

The record indicates that appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine on January 16, 2002, which showed a moderate herniation and degenerative disc disease at L4-5 and L5-S1. In attending physician's reports dated January 24 and February 4, 2002, Dr. James H. McVey, a family practitioner, noted that appellant was seen on January 22, 2002 complaining of severe back pain, extending to his left buttock and left groin. Dr. McVey described appellant as having been at work when he bent over to pick up a package weighing approximately 15 pounds and felt a catch in his back that prevented him from straightening his back. He reported a trigger spot to the left of L4 with radiation to his left leg and left testicle. The diagnosis was acute left low back strain and possible herniated disc at L5-S1. Dr. McVey checkmarked a box indicating that the diagnosed condition was caused or aggravated by an employment activity on January 22, 2002. In a series of duty status reports beginning February 1, 2002, Dr. McVey indicated that appellant was unable to return to work due to lower back and left testicular pain from a herniated disc.

Dr. McVey referred appellant to Dr. Jim C. Brasfield, a Board-certified neurologist, who examined appellant on February 19, 2002. He related that appellant began experiencing left testicular pain prior to January 22, 2002. Dr. Brasfield indicated that appellant had been seen by Dr. McVey for left testicular and low back pain as early as January 11, 2002. He further noted that the MRI scan on January 16, 2002 showed a central L5 disc herniation. Dr. Brasfield diagnosed chronic preexisting recurrent lumbar degenerative disc disease, most likely due to L5 central disc herniation, which preceded his work injury of January 22, 2002. He further opined that there was room to question whether the work incident of January 22, 2002 actually was a work injury, versus just a continuation of preexisting back and testicular pain. Appellant was prescribed medication, physical therapy and a series of lumbar steroid injections. The record contains physical therapy notes from Appalachian Wellness Center.

Appellant was also seen on March 2, 2002 by Dr. Matthew W. Wood, Jr., a Board-certified neurologist, who stated that appellant was seen on referral from Dr. McVey because he did not "get [a]long" with Dr. Brasfield. He related appellant's description of lifting a box on January 22, 2002 and experiencing back pain. Dr. Wood noted that appellant had complained of left testicular pain for some time prior to the January 22, 2002 work incident. He discussed the results of a lumbar spine x-ray that showed slight bifida occulta at S1 and early degenerative changes. Dr. Wood opined that the January 16, 2002 MRI scan showed degenerative changes consistent with appellant's age. He had ordered an additional MRI scan, performed on March 6, 2002, which showed small central disc protrusions at L4-5 and L5-S1 with mild degenerative changes at those same levels. There was no evidence of herniation or spinal stenosis identified. In a treatment noted dated March 11, 2002, Dr. Wood compared the March 6, 2002 MRI scan study to a study performed in 2000, noting that the findings were essentially the same. He opined that appellant suffered a lumbar strain with spasm and approved light-duty work. Appellant was told to continue with epidural injections to relieve his pain symptoms. Another MRI scan was conducted on May 29, 2002 and revealed a slight progression in the degree of protrusion of the discs, compared to the March 6, 2002 study.

In a letter dated June 3, 2002, the Office advised appellant of the medical and factual evidence required to establish his claim for compensation. The Office requested that he provide a reasoned medical opinion from his treating physician addressing with medical rationale how

his back condition was caused or aggravated by the work incident that occurred on January 22, 2002.

Appellant subsequently submitted a June 20, 2002 report from Dr. Ken W. Smith, a Board-certified neurologist, who noted appellant's description of back pain following a lifting incident at work on January 22, 2002. He diagnosed degenerative disc disease and disc herniation at L4-5 and L5-S1 based on the results of an MRI scan report dated May 29, 2002, which is also of record.

In a decision dated August 13, 2002, the Office denied compensation on the grounds that the medical evidence of record was insufficient to establish a causal relationship between appellant's back condition and the work incident of January 22, 2002. In an October 17, 2002 letter, appellant disagreed with the denial of his claim and requested reconsideration. Appellant submitted reports from Dr. McVey dated September 6 and December 12, 2002, wherein the physician diagnosed low back sprain and a possible herniated disc at L5-S1. He stated that appellant subsequently developed extreme anxiety and depression as a direct result of his continuing back pain, loss of work and financial difficulties. Appellant also provided several reports from Dr. Marilou Inocalla, a Board-certified psychiatrist, and Dr. John W. Ludgate, a licensed psychologist, documenting appellant's hospitalization and treatment for depression and anxiety. In a decision dated January 9, 2003, the Office denied modification of its prior decision.

Appellant filed a request for reconsideration on March 11, 2003. He submitted reports from Dr. Ken Smith, a Board-certified neurologist, dated June 20, 2002 and Dr. J. Thomas Hulvey, a Board-certified orthopedic surgeon, dated February 14, 2003. Dr. Smith diagnosed a lumbar disc degeneration at L4-5 and L5-S1 and indicated that surgical intervention was not recommended unless appellant's neurological situation deteriorated. Dr. Hulvey noted that appellant sustained an injury on January 22, 2002 and that he was unable to work. In a May 27, 2003 decision, the Office denied modification, finding that the evidence was insufficient to establish a causal relationship between appellant's back condition and the work incident of January 22, 2002.

LEGAL PRECEDENT

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.¹ Second, an 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.² 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

¹ Gary J. Watling, 52 ECAB 278 (2001); John J. Carlone, 41 ECAB 354 (1989).

² See Caroline Thomas, 51 ECAB 451 (2000); Shirley A. Temple, 48 ECAB 404 (1997); Elaine Pendleton, 40 ECAB 1143 (1989).

the employment incident.³ In order to satisfy the burden of proof, an employee must submit a physician's rationalized opinion on the issue of whether the alleged injury was caused by the employment incident. Rationalized medical opinion evidence is medical evidence which includes a physician's rationale opinion on the issue of whether there is a causal relationship between the employment incident and the employee's alleged injury or medical condition.⁴

ANALYSIS

In this case, appellant had the burden of proof to establish that he sustained a back injury on January 22, 2002 as alleged. This included the submission of rationalized medical opinion evidence establishing a causal relationship between the alleged lifting incident and appellant's diagnosed back condition.

Although the Board accepts that appellant lifted a box on January 22, 2002 and that he felt back pain, there is no medical evidence to establish a causal relationship between the employment incident and appellant's diagnosed condition. The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relation.⁵

The medical evidence of record indicates that appellant's back conditions are attributable to preexisting disc protrusions at L4-5 and L5-S1 with degenerative changes that were diagnosed as earlier as 2000 and most definitely by an MRI scan study performed on January 16, 2002. Although Dr. McVey checkmarked on several attending physician's reports that appellant sustained a lumbar strain and a possible herniated disc that was causally related to a work injury on January 22, 2002, his opinion is not sufficiently rationalized to satisfy appellant's burden of proof. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question that opinion has little probative value and is insufficient to establish a causal relationship.⁶ The Board considers Dr. McVey's opinion to be insufficiently rationalized on the issue of causal relationship since he did not discuss the fact that appellant and reported back and left groin pain symptoms prior to the alleged work injury.

The Board also finds the reports of Drs. Smith and Hulvey to be of little probative value since neither of these physicians discussed appellant's diagnosed back condition in relation to the lifting incident. They reported that an injury occurred on January 22, 2002 but did not provide an opinion as to how appellant sustained either a lumbar strain or a herniated disc as a result of his employment activities on that date.⁷ The Board has long held that medical evidence which

³ Gary J. Watling, *supra* note 1.

⁴ *Id.*

⁵ Jimmy H. Duckett, 52 ECAB 332 (2001).

⁶ See Lee R. Haywood, 48 ECAB 145 (1996).

⁷ The Board notes that none of the physical therapy notes satisfy appellant's burden of proof since a physical therapist is not considered to be a physician under the Act and therefore cannot provided a medical opinion on causal relationship. See 5 U.S.C. § 8102.

does not offer any opinion regarding the cause of the employee's condition is of limited probative value on the issue of causal relationship.⁸

Lastly, Dr. Brasfield examined appellant at the request of his treating physician and specifically pointed out in his February 19, 2002 report that there was room to question whether appellant sustained a work injury on January 22, 2002 as opposed to continuation of back and left testicular pain due to his preexisting back condition. Since Dr. Brasfield does not find a causal relationship between the lifting incident of January 22, 2002 and appellant's back symptoms, his opinion is insufficient to satisfy appellant's burden of proof.

Consequently, in the absence of a rationalized medical opinion addressing the issue of causal relationship, the Board finds that appellant failed to satisfy his burden of proof in establishing that he sustained a back injury in the performance of duty on January 22, 2002 as alleged. The Board further notes that, while the record contains evidence pertaining to a psychological condition, appellant's traumatic injury claim was for an orthopedic injury that has not been proven as due to the work incident of January 22, 2002. Appellant is therefore unable to establish that his depression and anxiety amount to a consequential injury.

CONCLUSION

For the reasons stated in this decision, the Board concludes that appellant failed to establish that he sustained a back injury in the performance of duty on January 22, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 27, 2003 is hereby affirmed.

Issued: December 19, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).