

She indicated that after she lifted the parcel she experienced pain in her low back which shot down her right leg and to her right foot. Appellant stopped work on July 24, 2006.¹

In a July 26, 2006 form report, a physician with an illegible signature listed the reported date of injury as July 24, 2006 with the reported cause of injury as “picking up box.” The physician diagnosed low back strain and indicated that appellant should not work for two days. In a July 27, 2006 report, Dr. Richard L. Parker, an attending Board-certified orthopedic surgeon, stated that appellant reported that she injured her back while delivering packages at work on July 24, 2006. He noted that appellant described pain in her lumbar spine which radiated into her right leg and denied any previous history of injury to the lumbar spine. On examination, appellant exhibited pain, tenderness and spasm on palpation of her lumbar spine, but there was no sensory or strength loss in her lower extremities. Dr. Parker diagnosed lumbar sprain/strain, herniated nucleus pulposus, sciatic syndrome, myofascial strain and pelvis sprain/strain.

In several form reports dated July 24 and September 15, 2006, Dr. Parker listed the date of injury as July 24, 2006 and the reported cause of injury as “lower back injury when lifting.” He diagnosed low back strain and indicated that appellant was totally disabled for various periods. In reports dated August 24 and October 19, 2006, Dr. Parker indicated that appellant remained symptomatic and diagnosed low back derangement, right sciatica and disc herniation at L4-5. The findings of a September 8, 2006 magnetic resonance imaging scan showed scoliotic lumbar curvature, bulges at L2-3, L3-4 and L5-S1 and a herniation at L4-5.

In a September 27, 2006 form report, Dr. Parker listed the reported date of injury as July 24, 2006 and diagnosed low back derangement and right sciatica. He checked a “yes” box indicating that these conditions were caused or aggravated by the reported employment activity and indicated that appellant was totally disabled from July 24, 2006 until an unknown date. In a November 1, 2006 report, an Office medical adviser responded to several questions posed by the Office claims examiner and indicated that appellant’s claimed back injury was not due to one day of delivering packages.²

In a December 7, 2006 decision, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on July 24, 2006. It found that the reports of Dr. Parker were not sufficiently well rationalized to establish appellant’s claim.³

¹ There is some indication in the record that appellant sustained an employment-related injury in January 2004 but the record is unclear regarding the fact and nature of such a injury. She has not filed a claim for recurrence of disability due to a January 2004 employment injury or any other employment injury and such a matter is not currently before the Board. The record contains a report of a June 21, 2004 arthrogram surgical procedure appellant underwent to evaluate her chronic right-sided sacroiliac pain.

² In its questions for the Office medical adviser, the Office noted that appellant had surgery in 2004. In response to a question regarding whether appellant could have experienced “residuals from 2004 concerning the back,” the Office medical adviser stated, “yes, most likely.”

³ The Office indicated that Dr. Parker did not adequately explain why appellant’s claimed medical condition was not due to a preexisting nonwork-related condition. It indicated that Dr. Parker did not mention appellant’s 1989 surgery.

In December 2006, appellant requested reconsideration of the December 7, 2006 decision. She contended that the basis for the December 7, 2006 decision was invalid because the Office had incorrectly stated that she had back surgery in 1989. Appellant submitted medical reports which had previously been submitted to the Office. In a November 13, 2006 report, Dr. Parker diagnosed right-sided sciatic syndrome and disc herniation at L4-5.

In an April 12, 2007 decision, the Office affirmed its December 7, 2006 decision.⁴

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of 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.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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 she actually experienced the employment incident at the time, place and in the manner alleged.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹ The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.¹⁰

⁴ The Office indicated that it had inadvertently stated that appellant had surgery, an arthrogram procedure, in 1989 rather than in 2004. It noted that this typographic error did not change its determination that Dr. Parker's opinion on causal relationship was not sufficiently well rationalized to establish appellant's claim. Appellant submitted additional evidence after the Office's December 7, 2007 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. §§ 8101-8193.

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

⁷ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁸ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹⁰ *Elaine Pendleton*, *supra* note 6; 20 C.F.R. § 10.5(a)(14).

ANALYSIS

The Office accepted that appellant lifted packages weighing up to 40 pounds at work on July 24, 2006 but found that she did not submit sufficient medical evidence to show that she sustained injury to her back and right leg due to these activities. The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on July 24, 2006.

Appellant submitted a September 27, 2006 form report in which Dr. Parker, an attending Board-certified orthopedic surgeon, listed the reported date of injury as July 24, 2006 and diagnosed low back derangement and right sciatica.¹¹ Dr. Parker checked a “yes” box indicating that these conditions were caused or aggravated by the reported employment activity and indicated that appellant was totally disabled from July 24, 2006 until an unknown date. The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship.¹² Appellant’s burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Parker did no more than check “yes” to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant’s burden of proof.

Dr. Parker did not describe the accepted employment incident in any detail¹³ and did not describe the mechanism through which it caused appellant to sustain a back or right leg injury. His opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.¹⁴ Dr. Parker did not discuss appellant’s preexisting back and right leg conditions or explain why such nonwork-related conditions would not have been the cause for her complaints in 2006. He submitted other reports in which he listed the date of injury as July 24, 2006, diagnosed various back conditions and recommended total disability. However, none of these reports contains a rationalized medical opinion addressing how appellant’s back and right leg conditions were caused or aggravated to the accepted employment incident.¹⁵ Appellant did not submit any medical report containing a rationalized opinion on

¹¹ In other reports, Dr. Parker listed the reported cause of the claimed July 24, 2006 injury as “delivering packages” or “lifting.”

¹² *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹³ For example, Dr. Parker did not describe the amount of weight that appellant carried on July 24, 2006 or how long she carried it.

¹⁴ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

¹⁵ Appellant argued that the basis for the December 7, 2006 decision was invalid because the Office had incorrectly stated that she had back surgery in 1989. The Office later acknowledged that it had inadvertently stated that appellant had surgery, an arthrogram procedure, in 1989 rather than in 2004. The Board notes that this typographic error would not change the fact that appellant failed to submit medical evidence containing a well-rationalized opinion relating her claimed conditions to the accepted employment factors.

causal relationship and the Office properly denied her claim for a July 24, 2006 employment injury.¹⁶

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on July 24, 2006.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 12, 2007 and December 7, 2006 decisions are affirmed.

Issued: August 25, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁶ In a July 26, 2006 form report, a physician with an illegible signature listed the reported the date of injury as July 24, 2006 with the reported cause of injury as "picking up box." The physician diagnosed low back strain and indicated that appellant should not work for two days. However, the physician did not provide a clear opinion on causal relationship.