

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH L. TURNER and DEPARTMENT OF THE NAVY,
U.S. NAVAL ACADEMY, Annapolis, MD

*Docket No. 02-2298; Submitted on the Record;
Issued June 12, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury while in the performance of duty.

Appellant, then a 59-year-old utility coordinator, filed a traumatic injury claim on April 10, 2001 after he fell down some steps on April 9, 2001 hurting his back, legs, neck and shoulder. He was treated at an emergency room.

Appellant's treating physician, Dr. Constantine A. Misoul, a Board-certified orthopedic surgeon, restricted him to limited stair climbing due to diagnosed back problems dating from 1986, including multiple herniated discs and radiculopathy. Appellant also had a history of myocardial infarction and sciatica.

The record reveals that appellant was disputing an office relocation. He had been on light duty because of previously accepted back injuries and did not want to be moved to the second floor where his supervisor was located. The move came about because the employing establishment had reviewed its position descriptions (PD) and discovered that appellant was not working under a valid position description. He accepted the utility coordinator position.

The Office of Workers' Compensation Programs informed the employing establishment on May 8, 2001 that it should continue appellant's pay and asked him to provide additional medical evidence and factual information about the incident. He submitted medical evidence, but on June 4, 2001 the Office requested reports from his cardiologist and orthopedist regarding the cause of the fall at work.

In a report dated June 19, 2001, Dr. Misoul recommended an electromyography and nerve conduction studies to assess appellant for lumbar radiculopathy because of his ongoing neurological symptoms. Dr. Paul Young-Hyman, Board-certified in internal medicine, stated on June 12, 2001 that appellant's fall was not caused by cardiac syncope from arrhythmia.

On July 24, 2001 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he had sustained an injury from the falling incident. Appellant requested a hearing, which was held on May 22, 2002.

On August 1, 2002 the hearing representative modified the Office's July 24, 2001 decision to reflect that the April 9, 2001 fall was unexplained, but found that the medical evidence was insufficient to establish an injury.

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

Under the Federal Employees' Compensation Act,¹ an employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by the preponderance of the reliable, probative and substantial evidence.² To determine whether an injury was sustained in the performance of duty, the Office begins with an analysis of whether fact of injury has been established.³

Generally, fact of injury consists of two components, which 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.⁴ The second component, whether the employment incident caused a personal injury, can generally be established only by medical evidence.⁵

In this case, the Office accepted that appellant fell down some stairs at work but found the medical evidence insufficient to establish that the fall caused a back injury. The Board has held that proceedings under the Act are not adversarial; while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The Office has an obligation to see that justice is done.⁷

In his July 3, 2002 report, Dr. Misoul generally indicated that the April 9, 2001 fall aggravated and worsened appellant's preexisting spondylosis, disc herniation and radiculopathy. He responded to five questions regarding the cause of appellant's worsened back condition and explained that, although appellant had similar symptoms prior to the fall, he was functioning and working. After the fall, appellant's symptoms got much worse, especially back and radiating leg pain, so much so that he was now considering invasive procedures such as steroid injections and

¹ 5 U.S.C. §§ 8101-8193.

² *Michael W. Hicks*, 50 ECAB 325, 328 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

⁴ *Linda S. Jackson*, 49 ECAB 486, 487 (1998).

⁵ *Michael E. Smith*, 50 ECAB 313, 316 (1999).

⁶ *Mary A. Wright*, 48 ECAB 240, 242 (1996).

⁷ *Claudia A. Dixon*, 47 ECAB 168, 170 (1995).

facet blocks. Dr. Misoul concluded that the fall caused “acute lumbar facet injuries which superimposed on [appellant’s] previous problems which were made worse.”

The Board finds that the reports of Dr. Misoul, which relates a causal relationship between the April 9, 2001 fall and appellant’s back problems, are sufficient to require the Office to develop the medical evidence further. Therefore, the Board will remand this case for further development.

On remand, the Office should develop the factual and medical record more fully to obtain a clear opinion on whether there is a causal relationship between appellant’s current back condition and the April 9, 2001 fall at work. The Office should refer appellant, a statement of accepted facts and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and rationalized opinion on the causal relationship between appellant’s back condition and his disability for work. After such further development as it deems necessary, the Office shall issue a *de novo* decision.

The August 1, 2002 decision of the Office of Workers’ Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
June 12, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member