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STEVEN C. HEATON, Appellant)	
)	
and)	Docket No. 04-2075
)	Issued: April 11, 2005
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Omaha, NE, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On August 19, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated May 28, 2004, wherein the Office affirmed the finding that he failed to establish that his condition had been caused or aggravated by the accepted April 8, 2003 incident. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

The issue is whether appellant established that his back condition was caused or aggravated by the accepted April 8, 2003 employment incident.

FACTUAL HISTORY

On April 8, 2003 appellant, a 49-year-old modified clerk, filed a traumatic injury claim alleging that he injured his lower back when he tripped over a floor mat.¹ He stopped work on April 8, 2003 and returned to light-duty work on April 17, 2003.

In support of his claim, appellant submitted attending physician's reports (Form CA-20) dated April 8 and 9, 2003. In an April 8, 2003 CA-20 form, Dr. Alexandra Gustav-Geditz diagnosed severe back strain which she checked "yes" as caused or aggravated by the April 8, 2003 employment incident. She reported that appellant tripped over a mat and then fell, which reinjured his prior back injury. Dr. Gustav-Geditz checked "yes" that appellant had been advised he could return to work and noted his disability as April 8, 2003 "until cleared." In an April 9, 2003 CA-20 form, Dr. Ronald D. Silvius, a treating osteopathic Board-certified family practitioner, diagnosed lumbar strain with exacerbation of chronic pain. He checked "yes" to the question as to whether the condition was caused or aggravated by the employment activity. Dr. Silvius indicated that appellant had not been advised as to when he could return to work.

In a letter dated April 18, 2003, the Office advised appellant that his allowance for continuation of pay was not authorized as the employing establishment controverted his claim and he had been released to return to light-duty work on April 9, 2003.

In a report dated April 25, 2003, Dr. Thomas M. Baer, an attending Board-certified family practitioner, reported that appellant injured himself on April 8, 2003 when he tripped on a mat and fell. He stated that since the April 8, 2003 incident appellant's back pain and left lower extremity weakness had increased. Dr. Baer reported that appellant "still had increased weakness in the left lower extremity especially the extensor muscles" when he saw him on April 25, 2003. Appellant also reported increased numbness and decreased feeling in the left foot and leg.

By decision dated May 7, 2003, the Office denied appellant's claim on the grounds that he failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on April 8, 2003, as alleged.

On December 4, 2003 the Office received a May 19, 2003 report by Dr. Behrouz Rassekh, a Board-certified neurological surgeon, diagnosing a herniated disc at L4-5. He reported that appellant sustained an initial injury in November 1999 and a magnetic resonance imaging (MRI) scan performed at the time showed an L4-5 herniated disc on the left and a bulging disc at L5-S1. Dr. Rassekh stated that appellant sustained another injury when "[he] tripped on a rubber mat at work and fell forward landing on his hand and knee." Subsequent to this incident, he "began having back pain" which "gradually has gotten worse" and "[a]round April 20, 2003 he began having some left leg pain and feeling the funny feeling in the left leg." A physical examination revealed mild lumbar muscle spasm, 45 degrees right left leg straight raising, 30 degrees left leg straight raising, "slight difficulty walking on heel on the left" and

¹ At the time of the injury appellant was working in a rehabilitation job as a result of a November 9, 1999 employment injury. The Office accepted that appellant sustained a lumbar strain and herniated disc due to the November 9, 1999 employment injury.

symmetrical reflexes. Dr. Rassekh reported that an MRI scan showed “an extruded fragment of L4-5 on the left and bulging disc at L4-5.” With regards to the cause of appellant’s symptoms, he attributed them to the L4-5 herniated disc.

By decision dated January 29, 2004, the Office hearing representative modified the prior decision for acceptance that the incident occurred as alleged but denied the claim, finding that the medical evidence was insufficient to establish a causal relationship between the alleged worsening of his back condition and the April 8, 2003 employment incident.

Appellant requested reconsideration in a letter dated February 25, 2004 and submitted a February 19, 2004 report by Dr. Baer in support of his request.

Dr. Baer noted that he had treated appellant for several years for chronic back pain. He opined that prior to the April 8, 2003 incident, he had no left leg symptoms and “was experiencing ‘normal’ pain and discomfort associated with his back pain and disability.” However, subsequent to the incident appellant “experienced severe and limiting pain.” Dr. Baer stated that there was documentation by both himself and Dr. Rassekh as to the worsening of his condition which included, “numbness, tingling and weakness in his left leg.” He opined that appellant’s worsening in his condition was due to the April 8, 2003 incident. In support of this conclusion Dr. Baer noted “a comparison and contrast of MRI scans that were performed on [January] 26, [20]00 and [April] 3,² [20]03 do show some changes in the herniated disc” which “would explain the worsening of [his] condition.”

By merit decision dated May 28, 2004, the Office denied appellant’s request for the modification of the denial of his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. 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.⁵ Second, the employee must

² This appears to be a typographical error as the record contains an MRI scan that was taken on April 30, 2003.

³ 5 U.S.C. §§ 8101-8193

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relate to the employment incident.

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁷ An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁸ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁹ Neither the fact that the condition became apparent during a period of employment, nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.¹⁰

ANALYSIS

As the Office did not dispute that the April 8, 2003 trip and fall occurred at the time, place and in the manner alleged and found that appellant was in the course of employment at the time of the incident, the remaining issue is whether the alleged injury was caused by the employment incident.

The record indicates that following the employment incident appellant sought treatment on April 8, 2003 from Dr. Gustav-Geditz and she diagnosed a severe back strain and checked "yes" that the condition was caused or aggravated by the April 8, 2003 tripping incident. She noted that appellant reinjured a prior back injury when he tripped and fell over the mat. However, Dr. Gustav-Geditz did not provide a reasoned opinion on causal relationship between the diagnosed condition of severe back strain and the April 8, 2003 employment incident, nor did she explain how appellant's preexisting back condition had been affected by the April 8, 2003 employment incident. Therefore, her reports are of diminished probative value and do not establish that he sustained a work-related injury on April 8, 2003.

In a report dated April 25, 2003, Dr. Baer, appellant's attending Board-certified family practitioner, opined that he injured himself when he tripped over the mat and fell. He stated that his back pain and left lower extremity weakness had increased since the April 8, 2003 incident. However, Dr. Baer does not provide a diagnosis beyond noting appellant's complaints of increased back pain and lower extremity weakness. He failed to provide a rationalized medical opinion explaining how appellant's trip and fall on April 8, 2003 had aggravated his preexisting

⁶ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁹ *Nicolette R. Kelstrom*, 54 ECAB ____ (Docket No. 03-275, issued May 14, 2003).

¹⁰ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Jamel A. White*, 54 ECAB ____ (Docket No. 02-1559, issued December 10, 2002).

back condition or caused the increase in his back pain and lower extremity weakness. Therefore, this report is not sufficient to establish that he sustained a work-related injury on April 8, 2003.

Dr. Baer, in a report dated February 19, 2004, noted that he had treated appellant for several years for chronic back pain and that prior to the April 8, 2003 incident, he had not experienced left leg symptoms and experienced normal discomfort and pain associated with his back condition. Subsequent to the injury appellant “experienced severe and limiting pain” as well as “numbness, tingling and weakness in his left leg.” Thus, Dr. Baer opined that his condition had worsened as a result of the April 8, 2003 incident. However, Dr. Baer failed to provide sufficient explanation of how the April 8, 2003 work incident caused a worsening of appellant’s preexisting back condition. Moreover, the Board has held that a diagnosis of “pain” without more does not constitute the basis for the payment of compensation.¹¹ Therefore, this report is not sufficient to establish that appellant sustained a work-related injury on April 8, 2003.

In a May 19, 2003 report, Dr. Rassekh, a Board-certified neurological surgeon, reported that appellant had originally sustained an injury in November 1999 and that he sustained another injury when he tripped and fell over a mat at work. He diagnosed a herniated disc at L4-5 and noted subsequent to incident when appellant tripped and fell, his back pain had worsened. With regards to the cause of appellant’s symptoms Dr. Rassekh attributed them to the herniated disc, but offered no opinion as to the cause of the herniated disc. His report is of diminished probative value as he offered no opinion as to the cause of his herniated disc.¹² Thus, this report is not sufficient to establish that appellant sustained a work-related injury due to the April 8, 2003 incident.

CONCLUSION

Appellant failed to provide sufficient rationalized medical evidence establishing that he sustained an injury causally related to his fall at work on April 8, 2003. Accordingly, the Office properly denied his claim

¹¹ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹² *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 28, 2004 is affirmed.

Issued: April 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member