

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT V. RAUB and DEPARTMENT OF THE AIR FORCE,
MOUNTAIN HOME AIR FORCE BASE, BASE HOSPITAL,
366TH MEDICAL GROUP, Mountain Home, ID

*Docket No. 02-1187; Submitted on the Record;
Issued September 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on June 12, 2000.

On July 5, 2000 appellant, then a 68-year-old medical clerk, filed a claim for neck, right shoulder, right arm, mid-back and "from neck down spine" injuries sustained on June 12, 2000 when he tripped while descending a flight of stairs, "falling on knees then front of body" onto a carpeted concrete floor, while in the performance of duty. He noted that he experienced "bad headaches" since the injury. In the witness portion of the form, Randall Cross, a coworker, stated that appellant "was walking down the stairs in the hospital main lobby when he tripped on last couple of steps. He fell onto his right side and shoulder. [Appellant] got up and stated he was fine." On the reverse of the form, Technical Sergeant Angela C. Reisman, appellant's supervisor, affirmed appellant's account of events, noting that appellant provided actual notice of the June 12, 2000 injury that day.

In a June 12, 2000 emergency room report, a physician whose signature is illegible provided a history of injury as "slipped at [the employing establishment] hit on r[ight] side. Twisted neck and back area." On examination, the physician noted "tenderness to palpation neck, le[ft] neck." The physician noted that appellant had cervical fusion in March 1997, and a 1987 injury sustained while lifting. The physician attributed appellant's condition on presentation to "slipped on stairs" and "prior injury," noting that appellant would be partially disabled for an indefinite period due, in part, from work restrictions related to prior injuries. Appellant was referred for further care at a spine clinic.

In a February 9, 2001 report, Dr. Fernando A. Escobar, an attending general surgeon, noted a history over "several months" of "bulging of the umbilicus on standing and coughing. On examination, Dr. Escobar also found a "[l]arge reducible right inguinal hernia more likely of the direct type." He diagnosed umbilical and right inguinal hernias and recommended surgical repair.

In a February 12, 2001 letter, appellant attributed the umbilical and right inguinal hernias to falling down the stairs at work on June 12, 2000. He requested that the Office of Workers' Compensation Programs authorize Dr. Escobar to perform the surgical repairs.

In a March 16, 2001 letter, the Office advised appellant of the additional evidence needed to adjudicate his claim. The Office requested that appellant submit an attending physician's report including a history of injury, findings on examination, diagnoses, prognosis and "a well-reasoned opinion on the relationship of the diagnosed condition(s) to the" June 12, 2000 injury. The Office specifically advised appellant that the "report should specifically address the two hernias and how they were directly caused by [his] fall on June 12, 2000." Appellant was afforded 30 days in which to submit additional evidence.

The record indicates that appellant did not submit additional evidence prior to the issuance of the Office's April 24, 2001 decision.

By decision dated April 24, 2001, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office accepted that the June 12, 2000 fall occurred at the time, place and in the manner alleged. The Office found, however, that the medical evidence of record contained insufficient information regarding the history of injury, objective findings and diagnosis. Additionally, the Office found that the medical record contained insufficient rationale to establish a causal relationship between the June 12, 2000 fall and any medical condition. The Office noted that appellant was advised by the March 16, 2001 letter of the additional evidence required to establish his claim, but that he had not submitted such evidence.

Appellant disagreed with this decision and in an August 13, 2001 letter requested reconsideration. He submitted additional evidence.

In a June 12, 2000 chart note, Trent I. Lengl, a physician's assistant at the employing establishment, provided a history of injury and noted appellant's complaints of right shoulder and trapezius muscle spasms and pain. On examination, Mr. Lengl noted point tenderness in the right trapezius, and diagnosed a musculoskeletal trapezius strain. He recommended exercise, heat, and over the counter anti-inflammatories.¹ Mr. Lengl's report was not countersigned by a physician.

An October 5, 2000 cervical magnetic resonance imaging (MRI) scan showed a C5-6 interbody fusion with moderate central stenosis, osteophytes and uncovertebral joint hypertrophy, disc bulges at C3-4, C4-5 and C6-7, endplate osteophytes at C4-5 and C6-7, and moderate central spinal canal stenosis at C6-7.

In a September 12, 2000 report, Dr. Wells, an attending internist, provided a history of the June 12, 2000 fall, noted appellant's complaints of back pain and tenderness to palpation of the cervical spine on the left. Dr. Wells diagnosed a cervical paraspinal muscle strain on the left, a posterior cervical strain and a "back" strain.

¹ In an April 9, 2001 letter, Mr. Lengl stated that he would prefer that appellant's physicians "comment on the relationship between the fall he sustained on June 12, 2000 and his current problems."

In an April 12, 2001 report, Dr. Wells diagnosed an umbilical hernia and right inguinal hernia secondary to the June 12, 2000 fall.

By decision dated January 30, 2002, the Office denied modification of the April 24, 2001 decision on the grounds that the medical evidence submitted was insufficient to warrant such modification.² The Office found that the medical reports submitted accompanying appellant's August 13, 2001 request for reconsideration did not contain any diagnosis by a physician attributable to the June 12, 2000 fall. The Office noted that Mr. Lengl was not a physician and that his report was not signed by a physician, and therefore did not constitute dispositive medical evidence regarding the diagnosis of a trapezius strain. The Office further found that appellant submitted no evidence regarding abdominal or groin pain or the presence of any hernia until Dr. Escobar's February 9, 2001 report, approximately eight months after the June 12, 2000 fall. The Office noted that this significant gap between the June 12, 2000 fall and the first mention of a hernia cast further doubt on the asserted causal relationship.³

The Board finds that appellant has not established that he sustained an injury in the performance of duty on June 12, 2000.

To determine whether an 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 to establish that the employment incident caused a personal injury.⁵ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.⁶ To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Federal Employees' Compensation Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or

² Following issuance of the January 30, 1992 decision, appellant submitted additional medical evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued its final decision in the case. 20 C.F.R. § 501.2(c).

³ Appellant filed his appeal with the Board on April 16, 2002.

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

⁵ *Id.*

⁶ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528 (1986).

contact with, certain factors, elements or conditions.⁷ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁸

As applied to this case, appellant has the burden of providing sufficient medical evidence to establish a causal relationship between the June 12, 2000 fall and the claimed umbilical and right inguinal hernias or any other injury. Appellant submitted medical evidence in support of his claim.

Several of the reports appellant submitted contain no rationale explaining a causal, pathophysiologic connection between the June 12, 2000 fall and any injury or condition.⁹ Dr. Wells, an attending internist, submitted September 12, 2000 and April 12, 2001 form reports noting the June 12, 2000 fall and diagnosing cervical paraspinal muscle strains, a “back” strain, an umbilical hernia and right inguinal hernia secondary to the June 12, 2000 fall. However, Dr. Wells failed to offer any explanation as to why the diagnosed conditions were caused by the June 12, 2000 fall. Similarly, in a February 9, 2001 report, Dr. Escobar, an attending general surgeon, diagnosed umbilical and right inguinal hernias, but did not attribute the hernias to any cause. The Board has held that medical opinion evidence not fortified by medical rationale is of little or no probative value in establishing causal relationship.¹⁰

Also, the June 12, 2000 emergency room report, by a physician whose signature is illegible, noted findings of “tenderness to palpation neck, le[ft] neck,” but did not provide any diagnosis. Without a definite diagnosis, the June 12, 2000 report is of very little probative value in establishing the presence of any injury.

The June 12, 2000 report of Mr. Lengl, a physician’s assistant, was not countersigned or reviewed by a physician. Therefore, it does not constitute medical evidence.¹¹

Appellant was advised by the Office’s March 16, 2001 letter of the deficiencies in the medical evidence then of record, and of the additional evidence needed to adjudicate his claim. The Office specifically requested that appellant submit a report from his attending physician “specifically address[ing] the two hernias and how they were directly caused by [his] fall on June 12, 2000.” However, appellant failed to submit such evidence.

Consequently, appellant has failed to establish that he sustained an umbilical or right inguinal hernia, or any other injury in the performance of duty on June 12, 2000, as he submitted insufficient rationalized medical evidence to establish causal relationship.

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *John J. Carlone*, *supra* note 4.

⁹ Similarly, the October 5, 2000 cervical MRI report does not address causal relationship.

¹⁰ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹¹ See *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is of not competent evidence on the issue of causal relationship).

The decisions of the Office of Workers' Compensation Programs dated January 30, 2002 and April 24, 2001 are hereby affirmed.

Dated, Washington, DC
September 24, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member