

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUKE M. PATCH and DEPARTMENT OF HEALTH & HUMAN SERVICES,
PARKER INDIAN HEALTH CENTER, Phoenix, AZ

*Docket No. 03-1501; Submitted on the Record;
Issued August 4, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an injury to his back in the performance of duty.

On February 21, 2003 appellant, then a 48-year-old maintenance mechanic, filed a notice of recurrence of disability, Form CA-2a, alleging that on January 30, 2003 he was "atop a ladder (straddling ladder)." Upon disembarking from the ladder his "right leg had gone numb, causing" him to "slide down approximately four rungs." He alleged that he felt a very strong pain in his lower back which caused him "to become nauseous." On a consumer membership services form, appellant described his injury as: "slipped on ladder, slipped approximately four feet landing on feet -- jamming back." On the recurrence form, appellant noted that his original injury occurred on April 3, 2002. On the reverse of the form, appellant's supervisor indicated that appellant stopped work on January 31, 2003 and had not returned.

Evidence accompanying the claim included a follow-up visit report from Dr. Marc H. Zimmerman, a Board-certified orthopedic surgeon, dated January 30, 2003, who noted that appellant was seen that day because his back pain had become increasingly severe. He further noted that appellant was continuing to have spasms in his back and pain radiating down his legs. Dr. Zimmerman also noted that appellant was "not doing any better," and should refrain from work until the results from a magnetic resonance imaging (MRI) scan was complete. His report did not diagnose appellant's condition or specify the cause of appellant's condition.

Also filed was a request from Artisan Prosthetics for a right ankle-foot orthosis, for a diagnosed right foot drop.

In a March 2, 2003 letter, the Office of Workers' Compensation Programs informed appellant that, after a review of the information provided, the Office determined that appellant's injury of January 30, 2003 was a new traumatic injury, based on a traumatic incident, not a

recurrence of an old injury.¹ Additionally, the Office advised appellant that the information submitted in his claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.² The Office advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was directed to provide a comprehensive medical report showing a diagnosis of any condition resulting from the work incident, and a physician's opinion, with medical reasons for such opinion, as to how the work incident resulted in the diagnosed condition.

In response to the Office's letter, the Office received an addendum report from Dr. Zimmerman, dated January 30, 2003, and received April 11, 2003. Dr. Zimmerman's report clarified the circumstances surrounding appellant's work incident. He noted that appellant was on top of a ladder, wiring a circuit for an exhaust fan in the emergency room treatment area. He stated that "upon disembarking from the ladder the patient's right lower extremity went numb causing the patient to slide down approximately four rungs of the ladder. The patient felt a sudden sharp pain in his low back, which then caused the patient to become nauseated and the patient has been having problems with his increased back pain since that time." Dr. Zimmerman stated that appellant was in his office on January 30, 2003 for evaluation and was noted "to have continuing back problems."

By decision dated April 17, 2003, the Office denied appellant's claim. The Office found that, while the evidence of file supported that appellant experienced the claimed incident, the medical evidence did not establish that a condition had been diagnosed in connection with the work incident. Therefore, it was determined that appellant did not sustain an injury as alleged.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act has the burden of establishing that 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 an injury was sustained 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.³ These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an 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 which must be considered in

¹ The present claim before the Board (13-2073200) does not purport to adjudicate any issues that may be present in appellant's prior claim (13-2051210).

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1142 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

In the instant case, it is not disputed that appellant experienced the claimed work factor, *i.e.*, while attempting to disembark from a ladder; he slid down the four final rungs of the ladder. However, appellant has not established the second component of fact of injury, as there is insufficient medical evidence to establish that he sustained an injury to his back on January 30, 2003 due to the employment incident. On March 2, 2003 the Office advised appellant of the evidence needed to establish his claim. However, such evidence was not submitted prior to the Office's April 17, 2003 decision.⁷

In the instant case, Dr. Zimmerman's amended January 30, 2003 report, received April 11, 2003, noted the events that led up to appellant sliding as he tried to get off the ladder while at work. He noted that appellant was experiencing pain in his back. However, he did not specifically provide an opinion explaining how and why the incident caused or aggravated an injury to appellant's back on January 30, 2003. Furthermore, the doctor did not address why his more contemporaneous January 30, 2003 original report made absolutely no mention of any employment incident causing or aggravating appellant's condition.⁸ Because of this, his amended report is of diminished probative value.

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Gary Fowler*, 45 ECAB 365 (1994).

⁷ The record contains a letter from an employing establishment physician, dated May 9, 2003, regarding appellant's injury and back condition. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. The Board cannot consider new evidence on appeal. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

⁸ *See Michael A. Danowski*, 34 ECAB 1706 (1983) (where the Board found that inconsistencies in the history of injury set forth in medical reports cast doubt upon the validity of the claim); *see also Jason E. Thompson*, 13 ECAB 364 (1962).

The decision of the Office of Workers' Compensation Programs dated April 17, 2003 is hereby affirmed.

Dated, Washington, DC
August 4, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member