

In April 2003 statements, the employing establishment controverted the claim because appellant was “away from the area assigned to perform her duties” at the time of the alleged incident. Appellant submitted a statement from a coworker who witnessed her “trying to hold on to a bottom drawer as she fell backwards upon her back.” Another coworker witnessed her lying on her back in the file area next to an open file drawer.

In a report dated April 23, 2003, Dr. Michelle A. Stern, a Board-certified physiatrist, related that she treated appellant on that date “for her complaint of severe back pain, which was sustained while at work on Monday, April 21, 2003.” She opined that appellant should remain off work for approximately two weeks. Dr. Stern completed a Form CA-16, authorization for examination and/or treatment on May 8, 2003. She provided a history on the form of appellant experiencing low back pain at work on April 21, 2003 after opening a file cabinet drawer. Dr. Stern diagnosed low back pain and lumbar strain and checked “yes” that the condition was due to the described employment activity. She found that appellant was totally disabled beginning April 23, 2003.

On May 13, 2003 the Office requested that Dr. Stern provide an explanation of how the April 21, 2003 incident caused or aggravated a diagnosed condition. On May 14, 2003 Dr. Stern related that appellant had preexisting partial disability as a result of a 1976 back surgery to correct severe scoliosis. She stated:

“On April 21, 2003 [appellant] [h]as reported that[,] while pulling a heavy file draw[er] open, she developed acute low back pain which required an immediate evaluation in an emergency room. [She] has been unable to work since April 21, 2003. [Appellant] still continues to have acute low back pain from this incident and is currently unable to return to work. It is expected that [she] should be able to return to work performing light duties only on June 6, 2003.”

In an accompanying work restriction evaluation, Dr. Stern diagnosed severe back pain and listed permanent work restrictions.

In a June 3, 2003 response to the Office’s request for further information, Dr. Stern noted that in 1976 appellant underwent a fusion at T8 to L4 with Harrington rods for severe scoliosis. She experienced pain on April 19, 2002 after moving “heaving drawers at work.” Dr. Neil Roth, an orthopedic surgeon, evaluated appellant on May 2, 2002 and diagnosed lumbar spine flat back syndrome. He referred appellant to Dr. Stern for treatment. Dr. Stern related:

“Since that time, I have seen [appellant] several times for episodic low back pain. These other episodes of low back pain occurred in August 2002 and February 17, 2003. [Appellant’s] acute episodes are controlled with pain medication and physical therapy. She was able to resume sedentary work duties on February 24, 2003. [Appellant] had at this time reduced lumbar lordosis, mild lumbar paraspinal spasms and occasional numbness down her left lower extremity. On April 21, 2003 [she] reported that[,] while pulling a heavy file draw[er] open, she again developed acute low back pain, which required an immediate evaluation in an emergency room. [Appellant] has been unable to work since April 21, 2003. On examination, on April 23, 2003 she had limited

lumbar range of motion due to pain, severe paraspinal spasms, limited motor due to pain and a positive straight leg test on the left.”

Dr. Stern asserted that an x-ray showed disc narrowing and facet hypertrophy at L3-4. She opined that appellant could resume limited-duty employment on June 6, 2003.

By decision dated June 13, 2003, the Office denied appellant’s claim on the grounds that she had not established that the incident occurred at the time, place and in the manner alleged.¹ On June 2, 2003 appellant requested an oral hearing which was held on January 23, 2004. In a decision dated April 19, 2004, the Office hearing representative affirmed the June 13, 2003 decision. He found that appellant did not explain why she opened the wrong drawer of the file cabinet.

In a statement dated May 21, 2004, appellant’s union representative noted that clerks inevitably opened a wrong file cabinet drawer. On April 5, 2005 her union representative requested reconsideration of appellant’s claim. He asserted that the employing establishment argued that appellant was working in an incorrect area but did not dispute that “she was still opening drawers that she believed to be where she had to file cases.” In a report dated October 21, 2004, Dr. Stern described appellant’s history of a back fusion in 1978 and subsequent diagnosis of flat back syndrome. She related:

“[Appellant] suffers from a temporary aggravation of her preexisting medical condition when performing certain work duties. [She] was advised not to pull heavy file drawers as this may aggravate her condition. [Appellant] was seen in my office again on April 23, 2003. She reported to me that she was assigned a task at work that caused her to pull open a heavy file drawer. After pulling the heavy file drawer on April 21, 2003, [she] developed symptoms of acute low back pain which required an immediate evaluation in an emergency room. On examination in my office on April 23, 2003, [appellant] had limited lumbar range of motion due to pain and severe paraspinal spasms. She was again placed off duty from work and given pain medication to control her symptoms.

“[Appellant] has a preexisting medical condition which causes her to suffer from episodic low back pain if she has to perform heavy lifting, pulling or twisting and affects the personal as well as work activity that she can perform. If [she] had to pull a heavy object, this could cause her to have an acute low back pain exacerbation. The work situation that [appellant] described can cause her stated symptoms and be responsible for her pain. Although [she] has a preexisting back condition, acute episodes of low back pain can occur through inappropriate work duties for appellant, requiring her to be out of work to recover.”

In a decision dated June 29, 2005, the Office modified its April 19, 2004 decision to show that the April 21, 2003 work incident occurred as alleged. It noted that mistakenly opening

¹ The employing establishment removed appellant from employment on June 9, 2003 because of her inability to perform her job duties. Appellant was subsequently found to be covered under the Americans with Disabilities Act by the Merit Systems Protection Board and retroactivity reinstated.

the wrong file drawer did not remove a claimant from the performance of duty. The Office found, however, that the medical evidence was insufficient to establish that appellant sustained a medical condition due to the accepted work incident.

On September 30, 2005 appellant, through her representative, requested reconsideration. In a July 19, 2005 report, Dr. Stern discussed her prior treatment of appellant for back pain and her recommendation that appellant work with modifications. She treated appellant on April 23, 2003 after an employment incident in which she opened a heavy file drawer. Dr. Stern noted her findings on examination of decreased range of motion and spasms and asserted, “[Appellant’s] injury that required her to be off work duty due to her back pain from April 21 to June 2003 was caused by the stress of trying to open a heavy drawer.”

By decision dated March 21, 2007, the Office denied modification of its June 29, 2005 decision. It found that Dr. Stern’s report did not show that appellant had a medical condition to her accepted fall at work and further noted that back pain was not a diagnosis.

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 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 determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

² 5 U.S.C. §§ 8101-8193.

³ *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

ANALYSIS

Appellant alleged that on April 21, 2003 she sustained a severe back pain after opening a heavy drawer in a file cabinet. She submitted statements from witnesses to the incident and sought medical treatment on that date in the emergency room. Appellant has established that the April 21, 2003 incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that she sustained an injury as a result of this incident.

In an April 23, 2003 report, Dr. Stern indicated that she treated appellant for severe back pain “sustained while at work” on April 21, 2003. In a May 8, 2003 form report, Dr. Stern diagnosed lumbar strain and low back pain.⁸ She checked “yes” that the condition was caused or aggravated by employment and opined that appellant was disabled from work. The Board has held, however, that, when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.⁹

On May 23, 2003 Dr. Stern discussed appellant’s history of developing “acute low back pain which required an immediate evaluation in the emergency room” after opening a heavy file drawer. She opined that she was unable to work due to continued low back pain. Low back pain, however, is a description of a symptom rather than a clear diagnosis of a medical condition and does not constitute a basis for the payment of compensation.¹⁰

In a report dated June 3, 2003, Dr. Stern noted that appellant had a history of a fusion from T8 to L4 with Harrington rods in 1976 to correct severe scoliosis. She experienced episodes of low back pain on April 12, August 2002 and February 17, 2003 and on April 21, 2003 after opening a heavy file drawer at work. Dr. Stern examined appellant on April 23, 2003 and found “severe paraspinal spasms, limited motor due to pain and a positive straight leg test on the left.” She found that appellant was unable to work beginning April 21, 2003 and could resume limited-duty employment on June 6, 2003. Dr. Stern did not provide a firm diagnosis of appellant’s condition or fully explain how the described work incident caused or aggravated her condition. Without a firm diagnosis supported by medical rationale, her report is of little probative value.¹¹

In a report dated October 21, 2004, Dr. Stern noted that appellant underwent a fusion in the 1970s to correct scoliosis. The fusion resulted in flat back syndrome. Dr. Stern advised against appellant opening heavy drawers as it might cause a temporary aggravation of her

⁸ The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989). The Office did not address this issue in its March 21, 2007 decision.

⁹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

¹¹ See *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician’s opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

preexisting condition. Dr. Stern opined that the “work situation that [appellant] described can cause her stated symptoms and be responsible for her pain.” While Dr. Stern found that the April 21, 2003 employment incident “can cause” appellant’s symptoms, she did not relate a specific diagnosed condition to the April 21, 2003 employment incident.¹² Thus, Dr. Stern’s opinion is insufficient to meet appellant’s burden of proof. She listed prophylactic work restrictions; however, the Board has consistently held that the possibility of a future injury does not form a basis for the payment of compensation under the Act.¹³

On July 19, 2005 Dr. Stern again discussed her treatment of appellant on April 23, 2003 after she experienced acute low back pain after opening a heavy file drawer. She stated, “[Appellant’s] injury that required her to be off work duty due to her back pain from April 21 to June 2003 was caused by the stress of trying to open a heavy drawer.” Dr. Stern, however, did not provide a specific diagnosis of appellant’s condition or provide any rationale for her conclusion. Medical conclusions unsupported by rationale are of diminished probative value.¹⁴

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is a causal relationship between her claimed condition and her employment.¹⁵ Appellant must submit a physician’s report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁶ She failed to submit such evidence and therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on April 21, 2003 in the performance of duty.

¹² *Id.*

¹³ *Manual Gill*, 52 ECAB 282 (2001).

¹⁴ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁵ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁶ *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2007 is affirmed.

Issued: December 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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