United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 15-749**
	)	**Issued: May 15, 2015**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Jacksonville, FL, Employer	)	

Appearances:
Appellant, pro se
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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2015 appellant filed a timely appeal from a January 14, 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 to review the merits of this case.

ISSUE

The issue is whether appellant established a back injury causally related to factors of his federal employment.

On appeal, appellant contends that he was reinjured on November 7, 2013 and his primary care physician provided a rationalized medical opinion establishing causal relationship between the accepted employment factors and his diagnosis.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 25, 2013 appellant, then a 51-year-old meat cutter leader, filed an occupational disease claim alleging that on December 9, 1993 he first became aware of his military-related back injury. He further alleged that on November 7, 2013 he first realized that his 1993 back injury was aggravated by lifting tons of meat at work for six years.

By letter dated December 5, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and submit evidence regarding his work duties and any medical evidence, if he had been treated at its medical facility.

In treatment notes dated December 11 and 13, 2013, Dr. Emilio Cosio, a chiropractor, provided impressions of lumbosacral disc degeneration and sprain and lumbago. He addressed appellant's physical therapy treatment and placed him on light-duty status.

In treatment notes dated December 9, 2013 and January 3, 2014, Dr. Majed B. Hassan, an emergency medicine specialist, noted appellant's complaints of lower back pain that became achy and aggravated when bending, extension, and lifting. He provided findings on physical examination and impressions of lumbar disc displacement, lumbar/lumbosacral disc degeneration, lumbosacral sprain, and lumbago. Dr. Hassan addressed appellant's physical therapy treatment and advised that he work on full-duty status.

In a January 23, 2014 decision, OWCP denied appellant's occupational disease claim. It found that there was no medical report signed by a physician which explained the causal relationship between a diagnosis and the established work factors.

On February 20, 2014 appellant requested a telephone hearing with an OWCP hearing representative. In a December 9, 2013 statement, he stated that he performed the claimed work activities of lifting meat three times a week, three hours a day for six years.

Appellant submitted emergency room records from Saint Vincent's Healthcare Emergency Services. In a November 7, 2013 report, Lauren Bell, a registered nurse practitioner, diagnosed low back pain. Unsigned patient discharge instructions dated November 7, 2013 reiterated the diagnosis of low back pain, and provided information about appellant's medication, and follow-up instructions. In a November 7, 2013 lumbar x-ray report, Dr. Zachary E. Brown, a Board-certified radiologist, found sacralization of the L5 vertebral body which could be a source of pain, multilevel anterior osteophytes, disc space narrowing from L1-2 through L3-4, and mild facet arthropathy. There was no compression fracture.

In a November 21, 2013 treatment note, Grace Marchant, a registered nurse practitioner, indicated that appellant was being evaluated for his tennis elbow. She noted a history that on November 5, 2013 he injured his back at work and received medical treatment in an emergency room. Ms. Marchant provided findings on examination and an impression of benign essential hypertension, lupus erythematosus, and elbow lateral epicondylitis.

In a December 4, 2013 treatment note, Dr. Hassan provided a history of appellant's medical, social, and family background. He listed examination findings and an impression of lumbosacral spondylosis without myelopathy, displacement of the lumbar disc without myelopathy, degenerative lumbar/lumobosacral intervertebral disc, spinal stenosis of the lumbar without neurogen claudification, and muscle spasm. Dr. Hassan set forth appellant's physical restrictions. In a November 26, 2014 Florida State Workers' Compensation Medical Treatment Form, he stated that appellant had work-related lumbago. Dr. Hassan advised that appellant had a preexisting condition that was exacerbated by the diagnosed condition based on a clear correlation between his objective relevant physical findings and his subjective complaints. He stated that no clinical services were indicated at that time. Dr. Hassan concluded that appellant could return to his activities with certain limitations.

In treatment notes dated January 24 to February 10, 2014, Dr. William C. Thomas, a Board-certified family practitioner, noted appellant's complaint of low back pain. He provided findings on physical examination and diagnosed lumbar disc displacement, lumbar/lumbosacral disc degeneration, lumbago, and lumbosacral sprain. Dr. Thomas indicated that appellant could perform full-duty work.

In treatment notes dated January 27 to February 5, 2014, Dr. Cosio provided findings on examination which included subluxation on L2, L3, L4, and T7. He reiterated his diagnoses of lumbar/lumbosacral disc degeneration, lumbago, and lumbar sprain. Dr. Cosio diagnosed lumbar disc displacement and somatic dysfunction in the thoracic region. He addressed appellant's physical therapy treatment.

By decision dated January 14, 2015, the hearing representative affirmed the January 23, 2014 decision. He found that none of the physicians of record provided a rationalized medical opinion relating appellant's diagnosed conditions to his accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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; that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual

[2] 5 U.S.C. §§ 8101-8193.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.,* 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.[5] Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.[6]

ANALYSIS

OWCP accepted that appellant lifted meat at work while working as a meat cutter leader at the employing establishment. The Board finds that the medical evidence of record is insufficient to establish that he sustained a back injury caused or aggravated by the accepted work factor.

Dr. Hassan's November 26, 2014 Florida State Workers' Compensation Medical Treatment Form found that appellant had a preexisting condition that was exacerbated by his work-related lumbago. He stated that there was a clear correlation between the objective physical findings and appellant's subjective complaints. However, Dr. Hassan did not identify the preexisting condition, his objective findings on examination, or appellant's subjective complaints. Moreover, he did not provide an opinion explaining how the accepted employment factor caused or aggravated the preexisting condition and diagnosed condition.[7] Dr. Hassan's treatment notes do not provide any opinion as to whether appellant's diagnosed lumbar conditions were caused or aggravated by the established employment factor. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8]

Likewise, Dr. Thomas' treatment notes and Dr. Brown's diagnostic test results are of limited probative value. Neither physician provided an opinion stating that the diagnosed lumbar conditions were caused or aggravated by the accepted work factor.[9]

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[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.* at 351-52.

[6] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[7] *See S.S.*, 59 ECAB 315 (2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

[8] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *Id.*

The treatment notes dated January 27 to February 5, 2014 of Dr. Cosio, a chiropractor, diagnosed subluxation at the L2, L3, L4, and T7 levels. Dr. Cosio addressed appellant's medical treatment and work capacity. Section 8101(2) of FECA[10] provides that the term physician, as used therein, includes chiropractors 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 regulations by the Secretary.[11] Dr. Cosio did not state that he based his subluxation diagnosis on a review of x-rays. Without a diagnosis of a spinal subluxation from x-ray, a chiropractor is not considered a physician under FECA and his opinion does not constitute competent medical evidence.[12]

The November 7, 2013 report from Ms. Bell and November 21, 2013 treatment note from Ms. Marchant, registered nurse practitioners, have no probative value in establishing appellant's claim as nurse practitioners are not considered physicians under FECA.[13]

The unsigned discharge instructions are insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper identification as a physician and cannot be considered probative medical evidence.[14]

On appeal, appellant contended he was reinjured on November 7, 2013 and his primary care physician provided a rationalized medical opinion which establishes a causal relationship between the accepted employment trauma and his diagnosis. As discussed, the medical evidence did not contain a rationalized medical opinion addressing whether he sustained a back injury caused or aggravated by the established employment factor.

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 failed to establish that he sustained a back injury causally related to factors of his federal employment.

[10] 5 U.S.C. § 8101(2).

[11] *See* 20 C.F.R. § 10.311.

[12] *See Jay K. Tomokiyo*, 51 ECAB 361, 367-8 (2000).

[13] 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. 5 U.S.C. § 8102(2); *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (evidence from a registered nurse had no probative medical value as a nurse is not a physician as defined under FECA); *Roy L. Humphrey*, 57 ECAB (2005).

[14] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board