United States Department of Labor
Employees' Compensation Appeals Board

W.G., Appellant	)	
and	)	**Docket No. 15-573**
	)	**Issued: May 18, 2015**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Edison, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 13, 2015 appellant, through counsel, filed a timely appeal from a September 15, 2014 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 sustained a low back injury in the performance of duty on July 31, 2012.

FACTUAL HISTORY

This is the second appeal before the Board. On August 7, 2012 appellant, then a 43-year-old clerk, filed a claim for traumatic injury alleging that he developed lower back pain and numbness in both legs and feet due to twisting and turning while moving boxes and turning on a

[1] 5 U.S.C. § 8101 *et seq.*

machine on July 31, 2012. He also had previously accepted claims. OWCP file number xxxxxx049, was accepted for injury of August 19, 2003, the nature of this injury is unclear. Its file number xxxxxx692 was accepted for a back injury on November 8, 2009. Appellant returned to work on May 25, 2012 following lumbar surgery for the November 8, 2009 injury.

In an August 7, 2012 statement, appellant asserted that on July 31, 2012 while at work he experienced lower back pain and numbness down both legs beginning at 12:45 a.m., which worsened until he went home three hours later. In an August 15, 2012 work capacity evaluation, Dr. Frank M. Moore, a Board-certified neurosurgeon, found appellant disabled due to pain from twisting following a lumbar fusion procedure. He stated that appellant might not be able to return to his position until further notice.

Appellant submitted a narrative statement dated September 6, 2012, which noted that he was working on a conveyor belt on July 31, 2012 lifting boxes that weighed between 5 and 70 pounds. He stated that he had to twist and reach to lift the boxes and place them on the belt. Appellant stated that he had no pain when he began working on July 31, 2012, but at 3:30 a.m. he asked to leave work due to his back pain. He stated that his supervisors required him to file a new injury form despite his statements that his pain was the result of the prior November 8, 2009 injury, under case file number xxxxxx692.

By decision dated September 27, 2012, OWCP denied appellant's claim because he failed to submit any medical evidence to establish a diagnosed condition causally related to his July 31, 2012 employment incident.

On September 22, 2012 Dr. Moore performed a laminectomy/intervertebral fusion procedure to ameliorate L3-4 and L4-5 spinal stenosis, discogenic disease, and instability by fusing the L3-4 and L4-5 disc levels

In a February 6, 2013 report, Dr. Moore stated that he had examined appellant on August 15, 2012, at which time he complained of increasing low back symptomatology. He stated that appellant had symptoms of mechanical low back pain with radiculopathy and that he was not fit to work in his current job description. Dr. Moore recommended that appellant be taken off work. He opined that the July 31, 2012 lifting and twisting incident caused an aggravation of appellant's preexisting lower back condition. After performing surgery on September 22, 2012 Dr. Moore reexamined appellant on September 24, 2012 and advised that he had increasing low back symptomatology. Appellant underwent a computerized axial tomography (CAT) scan of the lumbosacral spine, which showed that the area of surgery from L3 to L5 had healed properly, but that he had degenerative changes and facet arthropathy at L5-S1.

Dr. Moore related that appellant's symptoms were progressively worsening and he recommended a definitive myelogram and postmyelogram CAT scan to accurately diagnose appellant's condition. The myelogram was performed on December 4, 2012. Dr. Moore found that the area of surgery from L3 to L5 was fully decompressed and he noted a progression of stenosis and nerve root compression at the L5-S1 level. At this point he considered appellant to be a candidate for extension of the decompression and fusion to include L5-S1.

On January 31, 2013 appellant underwent an "uneventful" removal of the instrumentation with extension of decompression to L5-S1 and reinstrumentation at that level. Dr. Moore opined that appellant's job description entailed repetitive heavy lifting with a twisting motion, which was responsible for his recurrent symptomatology of lumbar pain with lower extremity radiculopathy, including weakness, and numbness in both legs. He concluded that this caused the need for the surgical decompression which was performed on January 31, 2013.

By decision dated March 20, 2013, an OWCP hearing representative affirmed the September 27, 2012 decision. He found that the evidence failed to establish the specific employment incident on July 31, 2012 and that by August 15, 2012 his symptoms had improved.

In a March 19, 2014 decision,[2] the Board found that the evidence was sufficient to establish the incident on July 31, 2012, but that appellant had failed to provide sufficient medical evidence to establish an aggravation of his low back condition as a result of the July 31, 2013 work incident. The Board, therefore, affirmed the March 20, 2013 decision. The complete facts of this case are set forth in the Board's March 19, 2014 decision and are herein incorporated by reference.

Appellant requested reconsideration on April 28, 2014. In support thereof, he submitted a report dated April 14, 2014 from Dr. Moore stated:

> "In order to further complete [appellant's] documentation, I would like to state that my professional opinion is that there is a direct causal relationship between [his] condition and his employment activities on July 31, 2012.
>
> "Prior to that day, [appellant] had mild discomfort in the lumbosacral area. Following that day he had acute exacerbation of his underlying symptoms with debilitating pain and he is unable to return to his regular job description.
>
> "As a result of this injury, [appellant] required additional care and surgery. This care and surgery was related to this accident dated July 31, 2012."

By decision dated May 9, 2014, OWCP denied modification of the prior decision.

On July 18, 2014 appellant again requested reconsideration. He submitted a July 14, 2014 report from Dr. Moore. In the July 14, 2014 report, Dr. Moore stated:

> "The purpose of this letter is to further discuss the causal relationship between [appellant's] symptomatology and employment activities on July 31, 2012. On that date, as noted on [appellant's] statement, he noted increasing low back pain as he was performing activities that included twisting, bending, and lifting. This was an acute exacerbation of his underlying symptoms and he had to stop working on that day and return home.

[2] Docket No. 13-1372 (issued March 19, 2014).

"[Appellant] is status post a prior L3-4, L4-5 decompression, fusion, and instrumentation. I do believe that following the accident that occurred on July 31, 2012 he sustained disc herniation at stenosis at the L5-S1 level, an adjacent level to prior fusion.

"Within a reasonable degree of medical certainty, I do believe that [appellant's] subsequent symptoms were related to this accident dated July 31, 2012. Post-traumatic imaging did demonstrate disc disease with stenosis at the LS-S1 level. This eventually required further surgery at that level.

"Adjacent level disease is not uncommon following prior surgery and activities performed on July 31, 2012 aggravated [appellant's] low back condition requiring additional treatment and surgery."

By decision dated September 15, 2014, OWCP denied modification of the prior decision, after merit review.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing that 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, 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.[4]

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. 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. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

The medical evidence required to establish causal relationship is usually rationalized medical 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

[3] *Supra* note 1.

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

[5] *See S.P.*, 59 ECAB 184 (2007).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

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.[7]

An award of compensation may not be based on surmise, conjecture or speculation.

ANALYSIS

In the prior appeal, the Board accepted that the alleged employment factors occurred on July 31, 2012, but that appellant had not submitted sufficient evidence to establish an aggravation of his back condition due to these factors. The Board finds that he has failed to establish a back injury causally related to the accepted events of July 31, 2012.

Counsel argues on appeal that Dr. Moore's April 14 and July 14, 2014 reports provided sufficient medical evidence to establish a causal relationship between appellant's July 31, 2012 work incident and the aggravation of his lower back condition. He contends that Dr. Moore's April 14, 2014 report specifically stated that the activities in which appellant engaged during the July 31, 2012 work incident aggravated his low back condition. Counsel asserted that, in his July 14, 2014 report, Dr. Moore clarified that appellant's work activities on July 31, 2012, including twisting, bending, and lifting, aggravated his low back condition.

Appellant claimed injury on August 7, 2012, alleging that he developed lower back pain as well as numbness in both legs and feet due to twisting and turning while moving boxes and turning on a machine on July 31, 2012. Evidence provided by him, which had not already been reviewed by the Board was included in April 14 and July 14, 2014 reports from Dr. Moore.

In his April 14, 2014 report, Dr. Moore opined that there was a direct causal relationship between appellant's condition and his employment activities on July 31, 2012. He advised that, prior to that day, appellant had mild discomfort in the lumbosacral area; following that day he had acute exacerbation of his underlying symptoms, with debilitating pain, and was unable to return to his regular job. As a result of this injury, appellant required additional care and surgery, which was related to the July 31, 2012 work incident. Dr. Moore in essence was stating that causal relationship existed between appellant's July 31, 2012 work duties and his current condition because appellant only had mild discomfort in his lumbosacral area before that day but was symptomatic afterwards. A medical opinion regarding causal relationship based on the lack of symptoms before the injury is insufficient, however, without supporting medical rationale, to establish causal relationship.[8] Dr. Moore did not explain, with medical rationale, how the accepted events of July 31, 2012 actually caused or aggravated appellant's diagnosed back condition.

[6] *Id.*

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

[8] *See M.D.*, Docket No. 14-1700 (issued December 1, 2014).

Dr. Moore reiterated in his July 14, 2014 report that there was a causal relationship between appellant's symptomatology and his employment activities on July 31, 2012. Appellant indicated in his August 7 and September 6, 2012 statements that he had increasing low back pain as he was performing activities which included twisting, bending, and lifting. Dr. Moore advised that this was an acute exacerbation of appellant's underlying symptoms and as a result he had to stop working that day. He concluded that, following the July 31, 2012 work incident, appellant sustained disc herniation and stenosis at the L5-S1 level, an adjacent level to prior fusion. Dr. Moore opined that, within a reasonable degree of medical certainty, he believed that appellant's subsequent symptoms were related to the July 31, 2012 work incident and advised that post-traumatic imaging did demonstrate disc disease with stenosis at the LS-S1 level, which eventually required further surgery at that level. He stated that adjacent level disease was not uncommon following prior surgery and that the activities performed on July 31, 2012 aggravated appellant's low back condition, requiring additional treatment and surgery. Again, Dr. Moore's reports do not explain how appellant's work activities on July 31, 2012 would have physiologically caused appellant's diagnosed disc herniation and stenosis at the L5-S1 level. Medical rationale is particularly important in establishing this claim, as it is clear from the record that appellant had preexisting back conditions.

Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.[9] The Board finds that he has not established that his current back conditions were caused by the accepted work incident on July 31, 2012.

CONCLUSION

The Board finds that appellant has not met his burden of proof.

[9] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board