

FACTUAL HISTORY

On September 16, 2005 appellant, then a 56-year-old air blocker and bracer, filed a traumatic injury claim alleging that on September 15, 2005 he injured his low back when he lifted a heavy box. He submitted a September 15, 2005 report from a physician's assistant.

On December 1, 2005 the Office requested additional evidence, including medical evidence containing a diagnosis and an explanation as to how the diagnosed condition was causally related to the September 15, 2005 work incident.

On December 7, 2005 Dr. Devabrata Ganguly stated that appellant described lifting a heavy box on September 15, 2005 feeling a snap in his back and experiencing pain. He stated that an October 6, 2005 magnetic resonance imaging (MRI) scan suggested significant preexisting arthritic changes along with disc bulging which could have been recent. Dr. Ganguly did not explain how these conditions were causally related to the September 15, 2005 lifting incident.

In a March 29, 2006 report, Dr. G. Peter Foox, a physician specializing in physical medicine and pain management, provided findings on physical examination and an impairment rating. He indicated that appellant injured his lower back on September 15, 2005 when he bent over and lifted a heavy object at work. Dr. Foox noted that an MRI scan revealed multilevel degenerative disc changes and diffuse disc bulges at L3-4 and L5-S1 and a protrusion osteophyte complex causing foraminal stenosis at L4-5. He diagnosed a mild L5-type radiculitis, degenerative disc disease and osteophyte complex pathology of the lumbar spine. Dr. Foox did not provide his opinion as to the cause of these conditions.

In a June 14, 2006 report, Dr. Roshan Sharma, an attending physiatrist, stated that appellant had a herniated disc documented on an MRI scan which revealed a right neuroforaminal stenosis and a right lateral disc protrusion corresponding to his right lumbar radiculopathy. He stated his opinion that appellant's conditions were related to the September 15, 2005 employment incident.¹ Dr. Sharma indicated that he was attaching additional medical reports. However, no other reports from him are of record.

By decisions dated January 6, May 31 and September 12, 2006, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained an injury on September 15, 2005 while in the performance of duty.

On October 12, 2006 appellant requested reconsideration and submitted additional evidence. In October 31, 2005 and May 16, 2006 form reports, Dr. Patricia Andres checked "yes," indicating that appellant's condition was work related. Appellant also submitted reports from a physician's assistant.

¹ Dr. Sharma submitted an identical report dated June 26, 2006.

By decision dated November 22, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

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 actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the 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

ANALYSIS -- ISSUE 1

The Board finds that the evidence is insufficient to establish that appellant sustained a back injury on September 15, 2005 while in the performance of duty.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁵ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 5.

Appellant alleged that on September 15, 2005 he injured his low back when he lifted a heavy box. He submitted a September 15, 2005 report from a physician's assistant. However, a physician's assistant does not qualify as a physician under the Act.⁷ Registered nurses, licensed practical nurses and physician's assistants are not physicians as defined under the Act and their opinions are of no probative value.⁸ Consequently, this report from a physician's assistant is of no probative value in this case. The report is not sufficient to establish a work-related back injury on September 15, 2005.

Dr. Ganguly stated that appellant lifted a heavy box on September 15, 2005, felt a snap in his back and experienced pain. An MRI scan suggested significant preexisting arthritic changes along with disc bulging which could have been recent. However, Dr. Ganguly did not provide medical rationale explaining how these back conditions were causally related to the September 15, 2005 lifting incident. Therefore, his reports are not sufficient to establish that appellant sustained an employment-related back injury on September 15, 2005.

Dr. Foon indicated that appellant injured his low back on September 15, 2005 when he bent over and lifted a heavy object at work. He diagnosed a mild L5-type radiculitis, degenerative disc disease and osteophyte complex pathology of the lumbar spine. However, Dr. Foon did not provide a rationalized medical explanation as to how the September 15, 2005 employment incident caused his lumbar spine conditions. Therefore, his report is not sufficient to discharge appellant's burden of proof as to causal relationship.

Dr. Sharma stated that appellant had a herniated disc documented on an MRI scan. He stated that appellant's condition was related to the September 15, 2005 employment incident. However, Dr. Sharma provided no medical rationale in support of his opinion regarding causal relationship. Therefore, appellant's opinion is not sufficient to establish that appellant sustained a work-related back injury on September 15, 2005.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act⁹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease; or increase the compensation awarded; or

⁷ See 5 U.S.C. § 8101(2) which provides: “‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law;” see also *Roy L. Humphrey*, 57 ECAB ____ (Docket No. 05-1928, issued November 23, 2005).

⁸ *Id.*

⁹ 5 U.S.C. § 8128(a).

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.¹⁰ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.¹¹

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant submitted reports in which Dr. Andres checked “yes,” indicating that his back condition was work related. The Board has held that a physician’s opinion on causal relationship which consists only of checking “yes” to a form report is of diminished probative value on the issue of causal relationship.¹² Therefore, the reports from Dr. Andres do not constitute relevant and pertinent evidence not previously considered by the Office. Appellant also submitted reports from a physician’s assistant. As noted, physician’s assistants are not physicians under the Act and, therefore, their reports are not probative. Consequently, these reports do not constitute relevant and pertinent evidence not previously considered by the Office. As appellant did not show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent evidence not previously considered by the Office, the Office did not abuse its discretion in denying appellant’s request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on September 15, 2005 while in the performance of duty. It further finds that the Office did not abuse its discretion in denying his request for reconsideration.

¹⁰ 20 C.F.R. § 10.606(b)(2).

¹¹ 20 C.F.R. § 10.608(b).

¹² See Gary J. Watling, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 22, September 12, May 31 and January 6, 2006 are affirmed.

Issued: December 12, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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