

injury was not reported was because his back was still in pain from a previous injury, his back did not feel different after the July 14, 1995 fall and there was no way to tell if the fall had done collateral damage. In an August 23, 1995 letter, Robert Johnson of the Kern County Sheriff Department, stated that on July 14, 1995 he saw appellant “take a bad fall while doing a search pattern. He hit hard on his back and fell down hill.”

By letters dated November 13 and December 19, 1995, the Office advised appellant of the evidence needed to establish his claim, including medical evidence addressing the causal relation between his condition and the July 14, 1995 incident. By decision dated February 12, 1996, the Office found that appellant had not established fact of injury. It found that the incident occurred as alleged, but that he had not established that a medical condition existed for which compensation was claimed. By letter dated November 16, 1996, appellant requested reconsideration and submitted a November 14, 1996 medical report from Dr. W.E. Wilson, who stated that he fell down a mountain, that his diagnosis was sciatica and that he should be off work for three months. By decision dated December 26, 1996, the Office found that the July 14, 1995 incident occurred in the performance of duty, but that the medical evidence was insufficient to meet appellant’s burden of proof, as it did not contain an accurate history or a reasoned opinion on causal relationship.

By letter dated January 3, 1997, appellant requested reconsideration and submitted additional medical evidence. In an August 15, 1995 report, Dr. Michael R. Shapiro, an orthopedic surgeon, diagnosed herniated discs at L4-5 and L5-S1 with right sciatica. He stated that a normal electromyogram and nerve conduction studies did not preclude a symptomatic ruptured disc, recommended a magnetic resonance imaging scan and concluded: “that whereas care would not be apportioned that there would probably be some apportionment of disability as some of the degenerative disc phenomena is probably due to multiple injuries. The patient’s present disability however derives from the instant injury as does his need for care at present.”

In a December 20, 1995 report of his initial evaluation, Dr. Brad L. Penenberg, a Board-certified orthopedic surgeon, noted that appellant sustained low back injuries in 1977 and 1985 in nonfederal employment, a low back injury as a volunteer for a sheriff’s department on September 17, 1994 when pulling a stretcher out of a vehicle, diagnosed as a strain, for which he received two months of physical therapy and a December 26, 1994 injury walking down a ramp at the physical therapy unit, when he slipped and fell backwards onto his tailbone, resulting in increased severe pain and inability to work. Dr. Penenberg described appellant’s July 14, 1995 injury, stating that his right leg gave way, causing him to fall down a hillside, injuring his left wrist and stated that he stopped work on August 1, 1995, due to left wrist pain and continued low back and right leg symptoms. He described appellant’s complaints of intermittent daily low back pain extending to his right calf, reviewed his medical records, including Dr. Shapiro’s August 15, 1995 report¹ and set forth findings on physical examination, which included inability to walk on his heels and toes, limited lumbar range of motion and normal motor, muscle and sensory examination. Dr. Penenberg diagnosed strain and sprain of the lumbar spine from the September 17, 1994 incident, significant lumbar disc disease preexisting the September 17, 1994

¹ Dr. Penenberg’s review of Dr. Shapiro’s August 15, 1995 report refers to a September 17, 1994 injury while pulling a stretcher out of a rescue vehicle, but does not refer to a July 14, 1995 injury.

incident and history of disc derangement at L3-4 and protrusion with bulging at L4-5 and L5-S1, as interpreted by another physician in a January 11, 1995 report. Dr. Penenberg concluded: “Based on the patient’s description of the mechanism of injury noted herein, it is my opinion that the findings on examination today are consistent with the described injuries, which occurred on the above noted dates, superimposed on degenerative lumbar disc disease.” In a January 24, 1996 report, Dr. Penenberg stated that appellant’s back symptoms were unchanged and that he was continued on a temporary total disability status for the next six weeks. In a March 13, 1996 report, Dr. Penenberg stated that appellant had episodic severe right lower extremity pain, that he was receiving physical therapy and that his examination was within normal limits. In a March 5, 1997 report on an Office form, Dr. Penenberg indicated that appellant’s strain and sprain of the lumbar spine resulted from the September 17, 1994 incident and that his coccydynia was secondary to his fall on December 26, 1994. In a March 17, 1997 report, Dr. Chung² stated that, appellant’s low back pain had worsened since his July 14, 1995 accident, in which he fell off a mountain and that this accident probably aggravated his sciatica.

By decision dated September 2, 1997, the Office denied modification of its prior decision, finding that the medical evidence did not contain rationale relating a specific condition to the July 14, 1995 incident.

By letter dated October 1, 1997, appellant requested reconsideration and submitted additional medical evidence. In a January 29, 1997 report, Dr. Eduardo E. Clark, a Board-certified family practitioner, stated that appellant had a long history of back problems and was injured most recently in a July 1995 fall down a hill, after which he developed pain, numbness and weakness down his leg. Dr. Clark diagnosed chronic low back pain with recent exacerbation. In a September 7, 2001 letter, appellant requested reconsideration and submitted additional medical evidence. In a May 27, 2001 report, Dr. Daniel M. Silver, a Board-certified orthopedic surgeon, noted injuries to appellant’s back in September and December 1994 and on “July 14, 1995, in which he fell down a 100-foot cliff aggravating his back condition.” He stated:

“It is my opinion, in regard to the workers’ compensation injuries of July 14, 1995, that this incident did definitely aggravate [appellant’s] back condition, which already was a problem from September 1994 and December 1994. The fall down the 100-foot cliff did aggravate the back in the sense that his symptoms worsened. He already had degenerative disc disease, facet disease and nerve root impingement and these conditions worsened. The patient became much more immobile, much more in need of treatment and probably surgical intervention as a result of the fall down the cliff.”

By decision dated October 15, 2001, the Office found that appellant’s request for reconsideration was untimely filed and did not demonstrate clear evidence of error. Appellant appealed this decision to the Board, which, by an order dated December 19, 2002, granted the Director of the Office’s motion to remand the case for a merit review on the basis that the

² This physician is not further identified.

October 1, 1997 request for reconsideration was timely but was not associated with the record and therefore not considered.³

In a December 31, 2002 report, Dr. Silver stated that he definitely believed that appellant had an aggravation of his back problem from the fall down the cliff and that he believed this was logical that the twisting and jarring of this type of force would certainly cause further damage to an already fragile lumbar spine.

By decision dated May 9, 2003, the Office found that the medical evidence did not establish that appellant's back condition was causally related to the July 14, 1995 incident. Appellant appealed this decision to the Board, which, by an order dated November 15, 2004, remanded the case to the Office on the basis that the May 9, 2003 Office decision was not sent to appellant's authorized representative and therefore was not properly issued.⁴

By decision dated December 7, 2004, the Office found that the medical evidence did not establish that appellant's back condition was causally related to the July 14, 1995 traumatic work incident. By letter dated March 6, 2005, appellant requested reconsideration, contending that the medical reports showed his back condition was causally related to his July 14, 1995 injury and that it was the Office's duty, not his, to obtain medical information. He submitted a December 7, 2004 report from Dr. Silver, stating that appellant had been his patient in 1995 and that it was his firm recollection that when he first saw appellant he reported that he fell 100 feet down a slope when his knee gave out, which certainly aggravated his back. Dr. Silver concluded: "The patient was examined on that initial visit and I confirmed with x-rays the degenerative condition of the lumbar spine. His findings were consistent with the fall down the hill and the aggravation of his condition."

By decision dated July 29, 2005, the Office found that the evidence was not sufficient to establish that the claimed medical condition was causally related to the July 14, 1995 employment incident.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.⁵

ANALYSIS

The medical evidence is not sufficient to establish that appellant's back condition is causally related to his July 14, 1995 employment injury. The earliest medical report, an August 15, 1995 report from Dr. Shapiro, an orthopedic surgeon, stated that his disability

³ Docket No. 02-1280 (issued December 19, 2002).

⁴ Docket No. 03-1508 (issued November 15, 2004).

⁵ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

“derives from the instant injury.” This report however does not contain a history of the July 14, 1995 injury and thus lends no support to appellant’s claim that his back injury is related to the July 14, 1995 employment incident as opposed to his earlier back injuries. The reports of Dr. Penenberg, a Board-certified orthopedic surgeon, show that he was aware of the July 14, 1995 injury, but this doctor did not relate appellant’s back condition to the incident. Instead he stated that appellant’s strain and sprain of the lumbar spine resulted from a September 17, 1994 incident and that his coccydynia was secondary to his December 26, 1994 injury. The reports of Dr. Penenberg do not support appellant’s claim that his back condition is related to his July 14, 1995 employment incident.

A November 14, 1996 report from Dr. Wilson diagnosed sciatica but did not indicate that this condition was related to his history of falling down a mountain. The March 17, 1997 report of Dr. Chung stated that the July 14, 1995 accident probably aggravated appellant’s sciatica, but provided no rationale for this opinion. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof.⁶ Dr. Clark, a family practitioner, diagnosed chronic low back pain with recent exacerbation, but did not diagnose any condition or provide any explanation of how appellant’s July 1995 fall exacerbated his condition.

The May 27, 2001 and December 31, 2002 reports from Dr. Silver, a Board-certified orthopedic surgeon, contain an embellished history that appellant fell down a 100-foot cliff. This history is so disproportionate to what occurred that any opinion based on such a history is of little probative value, especially as the effect this dramatic fall had on appellant was the only rationale in these reports. Dr. Silver amended this history in his December 7, 2004 report to falling down a 100-foot slope, but none of Dr. Silver’s reports, all of which indicate that appellant aggravated his condition or his back or his back problem, diagnose a specific condition that was aggravated on July 14, 1995. The December 7, 2004 report seems to infer that the degenerative condition seen on x-rays was aggravated but Dr. Silver does not indicate when these x-rays were taken, nor does he provide any rationale for the proposition that appellant’s preexisting degenerative condition was aggravated by the July 14, 1995 employment incident.

CONCLUSION

The Board finds that the medical evidence is not sufficient to establish that appellant sustained an injury to his back on July 14, 1995.

⁶ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2005 and December 7, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 19, 2006
Washington, DC

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

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