

Clinic. Appellant reported to the clinic on August 27, 2002 and gave a history of a prior employment injury in 1985, for which surgery was performed by Dr. John E. Cobb, a Board-certified orthopedic surgeon, followed by limited duty and chronic low back pain for which medications were taken as needed. As to the August 27, 2002 incident, appellant stated that when he reached forward to get the telephone, he felt a sharp severe pain in his low back, starting and continuing at 9/10, with pain radiating down his right leg all the way to his toes. Dr. Lara Longo, an internist, noted that appellant was "in no acute distress," but that he refused physical examination. Her assessment was low back pain and that appellant should be off work and rest at home until he was evaluated and treated by Dr. Cobb. Dr. Longo called Dr. Cobb's office and attempted to get appellant an appointment earlier than the one he had on September 16, 2002.

By letter dated September 10, 2002, the Office advised appellant that the evidence was insufficient to support his claim because he had not established that the incident actually occurred and was in the performance of duty, because no diagnosis of any condition resulting from his injury had been provided and because a physician's opinion as to how his injury resulted in the diagnosed condition had not been provided. On September 20, 2002 appellant provided a more detailed description of the August 27, 2002 incident, stating that when he reached for the telephone on the back of his desk, he felt a twinge in the middle of his upper back that felt like he had pulled something. He stated that he experienced sharp acute pain in his middle and upper back and pain in his shoulders, that movement was very painful, that he had weakness when standing and that the pain worsened as the day went by and radiated into his lower back and legs. Appellant submitted three September 25, 2002 notes from Dr. Cobb; two prescribed medications and the third ordered physical therapy to appellant's thoracic and lumbar areas three times per week for one month.

By decision dated October 11, 2002, the Office found that the evidence was not sufficient to establish that appellant sustained an injury on August 27, 2002 as alleged, as no condition was diagnosed in connection with the work incident.

On October 26, 2002 appellant requested reconsideration, pointing out that the August 27, 2002 injury was to his upper back. He submitted bills from Dr. Cobb which include a list of diagnoses. Each bill had checkmarks next to some diagnoses: a September 25, 2002 bill checked neck pain, myofasciitis of the cervical spine and thoracic sprain; an October 23, 2002 bill checked thoracic sprain; and a November 25, 2002 bill checked herniated nucleus pulposus of the thoracic spine, lumbar sprain, lumbar radiculitis and instability of the lumbar spine. Dr. Floyd Hindelang, a Board-certified diagnostic radiologist, read an October 14, 2002 magnetic resonance imaging (MRI) scan of appellant's thoracic spine to show mild to moderate central canal stenosis at T11-12 due to mild central disc bulge and facet hypertrophy. It also noted decreased perineural fat in the neuroforamina bilaterally indicative of mild neuroforaminal stenosis.

By decision dated January 6, 2003, the Office denied modification of the October 11, 2002 decision, finding that the bills from Dr. Cobb were insufficient to meet appellant's burden of proof, as they did not contain the doctor's signature, a history of the August 27, 2002 injury or an opinion that the thoracic sprain was causally related to the August 27, 2002 incident.

On November 28, 2003 appellant requested reconsideration and submitted work status reports from Dr. Cobb dated September 25, October 23, November 25, 2002 and January 8, 2003, all indicating that he was unable to work pending treatment.

By decision dated May 3, 2004, the Office denied modification of the January 6, 2003 decisions.

By letter dated July 26, 2004, appellant requested reconsideration and submitted additional evidence.¹ In a September 25, 2002 report, Dr. Cobb described appellant's August 27, 2002 injury as having occurred when he "reached across a long desk for a telephone and felt a twinge in his upper back and started having acute pain in his back and shoulders." He noted that appellant was still under his care for injuries to his neck, back, shoulder and knee sustained in a motor vehicle accident on April 29, 2002 for which his last office visit was on July 15, 2002. Appellant's complaints included aching and stabbing pain in his neck, shoulders and upper and lower back, increased by sitting, standing and walking. Examination showed active and equal deep tendon reflexes and normal motor and sensory function of the upper and lower extremities and spondylosis on x-rays of the thoracic and lumbar spine. Dr. Cobb listed his impressions as post-traumatic cervical and thoracic pain syndrome and possible aggravation of thoracic spondylosis.

In a May 5, 2003 report, Dr. Daniel L. Hodges, a Board-certified physiatrist, to whom Dr. Cobb referred appellant for pain management, set forth a history that on August 27, 2002 he felt pain to his upper back and shoulders when he reached across a desk to answer a telephone and noted his complaints of unbearable and constant back pain radiating into both legs, made worse by coughing, sneezing, standing, sitting, bending, reaching, coldness, touch and noise. Dr. Hodges stated that the October 14, 2002 MRI scan revealed a herniated disc at T11-12 with stenosis and on examination reported tenderness throughout the trapezial levator groups and midline in the midback, good strength in the upper extremities, symmetrical reflexes and a basically benign lower extremity examination. Dr. Hodges listed his impressions as post-traumatic cervical thoracic spine pain and herniated T11-12 disc and prescribed new medications for appellant's ongoing pain complaints.

By decision dated August 20, 2004, the Office denied modification of the November 28, 2003 decision, finding that there was no medical evidence or a confirmed diagnosis and no showing of a material change in appellant's accepted work condition from his August 6, 1985 injury.

¹ Included in the new evidence was a December 29, 2003 prearbitration settlement stating that no employee will be harassed or intimidated for exercising protected activity and that, if appellant had not been provided with proper forms to claim his injury, he would immediately be provided such. Also included were a February 23, 2004 request from appellant to return to work at a different location and a March 2, 2004 employing establishment reply that medical clearance and work tolerance limitations were required for appellant to return to work.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim³ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ 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.⁶

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁷ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁸ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁹

ANALYSIS

On August 27, 2002 appellant filed a claim for an injury to his back after reaching for a telephone, but his claim form was not specific as to which area of the back he injured. He was seen at a medical clinic on August 27, 2002 and complained of sharp severe pain in his low back when reaching for the telephone. Appellant refused to be examined and Dr. Longo was unable to provide a diagnosis, instead indicating appellant had low back pain.

² 5 U.S.C. § 8101 *et seq.*

³ *See Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

⁴ *James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ *See Daniel R. Hickman*, *supra* note 3.

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

On September 20, 2002 appellant stated that in the August 27, 2002 incident, he felt a twinge in the middle of his upper back that radiated into his low back and legs later in the day. He provided this history of a twinge in his upper back to Dr. Cobb on September 25, 2002. He listed impressions of post-traumatic cervical and thoracic pain syndrome and possible aggravation of thoracic spondylosis. Dr. Cobb, however, did not attribute these conditions to the August 27, 2002 employment incident and noted that appellant was still under his care for injuries to his neck, back and shoulder sustained in a motor vehicle accident on April 29, 2002. The checkmarked diagnoses on Dr. Cobb's bills cannot be considered probative medical evidence because the bills lack proper identification to show that they were prepared by a physician.¹⁰ Dr. Cobb's reports are not sufficient to meet appellant's burden of proof because they do not contain a rationalized medical opinion that his condition is causally related to the August 27, 2002 employment incident.

The May 5, 2003 report from Dr. Hodges is also not sufficient to meet appellant's burden of proof. He noted that an October 14, 2002 MRI scan showed a herniated disc at T11-12, but the Board-certified diagnostic radiologist who performed the MRI scan, stated that it showed only a mild central disc bulge at this level. The primary reason, though, that Dr. Hodges' report is not sufficient to meet appellant's burden of proof is because the physician did not provide a rationalized medical opinion explaining why the conditions of post-traumatic cervical thoracic spine pain and herniated T11-12 disc, if that condition is present, are causally related to the August 27, 2002 employment incident.

CONCLUSION

The medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on August 27, 2002.

¹⁰ *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 20 and May 3, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member