

In a report dated April 25, 2006, Dr. Bothwell Lee, a Board-certified neurosurgeon, related that he treated appellant for severe back pain radiating into her legs beginning on April 7, 2006. He interpreted a January 28, 2006 magnetic resonance imaging (MRI) scan study as showing degenerative lumbar changes with severe stenosis at L4-5 and moderate stenosis at L3-4 and L5-S1. Dr. Lee concluded that extensive sitting and typing at the computer aggravated appellant's preexisting back condition such that she was unable to work. In another report dated April 25, 2006, he discussed appellant's history of herniated discs and lumbar spinal stenosis beginning April 1997 and noted that she experienced increased pain radiating to her neck after three weeks of researching and typing. On April 7, 2006 appellant felt her back "crack" after bending to switch the power off of her computer. Dr. Lee diagnosed lumbar spondylosis with *cauda equine* compression, lumbar degenerative disc disease and lumbar radiculopathy.¹

In a report dated May 9, 2006, Dr. Lee discussed appellant's complaints that she was unable to sit for any period and noted that she attributed her condition to an assigned project that required her to sit at the computer rather than move around. On May 16, 2006 he described appellant's increased right leg symptoms. Dr. Lee noted that the MRI scan study showed severe stenosis at L4-5 and L3-4 and neuroforaminal narrowing.

In a statement dated June 3, 2006, appellant related that she was working from home on April 7, 2006.² She described her injury as occurring when she bent down to reconnect the modem to her office computer after checking for e-mail messages. Appellant heard a "cracking sound" and experienced a sharp pain in her left lower back. She tried to work but her left leg began hurting and buckling. Appellant related that the movement to connect her computer to perform work duties aggravated her preexisting herniated disc and severe spinal stenosis.³

By decision dated August 8, 2006, the Office denied appellant's claim after finding that she did not establish that the April 7, 2006 work incident occurred at the time, place and in the manner alleged.⁴ On August 25, 2006 appellant, through her attorney, requested an oral hearing. She submitted medical evidence from 1997 to 2000. A hearing was held on December 18, 2006.⁵ In a decision dated March 15, 2007, the hearing representative affirmed the August 8, 2006 decision as modified to reflect that appellant had established that the April 7,

¹ In a May 5, 2006 e-mail message, appellant related that the onset of her pain was April 7, 2006 when she called work. She noted that she experienced some pain the previous night.

² In a statement dated June 30, 2006, Claudia W. Sites, a manager at the employing establishment, related that appellant complained of back problems since a 1997 work injury. She began working at home in November but indicated that sitting at the computer resulted in back pain. The employing establishment encouraged appellant to take breaks but she found it difficult to break focus.

³ On June 15, 2006 Dr. Lee noted that appellant felt something crack and experienced pain radiating through the left leg on April 7, 2006 when she bent over to switch the power on her computer.

⁴ The Office noted that her claim was for an occupational disease rather than a traumatic injury as she attributed her condition to work events occurring over the course of more than one day but did not adjudicate her claim as an occupational disease.

⁵ In a note dated November 3, 2006, Dr. Lee related that appellant was not able to work pending further notice.

2006 incident occurred as alleged.⁶ She found, however, that the medical evidence was insufficient to show that appellant sustained a medical condition due to the established work incident.

On March 14, 2008 appellant, through her attorney, requested reconsideration. He submitted a report dated March 12, 2008 from Dr. Lee and asserted that his report was sufficient to require the Office to further develop the medical evidence. On March 12, 2008 Dr. Lee described the occurrence of the April 7, 2006 work incident when appellant bent to turn on a power strip on her computer. He discussed her history of back problems beginning in October 1995 and her prior accepted work injury of an aggravation of an L4-5 herniated disc. Dr. Lee diagnosed a lumbar degenerative disc, lumbar spondylosis with *cauda equine* compression, a herniated disc at L4-5 and bilateral lumbar radiculopathy. He explained that appellant's prolonged sitting from November 2005 to April 7, 2006 aggravated her diagnosed conditions "because of the increased loading of the lumbar spine when seated...." Dr. Lee noted that appellant had previously herniated the L4-5 disc. He stated:

"The pressure on the L4-5 disc from such a bending motion would have further extended disc material, increasing spinal stenosis and impinging on nerve roots. Bending may have forced the inferior articular process of the L4 vertebra into contact or further contact with the fifth lumbar nerve, particularly given [appellant's] short pedicles and facet hypertrophy. [Her] ligamentum flavum was thickened at the L3-4, L4-5 and L5-S1 levels and bending would have further extended that ligament into the medial half of the nerve root canal, which is problematic when lumbar spinal canal spondylosis and stenosis already exists. Because *cauda equina* pressure already existed at the L5-S1 level, such bending would have put further pressure on already compressed sacral nerves. Furthermore, there is no question that clinical findings after April 7, 2006, when compared with those before, were worse. In addition, after April 7, 2006, [appellant] experienced a worsening of her bilateral lower extremity radiculopathy, particularly a worsening of her left leg radiculopathy. After April 7, 2006, [she] began experiencing her left leg giving out and increased weakness, which are recognized signs of an aggravated, severe spinal canal narrowing and pressure on nerve roots. When mechanical irritation of nerve roots occurs, adhesions can form, which can be followed by neural ischemia and intra-neural fibrosis, which are permanent conditions. Furthermore, I have excluded most other possible causes for her increased back pain and radicular symptoms such as other accidents after April 7, 2006, diabetes and the hemangioma seen in the L3, L4 and L5 disc."

Dr. Lee opined that appellant was totally disabled from employment beginning April 7, 2006. He recommended a possible lumbar laminectomy.

By decision dated August 27, 2008, the Office denied modification of its prior merit decisions.

⁶ The hearing representative indicated that appellant had established "fact of injury"; however, it is apparent that he meant that she had established that the incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁷ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁹

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.¹⁰ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.¹¹ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹²

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.¹³ Once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.¹⁴

ANALYSIS

Appellant alleged that she sustained an injury to her lower back when, while working at home, she bent over to reconnect the modem on her computer. The Office accepted that the incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Anthony P. Silva*, 55 ECAB 179 (2003).

⁹ *See Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁰ *Delphyne L. Glover*, 51 ECAB 146 (1999).

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹² *Id.*

¹³ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁴ *Melvin James*, 55 ECAB 406 (2004).

On April 25, 2006 Dr. Lee related that he treated appellant for severe leg pain beginning April 7, 2006 when she felt her back “crack” after bending to switch the power on her computer. He discussed her history of preexisting herniated discs and lumbar spinal stenosis. Dr. Lee diagnosed lumbar spondylosis with *cauda equine* compression, lumbar degenerative disc disease and lumbar radiculopathy. On May 9, 2006 he noted that appellant attributed her condition to a project that required extensive sitting at the computer. Dr. Lee interpreted an MRI scan study as showing severe stenosis at L4-5 and L3-4 and neuroforaminal narrowing. In a report dated March 12, 2008, Dr. Lee noted that appellant bent over to turn on a power strip on her computer on April 7, 2006. He diagnosed a lumbar degenerative disc, lumbar spondylosis with *cauda equine* compression, a herniated disc at L4-5 and bilateral lumbar radiculopathy. Dr. Lee opined that bending on April 7, 2006 exerted pressure on the L4-5 disc which increased appellant’s spinal stenosis and nerve root impingement. He asserted that the bending also extended the L3-4 to L5-S1 ligamentum flavum into the nerve root canal and put further pressure on sacral nerves at L5-S1. Dr. Lee noted that clinical findings subsequent to April 7, 2006 were worse and that appellant experienced weakness in the left leg and increased radiculopathy.

On appeal appellant’s attorney contends that the medical evidence from Dr. Lee, in particular his March 12, 2008 report, is sufficient to warrant either acceptance of the case or further development of the medical evidence by the Office. It is well established that proceedings under the Act are not adversarial in nature and that, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁵ Although Dr. Lee’s reports do not provide sufficient rationale to discharge appellant’s burden of proving by the weight of the reliable, substantial and probative evidence that appellant sustained an aggravation of her preexisting back condition causally related to the April 7, 2006 work incident, his opinion raises an inference of causal relationship sufficient to require further development by the Office.¹⁶ Additionally, the record does not contain any contradictory medical evidence. The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained an aggravation of her preexisting back condition and, if so, the nature and extent of any disability or need for medical treatment. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

On appeal appellant’s attorney further argues that the Office erred in failing to adjudicate whether she sustained an occupational disease in the performance of duty. Appellant attributed the aggravation of her back condition not only to the April 7, 2006 work incident but also to prolonged sitting at the computer over a period of more than one work shift.¹⁷ The Office did not adjudicate this aspect of her claim. On remand, it should determine whether appellant has established that she sustained an occupational disease causally related to factors of her federal employment.

¹⁵ *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁶ *Phillip L. Barnes*, 55 ECAB 426 (2004); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁷ A traumatic injury is defined 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.” 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.” 20 C.F.R. § 10.5(q).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 27, 2008 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 26, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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