United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 17-0390**
	)	**Issued: July 20, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 12, 2016 appellant filed a timely appeal from a September 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a recurrence of medical condition causally related to his accepted right leg and knee sprain; and (2) whether appellant met his burden of proof to establish total disability for the period June 15 to July 27, 2016 causally related to his accepted July 10, 2014 employment injury.

[1] Appellant also filed a timely request for oral argument. After exercising its discretion, by order dated May 8, 2017, the Board denied his request finding that his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-0390 (issued May 8, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 10, 2014 appellant, then a 47-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2014 he sustained a right knee sprain when he twisted his right knee while pushing a cart. He stopped work on July 10, 2014 and returned to full-time modified work on September 20, 2014. OWCP accepted the claim for a right knee and leg sprain and paid wage-loss compensation and medical benefits on the supplemental rolls through September 19, 2014.

On June 13, 2016 appellant filed a claim for a recurrence of medical condition (Form CA-2a) alleging that he required further medical treatment causally related to his accepted July 10, 2014 employment injury. He indicated that he sought medical treatment on May 5, 2016. Appellant reported that he had sustained left shoulder and right inguinal injuries between the date of his accepted employment injury and the date of his recurrence. On the reverse side of the claim form, the employing establishment noted that appellant had been on light-duty work from April 27 to June 2, 2016 and was still on light-duty work.[3]

In a disability note dated June 15, 2016, a certified physician assistant noted that appellant was seen that day, and that he was disabled from work until July 28, 2016.

By correspondence dated July 14, 2016, OWCP informed appellant of the definition of a recurrence and the evidence required to support a recurrence claim. It also advised him as to the accepted condition for his claim.

Appellant subsequently submitted a May 5, 2016 hospital consultation for an inguinal hernia and a June 15, 2016 operative report. Dr. Daniel Hall, a treating Board-certified general surgeon, noted a preoperative diagnosis of inguinal hernia, postoperative diagnosis of no hernia, and that an examination of the inguinal canal was performed and mesh placed.

On August 10, 2016 OWCP received an undated note from Dr. Woody Chang, a treating physician specializing in internal medicine, noting that he had seen appellant twice. The most recent visit on July 29, 2016 was for an injury unrelated to the accepted 2014 work injury. Dr. Chang reported that he reviewed notes from August 1, 2014 concerning a work-related right foot and knee injury. Based on appellant's belief that the accepted work injury aggravated a preexisting hernia, Dr. Chang opined that there was a possibility that the accepted employment injury had aggravated the hernia condition.

On August 23, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period June 15 to July 27, 2016.

By decision dated September 12, 2016, OWCP denied appellant's claim for a recurrence of medical treatment. It also denied his claim for wage-loss compensation for the period June 15 to July 27, 2016.

[3] The Board notes that the employing establishment reported the date-of-injury as April 27, 2015, that appellant stopped work on June 2, 2015 and returned on June 3, 2015.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under FECA[4] 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.[5] In this case, appellant has the burden of proof to establish that he sustained a recurrence of a medical condition causally related to his accepted traumatic injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the accepted conditions and supports that conclusion with sound medical rationale.[6] Where medical rationale in support of the physician's opinion is not present, the medical evidence is of diminished probative value.[7]

OWCP regulations define a recurrence of medical condition as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[8] In order to establish that his or her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his or her present condition and the accepted conditions must support the physician's conclusion of a causal relationship.[9] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that on July 10, 2014 appellant sustained a right knee/leg sprain. After being out of work, appellant returned to modified full duty on September 20, 2014. On July 20, 2016 he filed a claim for a recurrence of a medical condition alleging that on May 20, 2016 he had sustained a recurrence of right knee pain causally related to his accepted April 28, 2010 employment injury. Appellant did not stop work until June 15, 2016. The Board finds that the medical record lacks a well-reasoned narrative from a physician relating his claimed recurrent medical condition beginning May 2, 2016 to his accepted July 10, 2014 employment injury.

[4] *Supra* note 2.

[5] *Mary Ceglia*, 55 ECAB 626 (2004).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[7] *Id.*

[8] 20 C.F.R. § 10.5(y).

[9] *Supra* note 5.

[10] *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Robert Broome*, 55 ECAB 339 (2004); *Ausberto Guzman*, 25 ECAB 362 (1974).

In support of his claim, appellant submitted an August 10, 2016 report from Dr. Chang who noted that appellant had sustained right foot and knee injuries at work on August 1, 2014. Dr. Chang opined that it was possible that appellant's current hernia condition which required medical treatment had been aggravated by the accepted work injury. In support of this conclusion, he referenced appellant's belief that his preexisting hernia had been aggravated by the accepted work injuries. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden of proof to disprove such a relationship.[11] Dr. Chang's opinion regarding causal relationship is of limited probative value as he did not provide adequate medical rationale in support of his conclusion. The Board also finds that his opinion, that it was possible that appellant's work injury aggravated his preexisting hernia, is speculative in nature. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[12] Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes the accepted work injury aggravated a preexisting condition is not sufficient to meet appellant's burden of proof.[13]

The remaining medical evidence related to appellant's June 16, 2016 operative procedure is also insufficient to establish his claim as no opinion is given regarding the cause of the inguinal hernia. 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]

An award of compensation may not be based on surmise, conjecture, or speculation. 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. Causal relationship must be established by rationalized medical opinion evidence.[15] Appellant failed to submit such evidence and therefore he has not met his burden of proof.

[11] *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[12] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

[13] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

[14] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, *supra* note 12; *Jaja K. Asaramo*, *supra* note 11.

[15] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[16] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[17] For each period of disability claimed, the employee has the burden of proof to establish that she was disabled from work as a result of the accepted employment injury.[18] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[19]

Under FECA the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[20] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.[21] An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[22] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.[23]

ANALYSIS -- ISSUE 2

Appellant filed a claim for wage-loss compensation for the period June 15 to July 27, 2016 which was denied by OWCP. The issue on appeal is whether appellant established that he was disabled from work due to the accepted work condition and, thus, is entitled to wage-loss compensation for this period. The Board finds that appellant is not entitled to wage-loss compensation for the period claimed.

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[16] *Supra* note 2.

[17] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 37 ECAB 712 (1986*); Joseph M. Whelan*, 20 ECAB 55 (1968).

[18] *See Amelia S. Jefferson*, *id.*; *see also David H. Goss*, 32 ECAB 24 (1980).

[19] *See Edward H. Horton*, 41 ECAB 301 (1989).

[20] *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

[21] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[22] *Merle J. Marceau*, 53 ECAB 197 (2001).

[23] *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

The only evidence appellant submitted regarding disability from work during the period June 15 to July 27, 2016 is a disability note from a certified physician assistant. This report is insufficient to establish appellant's claim because physician assistants are not considered physicians under FECA and their opinions are, therefore, of no probative value.[24]

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 recurrence of medical condition on May 2, 2016 causally related to his accepted July 10, 2014 employment injury. The Board further finds that appellant has not established entitlement to wage-loss compensation for the period June 15 to July 27, 2016 causally related to the accepted July 10, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2016 is affirmed.

Issued: July 20, 2017
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

[24] 5 U.S.C. § 8101(2); Section 8101(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. *R.M.*, Docket No. 16-1845 (issued March 6, 2017); *see also David P. Sawchuk*, 57 ECAB 316 (2006).