

Appellant submitted March 12, 2009 statements from Training Manager Tracie Graham and Coworker Yvette Williams. Two minutes after Ms. Graham observed him bending over a box of copy paper on the day in question, she witnessed appellant walking slowly back to his desk. Appellant stated that he felt something tear in his back. Ms. Williams stated that appellant cursed and stated that he heard something tear in his back shortly after the alleged incident.

The employing establishment controverted the claim. It contended that lifting a ream of paper weighing less than 20 pounds fell within appellant's work restrictions and he failed to provide medical documentation establishing a causal relationship between his claimed condition and the alleged incident.

The record contains a job offer for a modified sales services position, which appellant accepted on February 27, 2008 pursuant to restrictions related to a 1989 injury. Duties of the position were considered clerical and included opening, date-stamping and organizing mail, sending out mail and making photocopies.

By letter dated March 23, 2009, the Office informed appellant that the evidence submitted was insufficient to establish that the incident occurred as alleged or that he had sustained an injury as a result of the alleged incident. Appellant was advised to submit additional information and evidence, including witness statements and a physician's report, which contained a diagnosis and explanation as to how his diagnosed condition resulted from the claimed employment event.

Appellant submitted a March 18, 2009 report from Dr. Jeffrey A. Baum, a Board-certified orthopedic surgeon, who stated that, while working a few days earlier, appellant felt a burning pain in his back after lifting a ream of paper. Since then he experienced low back pain, burning and intermittent pain in his left leg. Dr. Baum noted that appellant had a history of multiple back surgeries. On examination, appellant had no tension signs with either leg out to 90 degrees. Reflexes were decreased 1+ and symmetric in knees and ankles. There was no pain with range of motion of either hip or either knee; however, left hip motion caused low back pain. Dr. Baum restricted appellant from working pending a magnetic resonance imaging (MRI) scan.

The record contains a March 12, 2009 report from an emergency medical service reflecting that appellant was transported to St. Margaret Hospital on that date after lifting a ream of paper at work.

A March 23, 2009 MRI scan of the lumbar spine reflected a diminutive spinal canal; foraminal narrowing bilaterally at L4-5; and central protrusion causing bilateral recess and central canal narrowing. There was moderate L3-4 and mild L2-3 foraminal encroachment mostly by facet hypertrophy. The record contains disability slips from Dr. Baum dated March 18 and 26, 2009; a request for physical therapy dated April 1, 2009; and a physical therapy rehabilitation plan dated March 31, 2009. The record also contains a March 27, 2009 note from Dr. Erica Bial, a Board-certified internist, reflecting that appellant received a nerve root injection at L3-4, L4-5 and L5-S1.

On March 26, 2009 Dr. Baum noted that appellant's MRI scan showed more concentric narrowing from a congenital basis, as well as a protruding disc at L4-5. He advised that appellant's back condition had worsened since October 2006, noting significant left leg pain.

Appellant submitted a March 12, 2009 emergency room report from the University of Pittsburgh Medical Center. He was examined by Dr. David R. Deitz, Board-certified in the field of family medicine. Appellant reported that he had been performing "laboring work" at the employing establishment. While lifting at work that day, he experienced low back pain, which radiated down to both extremities. Appellant noted that he had five previous lumbar surgeries. On examination, Dr. Deitz found diffuse lumbar tenderness at the L3-4 area and no mid-line tenderness. Straight leg raise test was negative. X-rays showed degenerative joint disease. He diagnosed acute lumbar sprain. The record contains a March 12, 2009 report of an x-ray of the lumbar spine.

In a decision dated April 22, 2009, the Office denied appellant's claim. It accepted that appellant lifted a ream of paper on March 12, 2009. It found that the medical evidence was insufficient to establish that the accepted incident caused his claimed back condition.

On June 23, 2009 appellant requested an oral hearing. In support of his request, he submitted physician's reports, reports of MRIs and x-rays and hospital records from March 12 through June 16, 2009.

By decision dated July 24, 2009, the Office denied appellant's request for a hearing as untimely. It determined that the issue involved could be addressed equally well on reconsideration, by submitting evidence establishing that his claimed medical condition was caused by the accepted employment incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.¹ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."²

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 disability or specific condition for which compensation is claimed is

¹ 5 U.S.C. § 8102(a).

² This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

causally related to the employment injury.³ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the “fact of injury,” consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁵ An award of compensation may not be based on appellant’s belief of causal relationship.⁶ 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 a causal relationship.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁸

However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁹

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

³ *Robert Broome*, 55 ECAB 339 (2004).

⁴ *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term “injury” as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). See 20 C.F.R. § 10.5(q), (ee).

⁵ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

The Office accepted that the March 12, 2009 lifting incident occurred as alleged, but found that there was insufficient medical evidence to establish that appellant's back condition was caused by the lifting of a ream of paper at work. The Board finds, however, that the medical evidence of record generally supports that appellant sustained an injury on March 12, 2009.

On March 12, 2009 Dr. Deitz stated that appellant had sustained an acute lumbar sprain while lifting at work that day. His report reflects an understanding of appellant's preexisting lumbar condition, which included five surgeries. It contains a factual and medical history, examination findings and a specific diagnosis. Although Dr. Deitz did not fully explain the process whereby appellant's diagnosed acute lumbar sprain resulted from lifting a ream of paper, his report generally supports appellant's claim that his diagnosed condition was caused or aggravated by the accepted incident.

On March 18, 2009 Dr. Baum stated that, while working a few days earlier, appellant experienced a burning pain in his low back after lifting a ream of paper and since then, he had experienced lower back pain, burning and intermittent pain in his left leg. He provided a medical history and detailed examination findings including low back pain with left hip motion, and restricted appellant from working pending an MRI scan. On March 26, 2009 Dr. Baum noted that appellant's MRI scan showed more concentric narrowing from a congenital basis, as well as a protruding disc at L4-5. He advised that appellant's condition had worsened since October 2006, noting that he had significant left leg pain due to his back condition. Dr. Baum's reports do not provide a definitive diagnosis or an opinion as to the cause of appellant's condition, but they are factually consistent with his treatment for a lumbar condition which began or was exacerbated on March 12, 2009.

The March 12, 2009 report from an emergency medical service does not constitute probative medical evidence, as it was not prepared by a physician as defined by the Act.¹⁰ However, it supports that appellant sought immediate emergency treatment after the lifting incident at work. The x-ray reports and MRI scan document that appellant suffered from, and was treated for, a lumbar condition following the accepted March 12, 2009 incident.

While none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained an employment-related lumbar injury on March 12, 2009 and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted employment injury, and are sufficient to require the Office to further develop the medical evidence and the case record.¹¹ The case will be remanded to the Office to obtain a rationalized opinion from a qualified physician as to whether appellant's back condition is causally related to

¹⁰ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician under section 8101(2) of the Act, which provides: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ See *Virginia Richard*, *supra* note 9; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

the accepted incident. After such development as necessary, it should issue an appropriate decision in order to protect appellant's rights of appeal.

CONCLUSION

The Board finds that this case is not in posture for decision on whether appellant sustained an injury in the performance of duty.¹²

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for action consistent with the terms of this decision.

Issued: August 5, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹² In light of the Board's ruling on the first issue, the second issue is moot.