United States Department of Labor
Employees' Compensation Appeals Board

RONALD D. GUSTAFSON, Appellant	)	
and	)	
	)	**Docket No. 04-1076**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, LAKE CRESENT RANGER STATION, Port Angeles, WA, Employer	)	**Issued: August 9, 2004**

Appearances:
Ronald D. Gustafson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 8, 2003 finding that appellant had not established that his back injury occurred in the performance of duty on July 21, 2002, as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that his back condition occurred in the performance of duty on July 21, 2002, as alleged.

FACTUAL HISTORY

On July 30, 2002 appellant, then a 56-year-old campground maintenance worker, filed a traumatic injury claim alleging on July 21, 2002 that he injured his back in the performance of

duty. Appellant noted that he had bone spurs in his low back and a leaking bladder. Appellant stated, "While bending and picking up trash and trash can doors, I felt a stiffness and dull ache in my left hip. This felt like a pulled muscle at first. The left leg stiffened up the following day, July 22, 2002 and was numb and weak by July 23, 2002."

In support of his claim, appellant submitted a form report dated August 29, 2002 from Dr. Barry J. Landau, a Board-certified neurosurgeon, noting a history of progressive leg pain, weakness and numbness, with left foot drop. He found severe lateral recess stenosis at L4-5 on the left and diagnosed lumbar radiculopathy and spinal stenosis. Dr. Landau indicated with a checkmark "yes" that the condition was aggravated by work as "pain began at work."

In a letter dated October 9, 2002, the Office requested additional factual and medical evidence in support of appellant's claim. Appellant responded on October 18, 2002 and repeated his history of injury.

In a report dated July 30, 2002, Dr. Landau noted that appellant reported a history of progressive left leg pain, numbness and weakness developing over a week. He stated, "Symptoms began while at work but he does not recall any particular trauma. Symptoms increased gradually over the course of several days." Dr. Landau found that appellant had the signs and symptoms of severe lumbar radiculopathy likely due to a herniated disc and recommended surgery. He performed a left L4-5 partial hemilaminectomy medial facetectomy and forminotomy on July 31, 2002.

By decision dated January 30, 2003, the Office denied appellant's claim finding that the medical evidence did not establish a causal relationship between his diagnosed condition and the employment incident of July 21, 2002.

Appellant requested reconsideration on April 11, 2003 and submitted a report from Dr. Landau dated March 5, 2003. Dr. Landau stated that he first examined appellant on July 30, 2002 and that appellant "presented with one week of progressive severe left leg pain and prominent left leg weakness." He noted that appellant's symptoms began at work and that appellant's job duties included heavy lifting and frequent bending and twisting. Dr. Landau stated:

> "[Appellant] developed acute left L5 radiculopathy due to his work activities, which required bending and twisting and heavy lifting. He had a preexisting lumbar stenosis, which is a degenerative condition. He also had some mild underlying congenital stenosis, which is not responsible for his problem. Repetitive bending, twisting, lifting through the years is a significant factor in the development of degenerative joint disease of the spine, causing lumbar stenosis. Preexisting asymptomatic lumbar stenosis can become symptomatic with bending, twisting, lifting episode.
>
> "It is my opinion, as a neurological surgeon, that on a more probable than not basis his work activities are responsible both for the degenerative condition of lumbar stenosis and for the exacerbation of this condition causing the symptomatic lumbar radiculopathy with left leg pain and left leg weakness."

By decision dated May 8, 2003, the Office denied modification of the prior decision finding that Dr. Landau's report did not contain an accurate history of injury as he did not mention appellant's alleged employment incident on July 21, 2002 and instead attributed appellant's condition to employment activities through the years.[1]

LEGAL PRECEDENT

The Office's regulations definite a traumatic injury 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."[2] An occupational disease, on the other hand, is defined as, "a condition produced by the work environment over a period longer than a single workday or shift."[3]

In order to determine whether an employee actually sustained an injury in the performance of duty in a traumatic injury claim, 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 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.[4] 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.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

[1] Following the Office's May 8, 2003 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

[2] 20 C.F.R. § 10.5(ee).

[3] 20 C.F.R. § 10.5(q).

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

The Office's procedure manual notes that the submission of an incorrect form, such as a notice of traumatic injury rather than a notice of occupational disease is a technical error and states:

> "It is improper to deny a case on the basis that the claimant failed to submit the correct form. The [claims examiner] must obtain the appropriate notice of injury or disease if it does not already appear in file.[7]"

ANALYSIS

Appellant filed a traumatic injury claim alleging on July 21, 2002 that he developed pain in his left leg while bending and lifting in the performance of his job duties. The Office accepted that the employment activities on July 21, 2002 occurred as alleged, but denied appellant's claim on the grounds that he failed to submit sufficient rationalized medical opinion evidence to establish a causal relationship between the accepted employment activities and his diagnosed back condition.

On July 30, 2002 appellant's attending physician Dr. Landau, a Board-certified neurosurgeon, noted his history of injury and found that appellant had the signs and symptoms of severe lumbar radiculopathy likely due to a herniated disc. He recommended surgery and performed a left L4-5 partial hemilaminectomy medial facetectomy and forminotomy. Dr. Landau's initial report did not provide an opinion on the causal relationship between appellant's diagnosed condition and his employment activities on July 21, 2002 and therefore is not sufficient to meet appellant's burden of proof.

In a form report dated August 29, 2002, Dr. Landau noted appellant's history of progressive leg pain, weakness and numbness, with left foot drop. He found severe lateral recess stenosis at L4-5 on the left and diagnosed lumbar radiculopathy and spinal stenosis. Dr. Landau indicated with a checkmark "yes" that the condition was aggravated by work as "pain began at work." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8] While Dr. Landau offered limited reasoning for his opinion on causal relationship, noting that appellant's pain began at work, the Board has held that the fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relation[9] and this statement by Dr. Landau cannot, therefore, constitute medical rationale in support of an opinion on causal relationship. Due to the lack of supporting medical reasoning, this report is not sufficient to establish a causal relationship between appellant's diagnosed back condition and his employment activities on July 21, 2002.

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[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4(b) (January 2003).

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

Dr. Landau completed a narrative report on March 5, 2003 stating that he first examined appellant on July 30, 2002 and that appellant "presented with one week of progressive severe left leg pain and prominent left leg weakness." He noted that appellant's symptoms began at work and that appellant's job duties included heavy lifting and frequent bending and twisting. Dr. Landau opined that appellant's acute left L5 radiculopathy was due to his work activities of bending and twisting and heavy lifting. He stated, "Repetitive bending, twisting, lifting through the years is a significant factor in the development of degenerative joint disease of the spine, causing lumbar stenosis. Preexisting asymptomatic lumbar stenosis can become symptomatic with bending, twisting, lifting episode." Dr. Landau concluded:

> "It is my opinion, as a neurological surgeon that on a more probable than not basis his work activities are responsible both for the degenerative condition of lumbar stenosis and for the exacerbation of this condition causing the symptomatic lumbar radiculopathy with left leg pain and left leg weakness."

While this report offers an opinion that appellant's employment caused his diagnosed lumbar conditions, Dr. Landau did not attribute appellant's back condition to lifting and bending on a specific date, July 21, 2002, but rather to these activities "through the years." As the medical opinion evidence in this report does not relate appellant's injury to a traumatic event, but rather to the development of an occupational disease, as defined by the Office's regulations, this report cannot meet appellant's burden of proof in establishing that he sustained an injury in the performance of duty on July 21, 2002 as alleged.

However, the Board notes that appellant's statements to his physician, Dr. Landau, and the conclusions of Dr. Landau suggest that this claim should more appropriately be developed as a claim for an occupational disease. Proceedings before the Office are not adversarial in nature, the Office is not a disinterested arbiter and shares responsibility in the development of the evidence.[10] It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim filed.[11] While appellant consistently describes the onset of his left leg pain as developing while performing his duties on July 21, 2002, the Office should provide him with the opportunity to expand his claim to include additional dates of lifting and bending in the performance of duty, defined as an occupational disease, in keeping with the detailed medical opinion of Dr. Landau and the Office's own procedures.[12] On remand, the Office should provide appellant with a notice of occupational disease claim form to complete if he believes that his condition could have resulted from additional employment activities of repetitive lifting, bending and twisting occurring prior to and including July 21, 2002.

[10] *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

[11] *Silverio J. Trujillo*, Docket No. 99-593 (issued December 5, 2000); *Jimmy L. Gardner*, Docket No. 95-2360 (issued January 12, 1998).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4(b) (January 2003).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that his back condition resulted from his employment activities on July 21, 2002 as alleged. However, the Board further finds that the Office should provide appellant with the opportunity to develop his claim as an occupational disease in accordance with the medical evidence and the Office's procedures.

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed in part and remanded in part for additional development consistent with this decision of the Board.

Issued: August 9, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member