

form report from his treating chiropractor, Dr. Adrian Marnell, indicating that appellant first received treatment for his back on August 14, 2003.

By letter dated September 10, 2003, the Office advised appellant that there was no evidence of record sufficient to establish his claim. The Office further advised him about the type of medical evidence he needed to submit to establish his claim. In response, appellant submitted a claim for compensation (Form CA-7), several prescription notes from Dr. Marnell placing him off work for certain periods and ordering tests and treatment, Dr. Marnell's August 14 and September 11, 2003 attending physician's reports diagnosing cervical and lumbar segmental dysfunction and lumbar facet syndrome due to the August 13, 2003 employment incident and his daily progress notes.

In an October 23, 2003 decision, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. The Office determined that the evidence of record was sufficient to establish that the claimed event occurred as alleged, but insufficient to establish that he sustained a medical condition causally related to the accepted incident.

Subsequent to the issuance of its October 23, 2003 decision, the Office received additional treatment notes and disability certificates of Dr. Marnell. The Office also received a November 28, 2003 magnetic resonance imaging report of Dr. J. Paul Rubin, a Board-certified radiologist, revealing a diagnosis of moderate multilevel hypertrophic disc desiccation with straightening of the normal lordosis curvature and subtle levoscoliosis suspect for element of mild muscle spasm. He also diagnosed mild spinal stenosis at L3-4 despite a congenitally smaller thecal sac at L2-3 through L4-5 levels and the presence of posterior epidural fat at the L3-4 level at that time. At L5-S1, he found left paracentral/foramina disc herniation which caused an impression upon the anterior thecal sac and budding left S1 nerve root, as well as, contributed to moderately severe left-sided neural foramina narrowing with possible impression upon the exiting left L5 nerve root. He diagnosed disc protrusions at the L3-4 and L4-5 levels which contributed to bilateral neural foramina narrowing with the greatest on the right side at L3-4 and with a possible impression upon the exiting right L3 nerve root peripherally. Lastly, Dr. Rubin diagnosed posterior disc bulging at L1-2 and L2-3 levels.

On December 3, 2003 appellant requested reconsideration of the Office's October 23, 2003 decision accompanied by duplicate treatment notes and disability certificates. He also submitted new medical evidence, including a November 6, 2003 report from Dr. Marnell revealing a diagnosis of subluxation of the cervical spine at C5, subluxation of the lumbar spine at L4 and L5, subluxation sacrum and prolapse protrusion of the disc based on an x-ray of the same date.

By decision dated December 31, 2003, the Office reviewed the merits of appellant's claim and modified its previous decision to reflect that he had established subluxation as demonstrated by x-ray and that the claim was denied on the grounds that this evidence failed to establish a causal relationship between the diagnosed condition and the August 13, 2003 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 States" within the meaning of the Act; that the claim was filed within applicable time limitation; that an injury was sustained while 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.³

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 or exposure which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁷

ANALYSIS

In this case, appellant satisfied the first criteria. The Office accepted that he experienced pain and soreness in his lower back when he crawled into a tight area above an air handler to check dampers on August 13, 2003. Thus, the Office found that appellant established a work

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Charles E. Evans*, 48 ECAB 692 (1997).

incident at the time, place and in the manner alleged. The Board finds that the evidence of record supports this incident.

Regarding the second criteria, however, appellant has failed to submit a rationalized medical opinion sufficient to establish that the August 13, 2003 employment incident caused his back condition. Appellant has submitted several reports, treatment notes and disability certificates of Dr. Marnell, his treating chiropractor. Under section 8101(2) of the Act,⁸ “[t]he term ‘physician’ includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary.”⁹ If a chiropractor’s reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.¹⁰

In his November 6, 2003 report, Dr. Marnell diagnosed subluxation of the cervical and lumbar spines as demonstrated by x-ray. Therefore, he is considered to be a “physician” under the Act. However, Dr. Marnell did not address how or why appellant’s back condition was caused by the August 13, 2003 employment incident. The Office advised appellant of the type of evidence required to establish his claim and he failed to submit such evidence.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a back injury in the performance of duty.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ 5 U.S.C. § 8101(2); *see also Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

¹⁰ *Loras C. Dignann*, 34 ECAB 1049 (1983).

ORDER

IT IS HEREBY ORDERED THAT the December 31 and October 23, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 14, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member