

of a ladder at his home landing on his right hand. Appellant stated that later, while at work, his back became stiff, but that he could continue to perform his duties. On July 5, 2000 appellant pushed three loaded hampers of magazines while at work and noticed pain in his right buttock. Appellant then used the forklift for this work, but later again manually pushed hampers and noted "stress in my buttock." He stated that his whole leg began to ache on the way home and when he got home he elevated his leg in bed. When appellant's pain increased and his leg became numb, he sought treatment at the emergency room. A magnetic resonance imaging (MRI) scan on July 9, 2000 demonstrated a herniated disc at L4-5. Appellant developed right foot drop and underwent surgery on July 13, 2000.

In a statement dated July 17, 2000, Laura Hibbard reported that appellant telephoned on July 8, 2000 and stated that he had fallen off a ladder a few weeks earlier and was stiff, but thought that he was okay. Appellant noted that when he left work on July 5, 2000 his leg went numb. She also noted that appellant played pool with a coworker, Harry Ableman, on July 5, 2000. Mary Ann Saliga also stated on July 14, 2000 that Mr. Ableman had reported to her that he played pool with appellant on July 5, 2000 and that appellant seemed fine.

The Office requested additional factual and medical evidence by letter dated August 1, 2000. Appellant responded but failed to submit any additional information.

By decision dated September 12, 2000, the Office denied appellant's claim finding that although the employment events occurred as alleged, he had failed to submit the necessary medical evidence to establish an injury related to his employment activities.

Dr. Carlos A. Palacio, a Board-certified neurosurgeon, completed a report on July 7, 2000 noting appellant's fall on June 18, 2000 and increased pain over time. He stated that following work on the night shift of July 4 and 5, 2000, appellant developed pain radiating down the right leg extending from the posterior thigh into the calf as well as numbness and tingling in the foot. Dr. Palacio noted that appellant's gait was abnormal due to foot drop and that he could not heel walk on the right. He stated that appellant's findings correlated with an acute herniated nucleus pulposus. Dr. Palacio recommended an MRI scan. On July 10, 2000 Dr. Palacio reviewed appellant's MRI scan and found a soft tissue mass emanating from the L4-5 disc compressing the nerve root. He diagnosed right L5 radiculopathy secondary to L4-5 disc herniation with compromise of the nerve root consisting of weakness and sensory loss. Dr. Palacio recommended surgery. In a note dated August 2, 2000, Dr. Palacio stated that appellant had undergone a L4-5 microdiscectomy on July 13, 2000 and reported no continuing back or leg pain.

The employing establishment submitted an investigative memorandum on September 14, 2000. On September 18, 2000 appellant stated that on the night of July 4 to 5, 2000 he was manually pushing hampers weighing 800 to 900 pounds each onto a scale, which had a small ledge and that he had to "strain a little" to get the hampers up the ledge. He then felt a pull in his buttocks.

Appellant, through his attorney, requested reconsideration on July 17, 2001. In support of his reconsideration request, appellant submitted a report dated January 27, 2001 from Dr. Palacio, noting that following appellant's fall on June 18, 2000, his pain was limited to the

lower lumbar area only with no change in activities. He stated that appellant noted a change in his symptoms after working on July 4 and 5, 2000. Dr. Palacio stated that although there may not be a direct causal relationship between his injury and work, work could be an aggravating factor. He stated that since appellant had no leg pain prior to July 4, 2000, it was likely that he did not have a substantial disc herniation before the onset of his leg pain. Dr. Palacio stated:

“It is more likely than not, that [appellant] may have developed a small tear in the annulus of the dis[c] with some disruption of the dis[c] material when he fell on June 18, [2000]. This would have led to a weakening of the dis[c] and to focal low back symptoms. With added stress on the injured dis[c], it eventually decompensated and this situation led to a frank dis[c] herniation with nerve root compression. The physical requirements of [appellant’s] job could certainly have aggravated the dis[c] injury leading to the above-mentioned decompensation with herniation.”

By decision dated August 10, 2001, the Office denied modification of the September 12, 2000 decision, finding that there were sufficient inconsistencies and contradictions in the record to cast serious doubt on whether the alleged injury occurred at the time, place and in the manner alleged.

On February 6, 2002 appellant again requested reconsideration and submitted an additional report from Dr. Palacio. He stated on December 14, 2001 that it was more likely than not that appellant developed a small annular tear of his disc with frank disruption of the disc material as a result of his fall on June 18, 2000. Dr. Palacio opined that the physical requirements of appellant’s job more likely than not aggravated the above-mentioned disc injury leading to a frank disc herniation requiring surgical intervention.

By decision dated April 30, 2002, the Office denied appellant’s claim finding that Dr. Palacio’s report was speculative and that there were continuing factual inconsistencies in the record.

Appellant requested reconsideration on April 29, 2003 and submitted a report from Dr. Palacio dated August 7, 2002. The physician noted that appellant stated that he first developed radiating leg pain on July 5, 2002 after having worked the night shift of July 4, 2002. He stated that appellant’s activities at work of pushing loaded hampers of magazines were of sufficient magnitude to stress the lower back and lead to an acute disc herniation. Dr. Palacio further noted that the fact that appellant was able to play pool the morning before his acute symptoms began did not indicate that he was not suffering and had not developed a significant anatomic problem. He opined that appellant’s lumbar disc herniation was a direct consequence of work-related activities.

The Office denied appellant's claim by decision dated July 29, 2003. The Office found that the medical evidence was not based on a sufficiently detailed factual background to establish appellant's claim.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees Compensation Act² 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 timely filed within the applicable time limitation period 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 is 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 an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁴

The employee must also submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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

¹ Appellant filed an additional claim on July 24, 2003 alleging that he injured his back on that date in the performance of duty. The Office accepted his claim for lumbar strain on September 15, 2003. Appellant did not appeal this decision to the Board in his September 10, 2003 appeal and the Board will not address this claim in this decision. 20 C.F.R. §§ 501.2(a) and 501.3.

² 5 U.S.C. §§ 8101-8193.

³ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

⁴ *Id.*

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

Appellant stated that he fell from a ladder on June 18, 2000 and experienced back pain following this fall. Appellant continued to work and performed his regular duties after the fall. On the night of July 4 and 5, 2000 he manually pushed hampers of mail onto a scale and experienced radiating pain into his buttocks. Appellant played pool with a coworker and developed leg pain on his drive home. He then sought treatment at the emergency room due to increased pain and numbness.

The employing establishment does not dispute that appellant pushed hampers on the night of July 4 and 5, 2000. There is no conflicting evidence regarding this work activity. Therefore, the Board finds that appellant has established that this employment incident occurred as alleged.

Appellant submitted medical evidence in support of his claim from Dr. Palacio, a Board-certified neurosurgeon, who noted appellant's fall on June 18, 2000 and in his January 27 and December 14, 2001 and August 7, 2002 reports opined that this fall caused a small annular tear that resulted in back pain only. He stated that appellant's work activities on July 4 and 5, 2000 were sufficiently strenuous to have aggravated the underlying injury, causing an acute disc herniation resulting in his radicular symptoms and need for surgery. Dr. Palacio opined that appellant's lumbar disc herniation was a consequence of his work-related activities.

These reports generally support that appellant sustained a herniated disc as a result of the July 5, 2002 employment incident. There is no contrary medical evidence in the record.⁶ Appellant has established a *prima facie* claim for compensation benefits. The reports of Dr. Palacio are sufficient evidence to require further development of the claim. The case will be remanded for the Office to further develop the evidence as deemed appropriate and a *de nova* decision on appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for decision. The case is remanded for further development consistent with this decision.

⁵ *Id.*

⁶ *See Allen C. Hundley*, 53 ECAB 551, 554 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2003 is hereby set aside and the case is remanded for further development consistent with this decision.

Issued: April 19, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member