



## **FACTUAL HISTORY**

On April 3, 2002 appellant, then a 53-year-old motor vehicle operator, filed a traumatic injury claim for contusions of the left thigh, hip and back, which allegedly resulted from a February 7, 2002 motor vehicle accident. He claimed that he was struck by another car in the right, front side of the vehicle he was operating. Appellant did not initially submit any medical evidence with his claim.

On December 23, 2002 the Office advised appellant of the need for medical evidence in support of his claimed February 7, 2002 employment injury. The Office afforded appellant 30 days within which to submit the required medical documentation. Appellant did not respond within the allotted timeframe.

In a decision dated January 27, 2003, the Office denied the claim. While appellant established that he was involved in a work-related motor vehicle accident on February 7, 2002 the Office found that he failed to demonstrate that he sustained an injury as a result of the accident. Consequently, it denied the claim because appellant failed to establish fact of injury.

Following the January 27, 2003 decision, the Office received a copy of appellant's employee health records, which dated back to 1989. The information included various treatment notes, several radiology reports and a September 3, 2002 neurological evaluation by Dr. Walter G. Husar. The Office later received an April 8, 2003 report from Dr. William C. Lowe, an employing establishment physician, who reviewed appellant's records and provided a chronology of injuries from December 1990. He noted several prior injuries to appellant's left knee, left ankle and left foot. Dr. Lowe also noted a history of injuries to several fingers on both hands. Additionally, he noted a December 1997 injury to appellant's right arm, shoulder and left leg and a February 22, 2001 left ankle injury.

Regarding the February 7, 2002 incident, Dr. Lowe noted that appellant was involved in an accident while driving a dialysis patient home. He reportedly hit his left leg and head on the dashboard. Dr. Lowe indicated that appellant sustained "abrasions of his right knee." In follow-up visits in February and March 2002, appellant complained of persistent back pain, left hip and left knee pain and left leg weakness. According to Dr. Lowe, he attributed all of his "disability" to the February 7, 2002 motor vehicle accident. Between March and November 2002 appellant returned to the employee health office on numerous occasions complaining of neck and lower back pain, left and right shoulder pain and left knee pain. He also reported left arm and left leg weakness. When appellant was last examined on December 30, 2002 he walked with a left leg limp and he used a cane with his right hand. He claimed to be unable to walk without a cane. Appellant was also reportedly unable to stand from a sitting position. His neck revealed a moderate degree of rigidity and appellant complained of pain in his shoulders, however, his shoulder movements were noted to be normal. Appellant's left arm and hand were slightly weak when compared with his right side. Dr. Lowe indicated that his most significant finding was atrophy in the left quadriceps and upper calf muscle. He reported weakness and a partial left foot drop. Appellant's lower back also showed some stiffness.

Dr. Lowe also reviewed several x-rays of the cervical and lumbar spine as well as Dr. Husar's September 3, 2002 neurological evaluation, which revealed muscle spasm and

myofascial pain syndrome with underlying cervical spondylosis and degenerative joint disease of the cervical and lumbar spine. Dr. Lowe attributed appellant's atrophy and muscle weakness in the left arm and left leg to degenerative arthritis and cervical and lumbar disc degeneration, which he indicated were not employment related.

Appellant requested reconsideration on May 16, 2003. He noted that additional evidence had been submitted in April 2003.

By decision dated August 20, 2003, the Office denied modification of the January 27, 2003 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.<sup>3</sup>

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup> An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>6</sup>

### **ANALYSIS**

Dr. Lowe diagnosed degenerative arthritis of the cervical and lumbar spine, with muscle weakness and atrophy in both the left upper and left lower extremities. These conditions, however, were not shown to be related to the February 7, 2002 motor vehicle incident.

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Appellant's cervical and lumbar spine x-rays revealed preexisting multilevel disc degeneration. Dr. Lowe specifically indicated that appellant's current condition was not employment related. Accordingly, the medical evidence of record does not establish that the February 7, 2002 employment incident either caused or contributed to appellant's current cervical and lumbar conditions. However, contrary to the Office's finding, he has established that he sustained an injury in the performance of duty. Appellant's claim is accepted for left leg abrasion. This finding is supported by the February 7, 2002 treatment records from the employing establishment's employee health office. The records for that day indicate that appellant was involved in a motor vehicle accident and he sustained an abrasion of the left leg and "possible contusion."<sup>7</sup> There was no firm diagnosis of a contusion and, while follow-up treatment records noted complaints of pain in the low back, left hip, left leg and left knee, a finding of pain does not constitute a basis for payment of compensation.<sup>8</sup> The Office's August 20, 2003 decision is modified to reflect acceptance of the claim for left leg abrasion.

### **CONCLUSION**

The Board finds that appellant sustained a left leg abrasion in the performance of duty on February 7, 2002.

---

<sup>7</sup> Dr. Lowe also diagnosed abrasions in his April 8, 2003 report. However, he mistakenly identified appellant's right lower extremity, rather than the left lower extremity, as the site of the abrasions.

<sup>8</sup> *Robert Broome*, 55 ECAB \_\_\_ (Docket No. 04-93, issued February 23, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 20, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: July 26, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board