United States Department of Labor
Employees' Compensation Appeals Board

LUCAS J. McCUTCHEON, Appellant	)	
and	)	**Docket No. 04-900**
	)	**Issued: September 27, 2004**
DEPARTMENT OF THE ARMY, ARMY CORPS OF ENGINEERS, Rock Island, IL, Employer	)	

Appearances:
Lucas J. McCutcheon, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 24, 2004 appellant timely appealed from a January 28, 2004 merit decision by the Office of Workers' Compensation Programs which denied modification of a September 4, 2003 decision. The September 4, 2003 decision denied appellant's claim for an injury arising from a June 23, 2003 employment incident. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant met his burden of proof in establishing that his meralgia paresthesia was causally related to a June 23, 2003 incident at work.

FACTUAL HISTORY

On June 23, 2003 appellant, then a 41-year-old heavy mobile equipment mechanic, was kneeling down to work on a generator. When he stood up his lower back hit a wall beam. He developed lower back pain and numbness in the right upper leg. He stopped working that day.

Appellant submitted a series of reports from a physical therapist, discussing his back condition and treatment. In a July 7, 2003 report, a physical therapist related that appellant was kneeling down and stood up, hitting a beam with his lower back. He tried to twist his shoulders to avoid hitting his head on another piece of equipment. In a July 8, 2003 report, the physical therapist stated that appellant was standing up and hit his back on a beam which threw him forward. As appellant was going forward, his head was about to hit an engine. Appellant twisted to his right and extended his lumbar spine. The physical therapist indicated that appellant began noticing increased back pain and numbness in the anterior right thigh.

In a July 23 2003 report, Dr. Timothy Miller, a Board-certified family practitioner, stated that appellant was working in a small crawl space, but as he went backwards, he hit his back and then came forward. Appellant twisted as he came forward to avoid hitting his head on the low-laying roof and felt a pop. In an August 1, 2003 report, Dr. Miller stated that appellant had been seen for right thigh pain after the June 23, 2003 incident which appeared to be neuropathic following his injury at work. He indicated that appellant had a probable broad-based disc bulge at L2-3 with what appeared to be a new right paracentral disc protrusion at that level impacting the L3 nerve root. This condition lead to radicular discomfort in the right thigh without evidence of neuropathic loss of strength in the right thigh. Dr. Miller stated that the distribution of symptoms was consistent with the area affected by the disc condition. He ruled out meralgia paresthesia[1] which he had considered to be the other possible diagnosis. Dr. Miller noted that while appellant did not have any evidence of motor loss within the quadriceps muscle innervated by the L3 nerve root, he did have some persistent hypesthesia and dysesthesia in addition to the pain in the area.

In a July 16, 2003 report, Dr. Ralph H. Congdon, a Board-certified orthopedic surgeon, stated that appellant was referred for treatment with a history of burning pain and dysesthesia in his right thigh. He commented that appellant was injured on June 23, 2003 while working on a vehicle and, as he stood up, he was injured and then driven forward so his head was going towards the vehicle. Appellant twisted to get out of the space and had something happen in his back, shortly after which he developed a burning pain in his right thigh. Dr. Congdon stated that appellant's localization was around the greater trochanter but from midline laterally to midline medially, he had numbness that seemed to go to the knee and not much distally. In an August 18, 2003 report, Dr. Congdon reported that appellant related a causal relationship between the onset of his symptoms and the June 23, 2003 event. Dr. Congdon indicated that he could not refute the causal relationship.

In an August 19, 2003 report, Dr. Stephen C. Rasmus, a Board-certified internist and neurologist, stated that an electromyogram and nerve conduction studies (EMG/NCV) showed an absent right lateral cutaneous nerve of the thigh response consistent with meralgia paresthetica. He indicated that no evidence of lumbar radiculopathy was found.

[1] Meralgia paresthesia is defined as a disease marked by pain, paresthesia and numbness in the outer surface of the thigh, in the region supplied by the lateral femoral cutaneous nerve, due to entrapment of the nerve at the inguinal ligament.

In a September 4, 2003 decision, the Office denied appellant's claim finding that the evidence did not establish that the claimed medical condition was related to the June 23, 2003 incident.

On November 24, 2003 appellant requested reconsideration. He submitted a September 11, 2003 report from Dr. Jeffrey Walczyk, a Board-certified family practitioner, who saw appellant on June 25, 2003 for back pain and numbness of his right anterior thigh which occurred on June 23, 2003 after striking a steel beam when going from a stooping to standing position. He noted that appellant was seen and treated at an emergency room. Dr. Walczyk reported that appellant asked to be seen on June 25, 2003 because he was still having severe pain and noted numbness in his right anterior thigh which seemed to be worsening. He indicated that on examination appellant had tenderness in the upper lumbar area on the right primarily over the muscle. Dr. Walczyk noted that straight leg raising was positive on the right at approximately 40 degrees. He related that appellant had a slight decrease of sensation over the right interior thigh by subjective report. Dr. Walczyk indicated that a magnetic resonance imaging (MRI) scan showed a broad-based disc bulge at L2-3 and a small paracenter protrusion and degenerative discs in L3-4 and L5-S1. He referred appellant to Dr. Congdon. Dr. Walczyk commented that the working diagnosis was muscular contusion with right thigh neuropathy.

In a September 26, 2003 report, Dr. Miller stated that appellant's numbness and paraesthesia in the right thigh was shown by the EMG to be a sensory loss in the right lateral femoral cutaneous nerve with normal effect in the left side. Dr. Miller indicated that there was no evidence of radiculopathy on the EMG. He concluded that appellant's current symptoms were due to meralgia paresthetica or an injury to the right femoral cutaneous nerve. Dr. Miller stated that the condition was related to appellant's injury at work in June 2003 which involved a twisting injury that appeared to have led to at least a transient compression of the lateral femoral cutaneous nerve.

In an October 17, 2003 report, Dr. Walczyk stated that appellant's problems from his work injury, particularly with the anterior right thigh, were consistent with the episode at work. He indicated that the incident at work was not about the question of the direct trauma to appellant's back from striking the steel beam but rather the trauma related to the twisting motion to avoid hitting. He commented that his records concerning appellant did not show a history of back injury.

In a January 28, 2004 decision, the Office denied modification of the September 4, 2003 decision on the grounds that the evidence submitted was insufficient to warrant modification.

LEGAL PRECEDENT

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, 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.[2] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the

[2] *See John J. Carlone*, 41 ECAB 354 (1989).

employment incident caused a personal injury.[3] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[4] A claimant seeking benefits under the Federal Employees' Compensation Act[5] has the burden of establishing by reliable, probative, and substantial evidence that any disability for work or specific condition for which compensation is claimed is causally related to the employment injury.[6] To establish causal relationship between a condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7] Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.[8]

ANALYSIS

The Office accepted that, the June 23, 2003 employment incident occurred as appellant alleged when he arose from where he was working, hit a bar with his lower back, was pushed forward towards an engine and twisted his back to avoid hitting his head on a piece of equipment.

Dr. Congdon indicated that, after appellant twisted his back, he developed a burning pain in his thigh. Dr. Congdon noted that appellant had numbness in the right leg above the knee. He subsequently stated that there existed a causal relationship between the June 23, 2003 incident and appellant's right thigh condition.

Dr. Walczyk reported on appellant's symptoms and conditions and gave a working diagnosis of muscular contusion with right thigh neuropathy. He subsequently described the mechanism of appellant's injury by concluding that appellant's symptoms of the right thigh were consistent with the twisting motion of his back while trying to avoid hitting the engine.

Dr. Miller indicated that appellant had a broad-based disc bulge at L2-3 which appeared to be impinging the L3 nerve root, which corresponded to appellant's symptoms. He remarked that appellant related his right thigh condition to the employment incident. Dr. Rasmus reported that an EMG showed a meralgia paresthetica involving the right lateral cutaneous nerve and ruled out lumbar radiculopathy. Dr. Miller stated that the EMG showed a sensory loss in the

[3] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(ee).

[4] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *See Frazier V. Nichol*, 37 ECAB 528 (1986).

[5] 5 U.S.C. §§ 8101-8193.

[6] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

[8] 20 C.F.R. § 10.115(e).

right thigh. He commented that appellant's symptoms were due to a meralgia paresthetica or an injury to the right lateral femoral cutaneous nerve. Dr. Miller indicated that the condition was related to appellant's employment incident which involved a twisting injury that appeared to have caused a transient compression of the right lateral femoral cutaneous nerve. His report was based on an accurate EMG test which gave a more precise diagnosis of appellant's condition. The opinions of Dr. Congdon, Dr. Walczyk and Dr. Miller relating appellant's right thigh condition to the twisting involved in the June 23, 2003 employment incident provide sufficient medical evidence to require further development of the claim.[9]

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate physician for an examination. The physician should be asked for his diagnosis of appellant's condition and his opinion on whether appellant's condition is causally related to the June 23, 2003 employment incident. After further development as it may find necessary, the Office should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs, dated January 28, 2004 and September 4, 2003, be set aside and the case remanded for further development as set forth in this decision.

Issued: September 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] *See John J. Carlone, supra* note 2.