

On December 19, 2007 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a December 8, 2007 Form CA-16 report from Dr. Thomas D. Pipis, a general practitioner, who diagnosed a strained lower back and strained left hip. Dr. Pipis stated the history of injury, noted lower back pain to palpation and indicated with a checkmark that the condition found was caused or aggravated by his employment activity.

Appellant submitted four reports from Dr. Mark A. Weiner, a general practitioner. On December 8, 2007 Dr. Weiner indicated that appellant had lumbar pain and noted that he developed pain in his lower back and left hip while lifting a bag weighing 40 pounds on December 7, 2007. He stated that appellant's pain was immediate, mild, moderate and aching and was located in the left lower lumbar region. Dr. Weiner advised that appellant's symptoms were exacerbated by touch or movement. He related a history of work-related low back pain/strain, which occurred one month previously.

In a December 14, 2007 report, Dr. Weiner stated:

“[Appellant] returns today for recheck of lumbar and left hip.

“[Appellant] feels the pattern of symptoms is slightly better. The pain is located on left lumbosacral region and the left hip. [He] has been working within the duty restrictions. [Appellant] has been taking ... medications with only minimal improvement. The pain is described as moderate. The symptoms are exacerbated by activity or flexion.

“Of note [appellant] reports he has had left hip pain for about six months as was recently diagnosed with osteoarthritis of the left hip. He reports that his arthritis is so severe that he is potentially being referred for a total hip replacement.”

Dr. Weiner noted tenderness over the hip joint and tenderness of the left paraspinal muscles at the L5 level. He diagnosed lumbosacral strain and severe degenerative joint disease of the left hip and outlined restrictions of no lifting, pushing or pulling exceeding 20 pounds.

In a report dated December 21, 2007, Dr. Weiner stated:

“[Appellant] returns for a recheck for [his lumbosacral strain] injury.

“[Appellant] feels the pattern of symptoms is improving and feels better. He still has some pain in his low back. [Appellant's] hip pain is approaching his baseline which is related to his nonoccupational osteoarthritis of the left hip. He reports he plans to see his personal doctor in about two weeks to discuss treatment and possible hip replacement.”

Dr. Weiner stated findings on examination and reiterated his prior diagnoses and work restrictions. In a January 4, 2008 progress report, he stated:

“[Appellant] feels the pattern of symptoms is improving. He reports his back pain has resolved. [Appellant] has lingering pain in both hips that is related to his ongoing treatment for nonoccupational degenerative joint disease.... [He] cannot identify any exacerbating factors. [Appellant] cannot identify any alleviating factors.”

Dr. Weiner reiterated his previously stated findings and conclusions and released appellant from treatment.

Appellant also submitted physical therapy reports dated December 18, 21 and 31, 2007 and January 4, 2008.

By decision dated January 23, 2008, the Office denied the claim, finding that appellant failed to submit sufficient medical evidence in support of his claim that he sustained a lower back and left hip injury in the performance of duty on December 7, 2007.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

In this case, appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury can only be established by medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on December 7, 2007 caused a personal injury and resultant disability.

Appellant submitted several reports from Dr. Weiner which stated findings on examination, noted his complaints of lower back and left hip pain and diagnosed lumbosacral strain and severe degenerative joint disease of the left hip. These reports, however, did not relate these diagnoses to the December 7, 2004 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Dr. Weiner indicated that appellant sustained an injury to his lower back and left hip on December 7, 2007 while lifting a heavy bag of luggage. He stated that appellant had mild, moderate pain in the left lower lumbar region which was exacerbated by activity or flexion. Dr. Weiner also noted that appellant had severe left hip pain for about six months and had been diagnosed with osteoarthritis/severe degenerative joint disease of the left hip; however, he stated that the origin of his left hip pain was nonoccupational. He outlined restrictions of no lifting, pushing or pulling exceeding 20 pounds. Dr. Weiner noted improvement in appellant's symptoms and a decrease of pain, though he stated that appellant still had some pain in his lower

⁶ *Id.*

⁷ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *John J. Carlone*, *supra* note 4.

¹⁰ *See Anna C. Leanza*, 48 ECAB 115 (1996).

back. In his January 4, 2008 report, he indicated that appellant believed his back pain had resolved, though he had lingering pain in both hips. Dr. Weiner stated that appellant could not identify any exacerbating factors and released him from treatment.

The record also contains a December 8, 2007 form report from Dr. Pipis, who noted that appellant had sustained an injury on December 7, 2007 while lifting heavy luggage, indicated that he had some pain at the L5 level at palpation and diagnosed a strained lower back and strained left hip. While the reports from Drs. Weiner and Pipis presented diagnoses of appellant's conditions, they did not address whether these conditions were caused by the December 7, 2007 incident.¹¹ Appellant failed to provide a rationalized, probative medical opinion relating his diagnosed conditions to any factors of his employment.¹²

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant failed to submit rationalized medical opinion evidence which sufficiently describe or explain the medical process by which the December 7, 2007 work accident would have been competent to cause the claimed lower back/left hip injury.

Accordingly, appellant did not establish that he sustained a lower back/left hip injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a lower back and left hip injury in the performance of duty.

¹¹ Dr. Pipis' form report that supported causal relationship with a checkmark is insufficient to establish the claim. The Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹² The Board notes that the reports appellant submitted from a physicians' assistant do not constitute medical evidence pursuant to section 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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