

FACTUAL HISTORY

On November 14, 2002 appellant, then a 40-year-old supervisory correctional officer (lieutenant), sustained an injury in the performance of duty:

“On November 14, 2002, at approximately 1:15 p.m., while sitting at the lieutenant’s desk, talking on the [tele]phone, as I leaned forward to hang the [tele]phone up, the desk fell off 2, 4 inch blocks, onto my lap, pressed against my abdomen, temporarily pinning me to my chair, until I pushed myself free.”¹

The Office accepted his claim for bilateral thigh contusion and lumbar strain. The Office later accepted a contusion of the hip and thigh and a lumbar sprain and strain. Appellant received compensation for temporary total disability. He returned to a temporary alternative-duty assignment from January to November 2003, after which he returned to his regular full-duty position as a lieutenant. He applied for disability retirement on March 21, 2005.

On March 29, 2005 appellant requested leave without pay beginning April 6, 2005, as his leave was exhausted. He also claimed compensation for wage loss beginning April 6, 2005. On April 6, 2005 the warden denied his request for leave without pay and placed him in a temporary alternative-duty assignment as a telephone monitor. Appellant took the remainder of his annual leave on April 9, 2005 and was charged 1.5 hours of being absent without leave that day. He did not return to work.

On May 18, 2005 the Office notified appellant that he had 30 days to submit certain evidence to support his claim for compensation beginning April 6, 2005, requesting:

“Medical evidence establishing disability for work during the entire period claimed is needed. This medical must clearly establish that your inability to work is related to the November 14, 2002, work injury. It must show an accurate history of the multiple injuries you have sustained since November 14th and explain how your current inability to work is due to the November 14, 2002, work injury as opposed to the other, more recent injuries.

“In addition, the most recent medical report shows diagnoses of [l]umbar [d]egenerative [j]oint [d]isease and [d]egenerative [d]isc [d]isease. These are not accepted conditions in this case. Your physician must advise if your current inability to work is due to these conditions.”

The Office received results of diagnostic tests and studies, documents relating to a claimed recurrence of disability on October 14, 2004, a number of health records, most of which predated the period of disability claimed, documents relating to a complaint of discrimination, and correspondence, either from appellant, the Office or the employing establishment.

¹ Appellant wrote on March 21, 2005 that the desk weighed 400 pounds.

In a decision dated June 22, 2005, the Office denied appellant's claim for compensation beginning April 6, 2005. The Office found that the evidence failed to support disability for the period claimed.

LEGAL PRECEDENT

A claimant seeking benefits under Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the claimant must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵

The term "disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁶ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷

ANALYSIS

Appellant sustained an injury in the performance of duty on November 14, 2002 when the desk he was sitting at fell off some wooden blocks and onto his lap, pinning him to his chair. The Office accepted that this incident caused contusions of the hip and thigh and a lumbar sprain and strain. On March 29, 2005 appellant claimed compensation for wage loss beginning April 6, 2005. He therefore has the burden of proof to establish that his absence from work beginning on or about April 6, 2005 is causally related to the employment injury he sustained on November 14, 2002. The Board finds that he has not met his burden of proof.

The Office correctly notified appellant on May 18, 2005 that he needed to submit medical evidence to support his claim for compensation beginning April 6, 2005, evidence clearly establishing that his inability to work was related to the November 14, 2002 work injury. The Office advised that the medical evidence had to show an accurate history and had to explain how his current inability to work was due to the November 14, 2002 work injury. Appellant submitted many documents in response, but none sufficient to establish causal relationship.

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Tracey Smith-Cashen*, 38 ECAB 568, 572-73 (1987).

⁶ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f) (1999).

⁷ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

A March 15, 2005 status report from Dr. David Joe stated that appellant had low back pain and was released to light duty for at least a month, but it made no mention of the November 14, 2002 employment injury and gave no indication that this employment injury caused appellant to stop work on or about April 6, 2005. In a May 4, 2005 report, Dr. David C. Collipp reported that appellant presented with a new injury to his low back, which he dated to early October 2004. He made no mention of the incident that occurred on November 14, 2002 and, although his report is contemporaneous to the period of disability claimed, Dr. Collipp made no mention of appellant's absence from work beginning on or about April 6, 2005. He diagnosed lumbar degenerative joint disease and degenerative disc disease, with possible hip pathology and incomplete effort on appellant's examination. Dr. Collipp did not state that these conditions had any relationship to the injury of November 14, 2002 or to the period of disability claimed.

To establish his entitlement to compensation for wage loss beginning on or about April 6, 2005, appellant must submit a probative medical opinion, one that relates a detailed and accurate history of the employment injury that occurred on November 14, 2002, together with any earlier or later medical history that might be relevant. Dr. Collipp must explain with clear medical reasoning how this injury prevented appellant from performing the duties of his position beginning on or about April 6, 2005. Dr. Collipp attributed this inability to work to the diagnosed lumbar degenerative joint disease and degenerative disc disease, but did not explain how these conditions are related to the injury of November 14, 2002. Because appellant has submitted insufficient medical opinion evidence, the Board will affirm the denial of his claim for compensation.⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof. The medical evidence fails to establish that his absence from work beginning on or about April 6, 2005 was causally related to his November 14, 2002 employment injury.

⁸ The Board has no jurisdiction to review Dr. Collipp's June 29, 2005 report, as this evidence was not before the Office when it issued its June 22, 2005 decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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