

By letter dated July 12, 2006, the Office advised appellant of the factual and medical documentation needed to establish his claim. It requested a comprehensive medical report from

a treating physician which provided a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

In statements dated June 20 to July 27, 2006, appellant noted that he first felt left arm pain while pushing the APC cart and did not think anything about it. However, it became worse the next morning. Appellant returned to light-duty work as he thought the pain would go away. He saw Dr. Matt C. Jacobs, a Board-certified internist, on June 17, 2006 when the pain became unbearable. On June 23, 2006 appellant saw Dr. Herbert Edmundson, a Board-certified neurologist, and was advised that he had a herniated disc that might require surgery. He attributed his condition to his job responsibilities of constant standing, lifting and pushing.

In a June 28, 2006 medical report, Dr. John B. Berry, a Board-certified neurosurgeon, stated that appellant's neck pain commenced June 9, 2006 and that he was unable to work for one to two weeks. On July 20, 2006 he diagnosed cervical disc herniation C6-7 left side. Dr. Berry opined that appellant could return to light duty on July 26, 2006.

In a June 29, 2006 medical report, Dr. Jacobs stated that appellant was disabled from June 17 to July 15, 2006. He advised that appellant's condition began on June 9, 2006 and that his cervical disc herniation did not allow him to turn his head or use his arms for extended periods. On July 13, 2006 Dr. Jacobs advised that it was "unknown" when appellant could return to light- or full-duty employment.

By decision dated August 14, 2006, the Office denied the claim, finding that the medical evidence was not sufficient to establish that the diagnosed cervical condition was caused by the June 9, 2006 work incident.

On September 5, 2006 appellant requested a review of the written record. On September 21, 2006 he changed his request to an application for reconsideration. Appellant submitted a factual statement and additional medical evidence, including a June 23, 2006 electromyogram (EMG) and nerve conduction studies.

In a June 23, 2006 report, Dr. Edmundson advised that appellant first developed neck pain several years prior without any antecedent trauma and that he denied any history of significant trauma to the neck. He reported that on June 9, 2006 appellant awakened with severe pain in his left upper extremity with no antecedent trauma. The pain was constant and made worse by lateral rotation of the head and neck. Pain in the left limb and cervical radiculopathy were diagnosed. Dr. Edmundson reported that the magnetic resonance imaging (MRI) scan of the cervical spine revealed evidence of a disc herniation at C6-7 to the left with impingement of the exiting left C7 nerve root. On August 11, 2006 he advised that a myelogram confirmed a disc herniation at C6-7 to the left. Dr. Edmundson advised that appellant would remain on light duty for another two weeks and then be evaluated to monitor the status of the left triceps weakness. He noted that appellant declined surgery.

In an August 25, 2006 report, Dr. Edmundson reiterated the history of appellant's cervical complaints. Appellant was apparently concerned that, if he had reported his condition as a work injury, his part-time job would be jeopardized. Dr. Edmundson stated that appellant had since made it clear that his symptoms began at work while he was involved in pushing and

moving of sacks of mail. He stated that appellant's neck and arm pain and the findings of significant weakness in the left arm associated with a disc herniation in the cervical spine were consistent with a work injury. Dr. Edmundson opined that there was a direct cause between appellant's neck and left upper extremity pain of June 9, 2006 and his work.

On September 27, 2006 Dr. Edmundson stated that, after appellant was seen on August 25, 2006, he had a mild injury at work when he was struck in the mid-back by an APC cart. He did not develop any worsening of pain, numbness or weakness or develop any new problems. Dr. Edmundson diagnosed cervical radiculopathy and pain in limb. He advised that appellant should remain on light duty because of the residual weakness of the left arm.

In a June 28, 2006 report, Dr. Berry noted that on June 9, 2006 appellant was pushing a cart at work and gradually developed pain in his neck and left shoulder with numbness in the left index finger. The pain persisted to extend into the forearm and hand and then gradually improved. Weakness in the left triceps was found on neurological examination. An EMG and nerve conduction studies confirmed a C7 radiculopathy and myelogram and a computerized axial tomography (CAT) scan identified a C6-7 foraminal encroachment on the left, consistent with his complaints. Appellant also submitted July 20, 2006 medical reports from Dr. Berry.

In a November 17, 2006 decision, the Office denied modification of its August 14, 2006 decision. It noted that the intervening work injury referenced as occurring in September 2006 was accepted for contusion of the back due to being "nudged or grazed" by an APC cart.¹

On January 19, 2007 appellant requested reconsideration. He advised that, contrary to the history contained in Dr. Edmundson's June 23, 2006 report, he never experienced pain in his neck or shoulder prior to July 2005, when he fell while at home. In a November 6, 2006 medical report, Dr. Edmundson indicated that appellant was last seen on September 27, 2006 and was being followed for injuries sustained at work. Appellant developed neck and left arm pain, numbness, weakness and tingling and conservative management resolved his symptoms. Dr. Edmundson found that the strength in his left arm was normal and released appellant to return to work without restriction. In a December 5, 2006 report, Dr. Jacob stated that appellant first started complaining of neck and shoulder pain "after blunt trauma in July 2005."

By decision dated March 20, 2007, the Office denied modification of the November 17, 2006 decision.

In an April 25, 2007 letter, appellant requested reconsideration. In an April 12, 2007 report, Dr. Jacob stated that appellant developed a blunt trauma to his left shoulder while at work. He indicated that "[o]n June 9, 2006 while at work he was pushing an APC cart and developed severe pains in the left shoulder and arm."

By decision dated June 28, 2007, the Office denied modification of its March 20, 2007 decision.

¹ This injury was developed separately by the Office in File No. xxxxxx279.

On July 27, 2007 appellant again requested reconsideration, contending that Dr. Edmundson's history of neck pain developing several years prior without antecedent trauma was incorrect. He reiterated that he fell down at home in July 2005 and sought treatment from Dr. Jacob. In a July 17, 2007 report, Dr. Edmundson stated that he had treated appellant since June 23, 2006. He noted that appellant reported neck pain with periodic flare-ups, which were not debilitating or associated with prior injury. As stated in his August 25, 2006 report, Dr. Edmundson stated: "I have reviewed in further detail additional information from the patient regarding the initiation of these symptoms. Apparently [appellant's] symptoms began while at work involved in lifting and moving of sacks and bundles of mail. He had hesitated at first to reveal this to his employer for fear that his part-time job would be put at jeopardy. The additional history does, in my opinion, support the impression that [appellant's] cervical radiculopathy was proximately and directly caused by his duties at work."

By decision dated October 31, 2007, the Office denied modification of the June 28, 2007 decision.

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 disabilities and/or specific conditions 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 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

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

⁶ *Id.*

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

The Board notes that on June 9, 2006 appellant was pushing an APC cart, as alleged. The issue is whether this employment activity caused an injury.

Dr. Jacobs indicated that appellant's neck pain and left paracentral herniation commenced June 9, 2006. In his June 29 and July 13, 2006 reports, he opined that appellant was disabled due to neck pain and a left cervical disc herniation beginning June 17, 2006. However, Dr. Jacobs did not specifically address whether the June 9, 2006 employment incident caused or contributed to his diagnosed conditions.¹⁰ He did not explain how appellant's work activities on June 9, 2006 would cause or aggravate the diagnosed cervical disc condition. Dr. Jacobs' reports are not sufficient to establish that appellant sustained a work-related injury on June 9, 2006.

On June 28, 2006 Dr. Berry noted that appellant's neck pain commenced June 9, 2006 while he was pushing a cart at work and gradually experienced pain in the neck and left shoulder. While he diagnosed a C7 radiculopathy on the left side, he failed to provide an opinion explaining how appellant's employment activities that day caused or contributed to any injury of the cervical spine and how it resulted in his becoming symptomatic. Lacking through medical rationale on the issue of causal relationship, Dr. Berry's opinion is not sufficient to establish that appellant sustained an injury on June 9, 2006.¹¹

Dr. Edmundson originally reported that appellant first developed neck pain several years prior without trauma. However, he corrected this history in a July 17, 2007 report, noting that appellant's neck pain before June 9, 2006 was neither debilitating nor associated with prior injury.¹² On June 23, 2006 Dr. Edmundson diagnosed pain in the left limb and cervical radiculopathy which commenced June 9, 2006. In an August 11, 2006 report, he stated that he

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹² Appellant advised that his neck and shoulder complaints began July 2005, when he fell at home. In his December 5, 2006 report, Dr. Jacobs confirmed that this was the case.

was not advised that this was a work-related injury as appellant was concerned about his part-time job being in jeopardy. Dr. Edmundson opined that the findings of significant weakness in the left arm associated with disc herniation in the cervical spine were consistent with a June 9, 2006 work-related event. However, he did not address how appellant's work activities on June 9, 2006 caused or contributed to his C7 disc herniation or cervical radiculopathy.¹³ Dr. Edmundson did not explain the reasons why pushing a cart would cause or aggravate the diagnosed condition. Thus, his reports are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the mere 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.¹⁴ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury causally related to his June 9, 2006 employment incident.

¹³ See *Jimmie H. Duckett*, *supra* note 11.

¹⁴ *Dennis M. Mascarenas*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the October 31, June 28 and March 20, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 20, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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