

disabled beginning that date. In a letter dated July 26, 2006, the Office requested additional factual and medical evidence supporting appellant's claim. It allowed 30 days for a response.

Appellant submitted a note from Dr. Mimi A. Chang, a physician specializing in pain management, dated September 28, 2004 which stated that appellant had severe pain in the low back and recommended work restrictions. On October 28, 2004 Dr. Chang diagnosed lumbosacral radiculopathy and again recommended work restrictions.

The employing establishment responded on August 4, 2006 and stated that on July 21, 2004 appellant working as an equipment manager which did not entail loading and unloading trucks. The employing establishment noted that appellant did not report his alleged employment incident until July 18, 2006. Appellant submitted a statement dated August 10, 2006 and alleged that he was afraid to report his injury to the employing establishment and did not understand his rights.

By decision dated August 29, 2006, the Office denied appellant's claim finding that he failed to submit sufficient factual evidence to establish that the alleged employment incident occurred.

Appellant, through his attorney, requested an oral hearing on September 5, 2006. In support of this request, appellant submitted a report dated September 5, 2006 from Dr. Lepis noting that he first examined appellant on January 25, 2005. He listed appellant's history of injury as occurring on July 21, 2004 when appellant attempted to stop a fully loaded postcon from hitting him by pushing it away with his hands and shoulder. Dr. Lepis stated that this action resulted in a low back injury. He diagnosed herniated disc at L5-S1 with a posterior annual tear and bilateral S1 radiculopathy. Dr. Lepis opined that appellant's diagnosed conditions were the result of the July 21, 2004 incident. However, in his January 25, 2005 note, he indicated that appellant reported a gradual onset of back pain beginning in September 2004.

D. Delli Bovi, a supervisor, submitted a statement dated August 25, 2006 noting that he witnessed a postcon strike appellant in the shoulder while he was unloading a truck. Appellant did not fall down and the postcon did not push him rather he appeared merely startled. Mr. Bovi noted that appellant refused medical treatment at that time.

Appellant testified at his oral hearing on January 23, 2007. He testified that in July 2004 he was working as a tow motor driver connecting postal containers to this vehicle. Appellant stated that his coworkers pushed a loaded postcon from a truck striking appellant in the right arm as he braced himself. He continued to work full time following the incident until he sought medical treatment in September 2004.

By decision dated March 21, 2007, the hearing representative accepted that the employment incident occurred as alleged, but found that the medical evidence was not sufficient to establish that a medical condition resulted from this incident.

Appellant, through his attorney, requested reconsideration on October 4, 2007 and submitted an additional report from Dr. Lepis dated April 16, 2007. He noted that appellant did not initially describe his employment incident, but that once appellant had provided this information then he determined that the injuries resulting in appellant's low back pain were

causally related to the July 21, 2004 work-related accident. Dr. Lepis opined, “Therefore, it is still my belief that appellant’s low back pain is causally related to the July 21, 2004 work-related accident and has limited his function and his ability to perform various daily activities.”

By decision dated December 18, 2007, the Office denied appellant’s claim finding that the medical evidence was not sufficient to establish that he sustained a back injury as a result of the July 2004 employment incident.

LEGAL PRECEDENT

The Office’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.¹ In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.² As part of an employee’s burden of proof, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relation. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.³ A temporal relationship alone is insufficient to establish causal relationship.⁴

ANALYSIS

The Office has accepted that the employment incident occurred as alleged in July 2004. However, it found that appellant failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between appellant’s accepted employment incident and his diagnosed low back conditions. Dr. Lepis is the only physician of record who discusses the accepted employment incident and offers an opinion on the relationship between this incident and appellant’s diagnosed low back conditions. He first examined appellant on January 25, 2005 at which point appellant reported that he had noticed a gradual onset of low back pain in September 2004. It was not until September 5, 2006, that Dr. Lepis included a history of a traumatic injury in July 2004 and attributed appellant’s ongoing back conditions to this incident. Dr. Lepis did not explain how and why appellant’s July 2004 employment incident would have resulted in the diagnosed conditions. His April 16, 2007 report does not offer more than a

¹ 20 C.F.R. § 10.5(ee).

² *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

³ *James Mack*, 43 ECAB 321, 328-29 (1991).

⁴ *Louis R. Blair, Jr.*, 54 ECAB 348, 350 (2003).

temporal relationship between the employment incident and appellant's diagnosed back conditions. Without medical reasoning explaining the processes by which a blow to appellant's shoulder could result in the need for medical treatment two months later and the diagnosed back conditions, these reports are not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that his diagnosed back condition is due to his accepted employment injury and that the Office properly denied his claim.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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