resulted from the accepted incident.

Dr. Greene first treated appellant in the emergency room for complaints of back pain radiating into both legs. In a May 25, 2014 hospital record, he related that when appellant bent over to get dressed he felt two pops in his back. Dr. Greene reported that appellant had lumbar spine trauma and could return to work on May 30, 2014. Appellant also underwent a diagnostic examination at the hospital. In a May 25, 2014 radiology report, Dr. Teferra noted no acute fracture, subluxation, or degenerative changes. The Board finds that neither physician provided a medical diagnosis or opinion as to whether the May 23, 2014 employment incident caused or contributed to appellant's alleged condition.[13]

Similarly, Dr. Lukcso's July 30, 2013 and August 26, 2014 employee health records, Dr. Selya's November 5, 2014 report, and Dr. Pleasure's June 6, 2014 MRI scan examination report did not offer any opinion or explanation on the cause of appellant's back condition. The physicians accurately described the May 24, 2013 employment incident and the symptoms appellant experienced in the two days following the incident. They provided examination and diagnostic findings, which revealed herniated discs and disc desiccation in appellant's lumbar spine. None of the physicians, however, opined on whether the May 24, 2013 work incident caused or contributed to appellant's back condition. The Board has held that 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.[14] These reports, therefore, are insufficient to establish appellant's claim.

Appellant was primarily treated by Dr. Chalabi who provided disability status notes and narrative reports from May 29 to October 28, 2014. Dr. Chalabi indicated that appellant was initially released to light duty and eventually to full duty after undergoing physical therapy. In an October 3, 2014 note, he remarked that appellant experienced a "resurgence of pain" and was

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

being put back on light duty. In an October 28, 2014 narrative report, Dr. Chalabi described that on May 23, 2014 appellant lifted a training dummy at work and that on May 25, 2014 he experienced pain and heard two pops in his back when he bent over to put on his socks. He remarked that a lumbar spine MRI scan demonstrated disc bulges and small herniations at L3-4 and L4-5. Dr. Chalabi diagnosed lumbar disc displacement without myelopathy, muscle spasm, myalgia, and myositis. He explained that appellant's back injury would have prevented him from being able to lift such a weight and that the injury could have occurred with a delayed manifestation of the herniated discs similar to patients who were injured in car accidents.

Although Dr. Chalabi mentioned the May 23, 2014 work incident and diagnosed a back condition, he did not clearly opine nor explain whether the May 23, 2014, incident caused or contributed to appellant's lumbar condition. He suggested that if appellant had sustained injury on May 23, 2014, he would not have been able to complete the training exercise, but he also alluded to a delayed manifestation of injury. Dr. Chalabi did not explain why appellant would have experienced delayed manifestation of injury nor how the condition was due to the accepted work incident. Medical opinion evidence should reflect a correct history and offer a medically sound explanation by Dr. Chalabi of how the specific employment incident or work factors, physiologically caused injury.[15]

In reports dated June 3 and November 19, 2015, Dr. Menet described that appellant experienced acute worsening of low back pain after a May 23, 2014 training exercise, which required appellant to lift a dummy at work. He discussed the medical treatment appellant received and noted that a June 6, 2014 MRI scan report of the lumbar spine showed small disc herniation at L3-4. Upon physical examination, Dr. Menet observed tenderness to palpation involving the bilateral paralumbosacral fascia. Straight leg raise testing was negative. He diagnosed lumbosacral sprain/strain with radiculopathy and disc herniation at L3-4. Dr. Menet opined that appellant's injury was "directly related and caused by his injury of May 23, 2014 with all medical treatments, physical therapy, and chiropractic treatment causally related and medically necessary."

The Board notes, however, that Dr. Menet did not support his opinion on causal relationship with medical rationale. Dr. Menet failed to explain the mechanism of injury of how lifting a training dummy at work caused or contributed to appellant's back condition.[16] The need for a rationalized medical opinion based on medical rationale is especially important in this case as appellant did not experience back symptoms until two days after the May 23, 2014 employment incident when he was at home getting dressed for work. Furthermore, the evidence of record reveals that appellant had a previous May 20, 2013 motor vehicle accident. In light of this prior injury, rationalized medical evidence is particularly important to explain how appellant's back condition resulted from the May 23, 2014 work incident, and not his prior motor vehicle injury. The Board has held that 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.[17] Because Dr. Menet has not provided such medical rationale

[15] *See L.R.*, Docket No. 16-0736 (issued September 2, 2016).

[16] *See B.T.*, Docket No. 13-138 (issued March 20, 2013).

[17] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

to support his opinion on causal relationship, his reports are insufficient to establish appellant's claim.

Appellant was also treated by Dr. Brouillette. In a May 5, 2015 medical form, Dr. Brouillette related appellant's symptoms of low back pain. He checked a box marked "yes" to indicate that appellant's condition was work related. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish causal relationship.[18]

The additional August 25, 2014 physical therapy report by Mr. Martin also fails to establish appellant's claim because physical therapists are not considered physicians as defined under FECA. Accordingly, their medical opinions regarding diagnosis and causal relationship are of no probative value.[19]

On appeal, counsel asserts that OWCP's decision was contrary to fact and law. As explained above, however, none of the evidence of record establishes that appellant's back condition resulted from the May 23, 2014 employment incident. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[20] The mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[21] The Board finds, therefore, that OWCP properly denied appellant's claim.

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 causally related to the May 23, 2014 incident.

[18] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[19] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 8102(2) of FECA 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 State law.

[20] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[21] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2017
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