United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
and	)	**Docket No. 18-0167**
	)	**Issued: May 7, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Detroit, MI, Employer	)	

Appearances:
Gad L. Holland, 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 October 30, 2017 appellant, through counsel, filed a timely appeal from a July 13, 2017 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.[3]

[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.*

[3] The Board notes that appellant submitted additional evidence after OWCP rendered its July 13, 2017 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted March 30, 2017 employment incident.

FACTUAL HISTORY

On March 31, 2017 appellant, then a 37-year-old air conditioning equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on March 30, 2017, he injured his lower back when he was moving a refrigerator while in the performance of duty. He claimed that when moving the refrigerator on a dolly, the dolly got caught on a door, and he pulled it loose which caused the feeling of pain to shoot into his hips, legs, and lower back. Appellant stopped work on that date.

Appellant submitted a report from Dr. Fadi Oska, a Board-certified internist, dated March 16, 2015. In this report, Dr. Oska diagnosed low back pain.

In a report dated March 30, 2017, Dr. Sudhir Rao, Board-certified in anesthesiology and pain medicine, diagnosed lumbosacral back pain status post injury. He noted that appellant told him that he was moving a refrigerator from one room to another on a dolly which got stuck on a ledge. Appellant pulled the dolly back and forth, after which he felt sharp back pain.

In an incident report dated March 30, 2017, a supervisor noted that appellant had sustained a sprain/strain of the lower back when he was pulling a refrigerator on a dolly through a doorway on March 30, 2017.

On March 30, 2017 Dr. Peter Salvia, a Board-certified family practitioner, examined appellant, diagnosed lumbar radiculopathy, and low back pain. He noted that appellant's pain began nine hours previous to the encounter.

In a diagnostic report dated March 30, 2017, Dr. Salvia examined x-rays of appellant's lumbosacral spine. He noted no evidence of an acute lumbar spine pathology, with evidence of a previous spinal intervention at the lumbosacral articulation with a plate and screws. Dr. Salvia observed no acute process.

A report dated April 27, 2017, from an employing establishment continuation of pay nurse assigned to appellant's case, confirmed that he had returned to work on April 18, 2017.

In a report dated May 22, 2017, Dr. Salvia noted that while appellant's back pain had gradually resolved from the incident of March 30, 2017, appellant's pain recurred on May 20, 2017. He diagnosed low back pain and ordered a computerized tomography (CT) scan of appellant's spine.

On May 23, 2017 appellant filed a notice of recurrence (Form CA-2a). He alleged that the recurrence occurred on May 20, 2017, when he was walking across a lawn, bent down to pick up trash, and felt pain in his back. Appellant expressed his belief that it was connected to the original injury based on how soon it occurred after returning to work, and because he never felt as though he had healed completely.

In a development letter dated May 30, 2017, OWCP informed appellant that his claim had been reopened for consideration because medical bills had exceeded $1,500.00. It informed him that he had not submitted sufficient medical evidence to establish his claim, as he had not submitted a medical report containing a medical opinion explaining how his claimed injury was caused or aggravated by exposure to his work environment. OWCP afforded appellant 30 days to provide the requested medical evidence.

In a letter dated June 16, 2017, Dr. Salvia noted that appellant had injured his back at work on March 29, 2017. He noted that appellant's pain recurred after pulling a refrigerator on a dolly on May 20, 2017. Dr. Salvia noted that a firm diagnosis would require an electromyogram (EMG) of the lower extremities and a CT scan of the lumbar region, although his symptoms were consistent with degenerative disc disease with radiculopathy to the left and L2-3 with radiation to the left. Dr. Salvia noted that appellant was unable to stand for longer than 15 minutes, and had a marked limitation in walking, bending, and twisting. He was also unable to push, pull, or lift greater than five pounds.

In a record of a telephone conversation with an OWCP representative dated July 12, 2017, appellant was informed that none of the medical reports he had submitted contained a firm diagnosis, except for the letter of June 16, 2017 which diagnosed degenerative disc disease, but that it was not a firm diagnosis. The representative further noted that appellant's physician had not supplied a description to support the proposition that appellant's degenerative disc disease was caused or aggravated by his employment.

By decision dated July 13, 2017, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish causal relationship between a diagnosed condition and the accepted March 30, 2017 employment incident.

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 timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged, but fail to establish that his or her condition relates to the employment incident.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.[9] 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 the employee.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the accepted March 30, 2017 employment incident.

Appellant submitted a report from Dr. Oska, a Board-certified internist, dated March 16, 2015. This report, however, predates appellant's date of injury. The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.[11]

In a report dated March 30, 2017, Dr. Rao diagnosed lumbosacral back pain status post injury. He noted that appellant told him that he was moving a refrigerator from one room to another on a dolly, when the dolly got stuck on a ledge. Appellant pulled the dolly back and forth, after which he felt sharp back pain. In a report dated May 22, 2017, Dr. Salvia noted that appellant's back pain had gradually resolved from the incident of March 30, 2017, but that appellant's pain recurred on May 20, 2017. He diagnosed low back pain and ordered a CT scan of appellant's spine. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[12] These reports of Dr. Rao are therefore insufficient to establish appellant's claim.

[7] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[8] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[9] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[10] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *V.N.*, Docket No. 16-1427 (issued December 13, 2016).

[12] *See K.V.*, Docket No. 18-0723 (issued November 9, 2018); *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008); *Robert Broome*, 55 ECAB 339 (2004).

In a March 30, 2017 report, Dr. Salvia examined appellant and diagnosed lumbar radiculopathy. He examined x-rays of appellant's lumbosacral spine and noted no evidence of an acute lumbar spine pathology, but found evidence of a previous spinal intervention at the lumbosacral articulation with a plate and screws. Dr. Salvia's report of March 30, 2017, provides a firm diagnosis, but it lacks an opinion on the cause of appellant's lumbar conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13]

In a letter dated June 16, 2017, Dr. Salvia noted that appellant had injured his back at work on March 29, 2017. He noted that appellant's pain recurred after pulling a refrigerator on a dolly on May 20, 2017. Dr. Salvia further noted that a firm diagnosis would require an EMG of the lower extremities and a CT scan of the lumbar region, although his symptoms were consistent with degenerative disc disease with radiculopathy to the left and L2-3 with radiation to the left. His report of June 16, 2017 does not contain a firm diagnosis of a condition, as he himself notes that a firm diagnosis would require additional testing. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, his report is of no probative value.[14]

The Board finds that appellant has not submitted sufficient evidence to establish a lumbar condition causally related to the accepted March 30, 2017 employment incident. As such, he has not met his burden of proof to establish his traumatic injury 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 has not met his burden of proof to establish a lumbar condition causally related to the accepted March 30, 2017 employment incident.

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *See J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2019
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