

Appellant submitted a November 29, 2001 report in which Dr. Spiros G. Stamelos, an attending Board-certified orthopedic surgeon, indicated that he reported suffering low back pain after lifting a heavy suitcase at work in August 2001. Dr. Stamelos stated that magnetic resonance imaging (MRI) scan testing did not show an annular tear and noted, “The patient’s symptoms are that of an annular tear.” He indicated that discography testing was the most appropriate testing for diagnosing an annular tear and recommended that appellant have electromyogram (EMG) testing to rule out a radicular neuropathy, followed by discography testing if the EMG testing was negative. Dr. Stamelos stated, “I feel the condition is work related commencing from the lifting of a suitcase.”¹ He provided the diagnosis of “rule out annular tear in an otherwise healthy 39-year-old gentleman with no previous history.”²

By decision dated February 1, 2002, the Office denied appellant’s claim that he sustained a traumatic injury at work on August 25, 2001. The Office accepted the occurrence of the August 25, 2001 employment incident as alleged, but found that appellant did not submit sufficient medical evidence to establish that he sustained an injury due to the employment incident.

Appellant submitted treatment notes dated between August 25 and October 27, 2001 of Dr. Carl E. Byer, an attending chiropractor. In his August 25, 2001 report, Dr. Byer noted that appellant reported experiencing low back pain after lifting luggage on that date. He indicated that examination revealed subluxations at C5, 6, T8 and L5 and diagnosed lumbar disc syndrome and segmental dysfunction of the lumbar, thoracic and cervical spines.³ In his August 28, 2001 report, Dr. Byer diagnosed “probable annular tear in one of the lower lumbar discs resulting into intense lumbalgia.”⁴

Appellant also submitted a March 9, 2001 report in which Dr. Amir Turayhi, an attending physician specializing in internal medicine, indicated that he presented to his office on October 29, 2001 with complaints of low back pain. Dr. Turayhi stated that appellant indicated that his symptoms started after lifting a bag at work in August 2001.

In a November 21, 2001 report, Dr. Stamelos again stated that appellant had a history of a work-related injury on August 1, 2001. He indicated that appellant’s diagnosis was “occult disc disease, herniated nucleus pulposus versus annular tear.”

¹ He also stated, “Date[-]of[-]injury, work related, is August 1, 2001.”

² Appellant submitted an October 29, 2001 report of Dr. Stamelos, which contained the same text as his November 29, 2001 report. The October 29, 2001 report indicated that appellant was examined on that date. Appellants also submitted a January 3, 2003 facsimile sheet from the office of Dr. Stamelos, which contained a list of diagnoses, but the sheet was not signed by a physician.

³ Dr. Byer stated that “lumbar radiographs” would be taken on the next visit, but the record does not contain any record of x-ray testing being carried out. He later indicated that appellant also had subluxations at C4 and 7.

⁴ Dr. Byer also stated, “There were no disc herniations or any type of pathology in the lumbar spine *via* a verbal report from the radiologist on the lumbar [MRI scan].”

The findings of MRI scan testing on August 27, 2001 showed normal results in appellant's low back and the findings of EMG testing on January 11, 2002 revealed evidence of a mild right sural sensory neuropathy.

By decision dated July 13, 2004, the Office affirmed its February 1, 2002 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his 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 are causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹ The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.¹⁰

ANALYSIS

Appellant alleged that he sustained injury to his back when he attempted to lift luggage at work on August 25, 2001. Although appellant established the occurrence of the August 25, 2001 employment incident as alleged, he did not submit sufficient medical evidence to establish that he sustained an injury due to the employment incident.

⁵ 5 U.S.C. § 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁸ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹⁰ *Elaine Pendleton*, *supra* note 6; 20 C.F.R. § 10.5(a)(14).

Appellant submitted October 29 and November 29, 2001 reports in which Dr. Stamelos, an attending Board-certified orthopedic surgeon, indicated that appellant reported suffering low back pain after lifting a heavy suitcase at work in August 2001. Dr. Stamelos ostensibly concluded that appellant sustained a work-related injury by stating, “I feel the condition is work related commencing from the lifting of a suitcase.” However, these reports are of limited probative value on the relevant issue of the present case in that they contain opinions which are equivocal in nature.¹¹ Dr. Stamelos did not clearly identify the medical condition which he felt was caused by the lifting of a suitcase at work.¹² He stated that appellant had symptoms of an annular tear in his low back, but also noted that MRI scan testing did not show an annular tear and that it was still necessary to perform additional diagnostic testing to rule out an annular tear. Moreover, Dr. Stamelos did not provide medical rationale in support of his opinion that appellant sustained an employment-related injury.¹³ He did not describe the August 2001 employment incident in any detail or explain the medical process through which it would have been competent to cause injury.¹⁴

Appellant submitted treatment notes dated between August 25 and October 27, 2001 in which Dr. Byer, an attending chiropractor, indicated that examination revealed subluxations at C4, 5, 6 and 7, T8 and L5.¹⁵ Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹⁶ However, Dr. Byer did not indicate in any of his reports that his findings of subluxations were demonstrated by x-rays to exist. Although he stated that “lumbar radiographs” would be taken, the record does not contain any record of x-ray testing. Therefore, his reports do not constitute medical evidence and have no probative value regarding the relevant issue of the present case.

Appellant also submitted a March 9, 2001 report in which Dr. Turayhi, an attending physician specializing in internal medicine, indicated that appellant reported that his symptoms

¹¹ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

¹² Moreover, he improperly identified the alleged injury as occurring on August 1, 2001 rather than August 25, 2001.

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

¹⁴ In a November 21, 2001 report, Dr. Stamelos stated that appellant had a history of a work-related injury on August 1, 2001 and indicated that his diagnosis was “occult disc disease, herniated nucleus pulposus versus annular tear.” This report also did not provide a rationalized opinion on causal relationship. The record also contains a January 3, 2003 facsimile sheet from the office of Dr. Stamelos which contained a list of diagnoses, but the sheet was not signed by a physician.

¹⁵ Dr. Byer diagnosed probable annular tear in one of the lower lumbar discs, lumbar disc syndrome and segmental dysfunction of the lumbar, thoracic and cervical spines. However, he also stated, “There were no disc herniations or any type of pathology in the lumbar spine *via* a verbal report from the radiologist on the lumbar [MRI scan].”

¹⁶ 5 U.S.C. § 8101(2). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

started after lifting a bag at work in August 2001. Dr. Turayhi did not, however, provide any opinion that appellant sustained an injury due to the accepted employment incident.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a back injury in the performance of duty on August 25, 2001.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 13, 2004 decision is affirmed.

Issued: May 9, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member