

On April 19, 2003 appellant, then a 69-year-old security screener, filed a traumatic injury claim alleging that on April 14, 2003 she twisted her back while lifting a large bag onto a table. The employing establishment did not indicate that she stopped work.

In a report dated April 24, 2003, Dr. Salim Rahman, an attending Board-certified neurosurgeon, noted that he had treated her for a prior neck and back pain. He stated that he had treated her in the past week for back pain radiating into her lower extremities that appellant related was caused by a work-related incident on April 14, 2003 when she lifted a piece of luggage and placed it on a table. Dr. Rahman reported that she had decreased range of motion of the lumbar spine but that the cervical and lumbar spines were without tenderness and that the motor and sensory findings were normal. Dr. Rahman diagnosed low back pain with radiculopathy and noted a preexisting lumbar canal stenosis.

On May 8, 2003 Dr. Rahman indicated that a May 1, 2003 myelogram of the lumbar spine revealed scoliosis with lumbar convexity to the left, centered at L3. He observed nerve root truncation on the right at L3-4 and bilaterally at L4-5 and diagnosed multiple level stenosis as a result of lateral recess compression. Dr. Rahman recommended posterior lumbar decompression with fusion, noting that the condition was preexisting, but that “the activity that exacerbated her pain contributed significantly to her current symptoms.”¹

By letter dated June 6, 2003, the Office advised appellant that the information submitted was not sufficient to determine whether she was eligible for benefits and advised her regarding the additional medical and factual evidence needed to support her claim. She was asked to provide a detailed narrative report from her physician that would include a history of injury, findings, symptoms, a firm diagnosis and test results that confirm the diagnosis, treatment provided, prognosis and the period and extent of disability, if any. The Office also requested that her physician provide an opinion as to how her employment resulted in the diagnosed condition. It also asked her for a history of her prior injury that caused back and leg pain.

In a report dated May 8, 2003, Dr. Rahman stated that appellant could work with limitations on lifting and that surgery was scheduled for May 21, 2003. On that date, appellant underwent decompression surgery from L2 to L5 with fusion. A postoperative computerized tomography (CT) scan revealed levoscoliosis.

By decision dated July 14, 2003, the Office denied appellant’s claim for benefits, finding that the medical evidence failed to establish that she sustained a medical condition causally related to the accepted incident. The Office found that Dr. Rahman’s reports did not provide a detailed medical explanation on how the symptoms worsened or why the injury resulted in the need for surgical intervention.

On July 29, 2003 the Office received a March 19, 2002 report from Dr. Robert L. Elworth, Board-certified in family medicine, who stated that appellant related that “a year ago [she] had lunged and hurt her low back.” She developed permanent paresthesias along the L4 interior thigh. Dr. Elworth noted that three weeks earlier she hurt her low back again causing severe pain down the right lower extremity. He noted a negative straight leg raising and noted sensory changes of L4.

¹ The May 1, 2003 lumbar myelogram report stated that the comparison study was from May 20, 1999. The radiologist noted progressive findings at L2-3 and L4-5 from the prior scan.

On September 4, 2003 appellant requested reconsideration. She submitted a June 19, 2003 x-ray that revealed diffuse degenerative changes and scoliosis of the lumbar spine and postoperative fixation of L2 through L5. On June 19, 2003 Dr. Rahman stated that appellant had an infection and abscesses in her wound and recommended dressing changes. On June 29, 2003 he placed appellant on total disability from May 21, 2003 based on the lumbar fusion and stitch abscess. In form reports dated July 9 and 10 and August 25, 2003, Dr. Rahman checked appropriate boxes indicating that appellant had a concurrent or preexisting injury but that her nerve root truncation and spinal stenosis were caused or aggravated by the employment incident of April 14, 2003. He noted that appellant was totally disabled as of May 21, 2003.

In an August 21, 2003 report, Dr. Rahman stated that he treated appellant for degenerative disc disease in May 2002. He noted that appellant related that pain associated with this condition had resolved and that her April 14, 2003 incident caused her current condition. Dr. Rahman stated that the mechanism of injury was “most likely” the twisting of her back as she lifted luggage and this activity would be sufficient to explain her symptoms. He added, for the April 14, 2003 incident, she would not have had the required surgery. Dr. Rahman released appellant to return to restricted duty on October 20, 2003. Appellant also submitted a Form CA-7 claim for compensation for June 22 to October 21, 2003.

By decision dated November 24, 2003, the Office denied modification of its July 14, 2003 decision. The Office stated that Dr. Rahman’s May 18, 2003 report did not define what activity exacerbated her preexisting condition. Further, it found that Dr. Rahman failed to distinguish the effects of her preexisting spinal stenosis and the effects of the lifting incident on April 14, 2003 in causing her current condition.

Appellant requested reconsideration on February 24, 2004 submitted a February 5, 2004 report from Dr. Rahman. He stated that appellant sustained a work-related injury on April 14, 2003 when she was lifting luggage that caused an immediate onset of low back pain. He added that appellant had had degenerative disc disease but that she was completely asymptomatic and had complete resolution of prior pain associated with this condition. Dr. Rahman stated “[T]o the best of my knowledge and with a reasonable degree of medical certainty, I can say that the causation of her symptoms, without any doubt, was the lifting injury [on April 14, 2003.] In an attending physician’s supplemental report, Dr. Rahman noted that appellant was totally disabled from May 21 to October 21, 2003.

On March 24, 2004 the Office denied modification on the grounds that the evidence failed to establish a causal relationship between her condition and the work-related incident. The Office also denied appellant’s request for authorization for surgery on the grounds that no causal relationship between the need for surgery and her employment had been established.

On May 6, 2004 appellant requested reconsideration. In a report dated July 23, 2004, Dr. Rahman stated that he treated appellant in May 2002 for back and leg pain. He noted that a magnetic resonance imaging (MRI) scan demonstrated the degenerative scoliosis and moderate stenosis but that she did not seek treatment due to improvement in her pain symptoms. Dr. Rahman stated that, at the time of her work injury on April 14, 2003, appellant had been doing well. At that time, she experienced an acute exacerbation of back and leg pain when

lifting luggage to place it on a table. He stated: “I feel it was the lifting and twisting action that caused the acute pain symptoms, necessitating surgical treatment.”

On August 6, 2004 the Office denied modification of its prior decisions on the grounds that appellant failed to submit evidence to support her claim that her medical condition was causally related to her employment. The Office said that Dr. Rahman failed to provide a diagnosis that resulted from the April 14, 2003 incident, nor did he identify the specific nerve root that was irritated in the April 14, 2003 incident. With respect to Dr. Rahman’s July 23, 2003 report, the Office stated that the doctor failed to identify the exact area of the spine that was injured, it added that it had not received a copy of the postoperative report.

On October 5, 2004 appellant requested reconsideration. In support of her request, she submitted a report from Dr. Rahman that was dictated on October 16, 2004 regarding the May 21, 2003 surgery.

The Office denied modification of its prior decisions on November 2, 2004. The Office found that Dr. Rahman’s postoperative report failed to provide a rationalized medical opinion establishing a causal relationship between appellant’s condition and the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing 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 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 are causally related to the employment injury.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal 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.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

⁶ *Id.*

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁷ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁸

ANALYSIS

It is not disputed that on April 14, 2003 appellant was lifting a large bag onto a table as alleged. The Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that she sustained a medical condition causally related to the accepted event.

The Board finds that the medical reports from Dr. Rahman generally support that the accepted lifting incident aggravated her preexisting back condition. Dr. Rahman began treating appellant within days of the claimed injury and consistently maintained that the April 14, 2003 employment incident caused her low back pain and radiculopathy. He noted that the lifting and twisting caused an injury, provided examination findings, and addressed results of diagnostic testing. While he acknowledged that appellant had a preexisting condition, he advised that this was essentially asymptomatic as of April 14, 2003 and that the lifting incident was sufficient to cause her symptoms and aggravate her preexisting lumbar stenosis. There is no medical evidence of record negating causal relationship. Although the physician's reports are not sufficiently rationalized to meet appellant's burden of proof in establishing her claim, they stand uncontroverted in the record and are sufficient to require further development of the case.⁹

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁰ The Board will remand the case to the Office for preparation of a statement of accepted facts appropriate further medical development. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁷ *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003).

⁸ *Calvin E. King*, 51 ECAB 394 (2000).

⁹ *See John J. Carlone*, *supra* note 5; *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁰ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 2, August 6 and March 24, 2004 are hereby set aside and the case remanded for further development in accordance with this decision of the Board.

Issued: July 13, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member