

L4-5. Appellant was also under the care of Dr. Peter L. Sitaras, an internist, for treatment of his condition. In notes dated August 13 to October 16, 2003, he indicated that appellant could return to light duty September 23, 2003 with restrictions of no lifting over 25 pounds, no climbing ladders and no working in crawl spaces. Dr. Robert Barthel, a Board-certified family practitioner and employing establishment physician, noted treating appellant from September 22 to December 16, 2003 for chronic back pain and reported that appellant injured his back when he sneezed. Also submitted was a note from Dr. Louis Silverstein, an internist, who noted treating appellant July 28, 2003 and advised that appellant would be off work until August 4, 2003. Appellant submitted a statement from William H. Settles, a coworker, who indicated that on July 28, 2003 he witnessed appellant leaning on a table to support himself and needed assistance to get into his car. Appellant's wife, Karen Serra, noted that on July 28, 2003 her husband experienced back pain and could not stand up without assistance.

By letter dated February 4, 2004, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed left wrist injury.

In a statement dated February 25, 2004, the employing establishment noted that appellant sustained a new injury on July 28, 2003 when he was unloading equipment from one work truck to another. Appellant sustained another work injury several years prior and underwent a successful back surgery and returned to work without restrictions.

Additional treatment notes from Dr. Sitaras dated August 6, 2003 advised that appellant was treated for exacerbation of back and leg pain which developed after he sneezed. He noted positive findings on examination of pain with forward flexion, lateral flexion, rotation and hypertension, minimal tenderness at L5 on the right and decreased pinprick sensation along the posterolateral calf, dorsum of the foot and big toe on the right. Dr. Sitaras noted symptoms of back pain and numbness in the right leg and diagnosed lumbar radiculopathy which could be attributed to a recurrent disc herniation or scar tissue. He indicated that appellant underwent a lumbar discectomy and decompression on the right side in 1997 and completely recovered from the surgery. Dr. Sitaras' report of August 13, 2003 advised that the MRI scan revealed a small disc herniation at L3-4 on the left side; however, appellant was asymptomatic on the left side and experienced only right-sided pain. Dr. Sitaras diagnosed right sciatica with no evidence of disc herniation on the right and recommended appellant stay off work for one and a half weeks.

In a decision dated March 4, 2004, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.¹

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United

¹ 5 U.S.C. §§ 8101-8193.

States within the meaning of the Act, that the claim was filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

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 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.³ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁴ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁵ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁶ 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.⁷

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.⁸ The weight of the 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.⁹

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *See Michael W. Hicks*, 50 ECAB 325 (1999).

⁶ *Id.*

⁷ *Michael E. Smith*, *supra* note 3.

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

ANALYSIS

Appellant alleged that he sustained a low back injury while unloading tools and supplies from his work truck. The Board initially notes that the Office apparently found, and the Board agrees, that the accident occurred on July 28, 2003 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a lower back injury causally related to his employment duties. Appellant submitted treatment notes from Dr. Sitaras dated August 6 and 13, 2003 who diagnosed lumbar radiculopathy, right sciatica with no evidence of disc herniation. He noted that appellant's injury occurred as a result of sneezing. However, these notes do not provide an accurate history of the July 28, 2003 injury as the physician indicated that the injury occurred when appellant sneezed, which is different than the history provided by appellant which indicated that he injured his back while unloading his truck.¹⁰ Dr. Sitaras neither mentioned that appellant's condition was work related nor did he provide a rationalized opinion regarding the causal relationship between appellant's back injury and the factors of employment believed to have caused or contributed to such condition.¹¹ Therefore, these reports are insufficient to meet appellant's burden of proof.

Other reports from Dr. Barthel noted treating appellant from September 22 to December 16, 2003 for chronic back pain and noted that appellant's "back went out" when he sneezed. However, as noted above, this note does not provide an accurate history of the July 28, 2003 injury as the physician indicated that the injury occurred when appellant sneezed, which is inconsistent with the history provided by appellant which indicated that he injured his back while unloading his truck.¹² Additionally, Dr. Barthel does not provide a rationalized opinion regarding the causal relationship between appellant's back injury and the factors of employment believed to have caused or contributed to such condition.¹³ Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Silverstein's note dated July 28, 2003 indicated that appellant was treated since July 28, 2003 and could return to work on August 4, 2003; however, he did not mention that appellant's condition was work related nor did he provide a rationalized opinion regarding the causal relationship between appellant's back injury and the factors of employment believed to have caused or contributed to such condition.¹⁴ Therefore, this report is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor

¹⁰ See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹¹ See *Jimmie H. Duckett*, *supra* note 9.

¹² See *Frank Luis Rembisz*, *supra* note 10.

¹³ *Id.*

¹⁴ See *Jimmie H. Duckett*, *supra* note 9.

the belief that his or her condition was caused, precipitated or aggravated by his or her employment is sufficient to establish causal relationship.¹⁵

CONCLUSION

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet his burden of proof.¹⁶

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁵ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁶ See *Calvin E. King*, 51 ECAB 394 (2000).