

**United States Department of Labor
Employees' Compensation Appeals Board**

MEVANWIE E. PETERSON, Appellant)

and)

**DEPARTMENT OF AGRICULTURE, FOREST)
SERVICE, Salmon, ID, Employer**)

**Docket No. 05-296
Issued: May 11, 2005**

Appearances:
Mevanwie E. Peterson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 9, 2004 appellant filed appeals of merit decisions of the Office of Workers' Compensation Programs dated January 21 and July 19, 2004, which denied her claim of injury causally related to factors of her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty, causally related to factors of her federal employment.

FACTUAL HISTORY

On October 16, 2003 appellant, then a 41-year-old emergency medical technician, filed an occupational claim alleging that she sustained a herniated disc due to lifting and moving patients in July 2003.¹ She claimed that her L4-5 disc had a small herniation and her L5-S1 disc

¹ Appellant's supervisor noted that when she returned to work on July 26, 2003 she complained of lower back pain.

had a significant herniation. Appellant initially sought treatment by a chiropractor in August 2003 and again in September 2003, but those reports are not of record.

In support appellant submitted a CA-20 attending physician's report from Dr. Brent H. Greenwald, a Board-certified neurosurgeon, who had an October 15, 2003 consultation and diagnosed right L5-S1 disc herniation and lumbar radiculopathy. He noted that a right L5-S1 discectomy was scheduled for October 28, 2003. Dr. Greenwald also checked "yes" to the question of whether the condition found was caused or aggravated by an employment activity.

In a December 16, 2003 letter, the Office advised that the evidence submitted was insufficient to establish her claim and requested further factual and medical evidence.

Appellant responded on December 27, 2003 discussing her outside activities, her home life, her hobbies and her prior injuries and she noted that her only previous injury was a left shoulder dislocation in May 2003 while teaching.

By decision dated January 21, 2004, the Office rejected appellant's claim, finding that Dr. Greenwald's report was conclusory on causal relation and insufficient to establish the claim. The Office noted that no other rationalized medical evidence was submitted that addressed appellant's claim.

On January 8, 2004 Dr. Mark S. Myers, a Board-certified internist, noted that appellant hurt her back while working on a fire the previous June doing some heavy lifting. He noted that she had minimal symptoms at first but then they worsened to severe pain. Dr. Myers noted that appellant underwent emergency lumbar sacral spine surgery for spinal cord compression based on a free fragment of disc material in the spinal canal. He opined that she was not overweight, did not smoke and had no other risk factors, such that the sole reason she developed a free floating disc fragment within the spinal cord was related to her heavy lifting in the summer of 2003 when there were significant fires. Dr. Myers opined that significant injury was sustained on the job and caused the problems noted.

By letter dated January 30, 2004, Dr. Carter E. Beck, a Board-certified neurologist, reported appellant's history of working as an emergency medical technician on July 17, 2003 when she experienced a pop in her back and had persistent back pain. He noted that in October 2003 she had a marked increase in low back pain with radiation into her right leg. Dr. Beck opined that more probable than not appellant's back injury was work related and occurred on July 17, 2003.

In a report dated February 4, 2004, Dr. Myers, repeated his January 8, 2004 opinion.

A magnetic resonance imaging (MRI) scan from October 2003 interpreted by Dr. Kevin Funk, a Board-certified radiologist, was reported as demonstrating a right paracentral disc extrusion at L5-S1 with inferior migration of disc material into the right S1 lateral recess with resultant compression of the right S1 nerve root. He also identified compression of the right anterolateral aspect of the thecal sac, superimposed on a broad-based disc bulging at L5-S1.

On February 7, 2004 appellant requested a review of the written record and submitted an October 2003 consultation in which Dr. Greenwald, who reviewed her history working as an

emergency medical technician for the employing establishment, reported no significant examination results and diagnosed right S1 radiculopathy and a right L5-S1 herniated nucleus pulposus. He discussed surgical treatment and its possible side effects. However, Dr. Greenwald did not provide any explanation of causal relationship with appellant's employment.

By decision dated July 19, 2004, the hearing representative noted that appellant related the occurrence of her low back injuries to several activities, including lifting and rolling patients, cleaning the back of the ambulance and traveling. He noted that Dr. Greenwald checked "yes" to the question of whether the condition found was caused or aggravated by the employment factors alleged. Thereafter Dr. Greenwald listed an impression of L5-S1 disc herniation and S1 radiculopathy and noted that her problems began in later July or early August when she was fighting fires and lifting and moving patients. Dr. Myers noted that appellant injured herself in June while working on a fire and doing some heavy lifting. He opined that her condition was related to her heavy lifting in June 2003. On January 30, 2003 Dr. Beck noted that appellant reported a pop in her back while transferring patients and he opined that more probable than not her back injury was work related and occurred on July 17, 2003. The hearing representative denied the claim finding that appellant failed to provide a complete and accurate description of the heavy lifting implicated by the medical reports and her claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim, including the fact 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.³

To establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by appellant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The Board has held that the opinion of a physician who answers a form question about causal relationship by checking "[y]es," on the form, without further explanation or clarification his or her opinion, is conclusory, as it is unaccompanied by medical explanation.⁴

² 5 U.S.C. § 8101 *et seq.*

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Ruth S. Johnson*, 46 ECAB 237 (1994); *William C. Thomas*, 45 ECAB 591 (1994).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁵ However, it is well established that proceedings under the Federal Employee' Compensation Act are not adversarial in nature and while the claimant has to burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.

ANALYSIS

Appellant has met the first of the three criteria noted above by submitting medical evidence establishing the presence of the condition for which compensation is claimed. The Board finds that appellant's factual statements and allegations are sufficient to meet the second criteria noted above which is to identify employment factors alleged to have caused or contributed to the condition. Although the Office concluded that appellant failed to provide a complete and accurate description of the heavy lifting implicated, the Board finds that the record does not contain any contrary evidence refuting her allegations.

Dr. Greenwald noted in an October 2003 narrative letter that appellant had a right S1 radiculopathy and a right-sided L5-S1 herniated nucleus pulposus. Dr. Greenwald checked "yes" to a form question on causal relationship, but as he did not elaborate on his answer or provide any medical rationale, his opinion is of decreased probative value and is insufficient to establish her claim. He subsequently diagnosed L5-S1 disc herniation with S1 radiculopathy and noted that it began in July or August when appellant injured herself fighting fires and lifting and moving patients.

Dr. Myers noted that appellant hurt her back while working on a fire in June doing some heavy lifting. He noted that the symptoms were minimal at first but worsened to severe pain in October when she underwent emergency spinal surgery. Dr. Myers ruled out other risk factors and causes and noted that she developed a free floating disc fragment within her spinal cord due to her heavy lifting in the summer of 2003 and opined that significant injury was sustained by appellant on the job and caused the problems noted.

Dr. Beck pinpointed the date of appellant's injury as July 17, 2003 when she felt a pop in her back and thereafter had a marked increase in low back pain with radiation into her right leg. He opined that, more probably than not, appellant's back injury was work related and occurred on July 17, 2003.

Although the record lacks well-rationalized medical evidence documenting that an occupational back injury occurred in the summer of 2003 while lifting patients and working with the ambulance, appellant's physicians have each opined that appellant sustained a herniated disc with free fragment related to her employment duties during the summer of 2003 and that her condition was caused or contributed to by her work factors. This is sufficient to require further development of the claim. In an occupational disease claim, each exposure or event need not be sufficient to cause an injury, but cumulatively would be sufficient to cause the condition alleged.

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

It becomes a medical question whether appellant sustained a herniated disc due to factors and duties in July 2003 as alleged.⁶ The case will be remanded for further development on the issue of causal relation necessitating a statement of accepted facts and questions to be answered.⁷

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 19 and January 21, 2004 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Issued: May 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ If it deems necessary, the Office shall direct appellant to submit a more specific description of the duties performed during the alleged period of injury.

⁷ *John J. Carlone*, 41 ECAB 354 (1989).