

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

ANNIS K. MORISON, Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF THE
INSPECTOR GENERAL, Atlanta, GA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-787
Issued: July 20, 2006**

Appearances:
Annis K. Morison, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 16, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 2, 2005 and January 25, 2006 merit decisions denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on July 21, 2003.

FACTUAL HISTORY

On February 2, 2004 appellant, then a 60-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2003 she sustained a low back injury while in the process of changing a flat tire, which occurred while she was traveling to Tallahassee, Florida on official business. She alleged that in order to reach the spare tire she was

required to remove computer equipment, luggage and other heavy items from the trunk of her car. Appellant stopped work on January 12, 2004.

By letter dated February 13, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It stated that the evidence did not establish that she provided timely notification of the alleged injury or that appellant actually experienced the alleged incident or the employment factor alleged to have caused the claimed injury. In addition, no medical opinion had been submitted from a physician as to how her work activity resulted in an injury. The Office provided 30 days for the submission of additional evidence.

Appellant submitted a September 3, 2003 report of a magnetic resonance imaging (MRI) scan of the lumbar spine reflecting severe degenerative joint disease with Grade 1 spondylolisthesis of L3 on L4. Appellant also submitted an October 14, 2003 report of an MRI scan of the lumbar spine, which revealed anterolisthesis of L3 on L4 with modic Type III severe end plate change as well as high grade more than left foraminal stenosis. Moderate foraminal crowding at L5-S1 with mild broad dis[c] protrusion.” The report indicated that the location of the spondylolistheses was somewhat unusual and recommended a localized computerized tomography (CT) scan to evaluate the posterior elements for a trauma or developmental abnormality.

Appellant submitted unsigned treatment notes dated December 10, 2003 through March 10, 2004 from Dr. Rose Taylor, a Board-certified internist. She diagnosed displacement of lumbar intervertebral disc, back pain, and left hamstring injury. Dr. Taylor indicated that appellant’s MRI scan revealed evidence of disc herniation and spondylolisthesis. Noting that appellant was experiencing low back pain and burning down her right leg, Dr. Taylor opined that appellant was unable to work.

Appellant submitted a January 7, 2004 report from Dr. W. Knox Kinlaw, Jr., a Board-certified neurosurgeon. He related the history of the alleged injury, indicating that she had been “traveling for work carrying a computer and started having pain in her hips,” which progressed to a burning sensation, especially on the right side, where it radiated down the outer aspect of the right thigh and into the right foot. Appellant also reported that a snow skiing injury had resulted in a tear of her left gastrocnemius and that she had experienced weakness in her legs ever since. Dr. Kinlaw noted that appellant’s September 2003 MRI scan revealed severe degenerative joint disease of the lumbosacral spine with fusion at L3-4, as well as Grade 1 spondylolisthesis. He provided an impression of low back and right leg pain secondary to L3-4 spondylolisthesis with nerve root compression.

The record contains travel orders signed by Stanley E. McGhee and Robert R. Wallace of the employing establishment, providing authorization for the period March 24 through September 30, 2003, for appellant’s “blanket domestic travel from Atlanta, Georgia to any and all points in the continental United States as often as necessary on official business and return.”

On March 10, 2004 appellant responded to questions posed by the Office. She indicated that she delayed seeking medical treatment because she had not experienced any pain until two weeks after the July 21, 2003 incident. Appellant began experiencing burning pain in her right hip and leg and first “consulted” a doctor in early August 2003. She delayed in reporting the

alleged injury because she did not originally associate her pain with a back problem and that her first examination with a physician after the incident was on December 5, 2003 with Dr. Susan Dreyer, a Board-certified physiatrist. Appellant stated that the objects she lifted on the date in question included a printer weighing 60 pounds, a monitor weighing 30 pounds, a case of printer paper weighing 30 pounds, and a cart weighing 25 pounds. She provided a detailed listing of contacts with her physicians, which included an alleged telephone conversation during August 2003 with Dr. Kathy Lynn, a Board-certified internist, and her first medical appointment following the alleged injury on December 5, 2003 with Dr. Dreyer.

In a December 5, 2003 report, Dr. Dreyer diagnosed spinal stenosis with L3-4 spondylolisthesis, L5-S1 disc degeneration, and right greater than left trochanteric bursitis. She stated that appellant had a five-month history of a burning sensation in her right hip. Indicating that she had been doing a lot of lifting of computer equipment, appellant reportedly did not recall any particular injury. Her history included a fall from a roof 10 years earlier, when she “landed on her back on a ladder and had back pain but did not seek medical care,” and a waterskiing accident in which she sustained a ruptured hamstring. Dr. Dreyer noted that an October 14, 2003 MRI scan demonstrated Grade 1 spondylolisthesis at L3-4 resulting in right greater than left foraminal stenosis and disc desiccation and a small central bulge resulting in left greater than right foraminal stenosis at L5-S1. Examination revealed nontender thoracic hips and pain free range of motion. Appellant’s neurologic examination was normal. Reflexes were symmetric. Straight leg raises were negative. Motor testing was 5/5, and sensation was normal. Appellant’s gait was nonantalgic. In a follow-up report dated January 20, 2004, Dr. Dreyer indicated that appellant continued to complain of pain. She found that appellant’s reflexes were 1/4; straight leg raises were negative; sensory was intact; and motor testing was 5/5. On May 18, 2004 Dr. Dreyer reiterated her diagnosis of spinal stenosis and indicated that appellant’s back pain had reached a plateau.

In a decision dated March 19, 2004, the Office denied appellant’s claim, finding that the evidence was insufficient to establish that she sustained a low back injury caused by the accepted July 21, 2003 employment incident.

The Office received unsigned treatment notes from the Emory Spine Clinic and Georgia Medical Associates for the period March 24 through August 5, 2004. In unsigned notes dated April 28, 2004, Meredith Magner, a physician’s assistant, indicated that appellant had a “chronic injury -- DJD in spine/slipped vertebrae, acutely painful following episode of heavy lifting many months ago.” On July 14, 2004 Ms. Magner noted low back pain and displacement of lumbar intervertebral disc. On August 5, 2004 Ms. Magner stated that appellant’s injury was “most likely precipitated by lifting heavy computer equipment out of trunk onto ground, then back in.”

In an October 14, 2004 report, Dr. Daniel H. Silcox, a Board-certified orthopedic surgeon, provided diagnoses of Grade 1 spondylolisthesis of L3-4 with foraminal stenosis and degenerative disc disease at L5-S1 with foraminal stenosis. Appellant reported to Dr. Silcox that her bilateral lower extremity pain had been ongoing since July 21, 2003, when she unloaded computer equipment from her car in order to change a tire.

Appellant submitted a November 11, 2004 operative report signed by Dr. Draper, reflecting the administration of a steroid injection. Appellant also submitted a January 6, 2005 report from Dr. John G. Heller, a Board-certified orthopedic surgeon. He indicated that x-rays of the lumbar spine taken that date demonstrated a previously undetected pars defect at the L3 level, as well as a Grade 1 isthmic spondylolisthesis, and severe disc degeneration at the L3-4 level with bone on bone encroachment. Dr. Heller also noted disc degeneration at a moderate level at the L5-S1 level.

Appellant submitted unsigned treatment notes from Dr. Dreyer dated May 18, October 18 and December 3, 2004 reflecting treatment for bilateral thigh pain and reiterating her earlier diagnosis.

Appellant provided a May 13, 2004 report from Dr. Kinlaw reflecting her continued pain due to spondylolisthesis. He reiterated that his previous notes indicated that appellant had been traveling for work in July 2003 and carrying a computer when her pain began. Dr. Kinlaw stated that appellant wanted to amend her original report of injury to reflect that her symptoms started as a result of an accident while she was at work and that she had experienced severe pain since that time. He stated that it was impossible to state whether the accident caused appellant's spondylolisthesis, but that even if the spondylolisthesis was preexisting, the accident "certainly aggravated the preexisting condition."

On March 14, 2005 appellant requested reconsideration of the Office's March 19, 2004 decision. In an accompanying narrative statement, she indicated that she was unable to focus on work due to chronic pain and effects of medication. Appellant addressed several statements made by Drs. Kinlaw and Dreyer. She claimed that she actually told Dr. Kinlaw on May 13, 2004 that she was carrying several pieces of heavy computer equipment and several boxes of work papers, which she had to load, unload and reload in her car several times on July 21, 2003. Appellant stated that she told Dr. Dreyer on May 18, 2004 that she had seen Dr. Kinlaw, not Dr. Kingloff. She also indicated that she didn't tell Dr. Dreyer on December 3, 2004 that she was anxious to get back to skiing, but rather that she was emotional about her physical limitations.

In a July 27, 2004 report, Dr. Kinlaw stated that appellant experienced pain but had returned to work. An unsigned note dated August 5, 2004 from Dr. Davine Dansley, a treating physician, reflected that appellant was "off work" due to severe pain in her lower back and right leg.

Appellant submitted an unsigned report dated March 24, 2004 from Dr. Taylor, who provided an assessment of low back pain and displacement of lumbar intervertebral disc. Dr. Taylor stated that appellant's symptoms started after lifting while at work and progressed until the pain became unbearable. She indicated that appellant had never been treated for any back pain or condition until her July 21, 2003 activity, and that it was likely that the July 21, 2003 lifting was the "initiation of the trauma related to [the] pain and back condition."

By decision dated May 2, 2005, the Office denied modification of the March 19, 2004 decision, finding that the evidence of record failed to establish that appellant sustained a medical

condition causally related to the July 21, 2003 employment incident. Specifically, the claims examiner stated that he was unable to determine from objective findings whether appellant's condition was due to a natural progression of an underlying disease or an aggravation caused by the claimed work trauma.

The record contains numerous articles and literature on the causes, care and treatment of spondylolisthesis.

On September 20, 2005 appellant submitted a request for reconsideration and submitted a September 1, 2005 letter from Dr. Dansley, who stated that he had treated appellant for 18 years with no history of back problems. He reported that on July 21, 2003 appellant had a flat tire while driving to Tallahassee, Florida on work-related business. During the course of changing the tire, appellant lifted several heavy items, including computer equipment and boxes of computer paper on several occasions. The next day, appellant reportedly experienced burning pain in her hips, and continued to have chronic pain with subsequent depression. Dr. Dansley opined that "leaning forward and lifting heavy objects either caused the spondylolisthesis or aggravated the condition."

Appellant submitted a letter from C. Eugene Smith, a coworker, who stated that he was with appellant in her vehicle on July 21, 2003 when she had a flat tire. Mr. Smith indicated that, because he was physically unable to help, appellant moved all of the computer equipment from the trunk, in order to change the flat tire, and reloaded the equipment afterward. After purchasing a new tire, she again unloaded and reloaded the equipment in order to replace the spare tire. When appellant arrived in Tallahassee, she moved the equipment for the fifth time. Mr. Smith stated that, within a few days, appellant began experiencing a burning sensation in her hips, but that neither of them related the pain to the activities of July 21, 2003. He stated that he had known appellant for 13 years and never knew her to have a back problem.

By letter dated November 9, 2005, the employing establishment stated that it did not controvert appellant's initial claim.

On January 25, 2006 the Office denied modification of its May 2, 2005 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.³

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8102(a).

³ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged, and that such event, incident or exposure caused an injury.⁵ To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁷ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

⁴ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004); see also *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Tracey P. Spillane*, 54 ECAB 608 (2003); see also *Betty J. Smith*, 54 ECAB 174 (2002). 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(ee).

⁶ See *Paul Foster*, 56 ECAB ____ (Docket No. 04-1943, issued December 21, 2004).

⁷ *Id.* See also *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

The Office accepted that the July 21, 2003 incident occurred at the time, place and in the manner alleged by appellant. It is not disputed that appellant was authorized to travel to Tallahassee, Florida on the date in question; that she had a flat tire; and that she removed computer equipment and other heavy objects from her trunk while changing a flat tire on business-related travel. The issue is whether the activities of July 21, 2003 caused appellant's diagnosed condition. The Board finds that the medical evidence of record fails to establish that appellant's low back condition was due to the July 21, 2003 employment incident. Although the Office accepted that appellant moved computer equipment on July 21, 2003 during the course of her employment, the medical evidence presented does not clearly establish that her diagnosed spondylolisthesis and disc degeneration was caused by this activity.

The medical evidence submitted is insufficient to establish a causal relationship between the incident of July 21, 2003 and appellant's diagnosed condition.

In his January 7, 2004 report, Dr. Kinlaw provided a diagnosis of spondylolisthesis. However, the report fails to provide any opinion as to the cause of her condition and, therefore, lacks probative value. In his May 13, 2004 report, Dr. Kinlaw reiterated his diagnosis of spondylolisthesis and noted that appellant had changed her account of the alleged injury, indicating that her symptoms were a result of an accident at work and that she had experienced severe pain since that time. He stated that it was "impossible to state whether the accident caused spondylolisthesis" but that, even if her condition was preexisting, the accident "certainly" aggravated the preexisting condition. The Board finds that Dr. Kinlaw's opinion is speculative. Moreover, the opinion is not based on a complete and accurate factual background, but rather is based on conflicting versions of the facts presented by appellant. Dr. Kinlaw was therefore unable to and did not provide any medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment. For these reasons, the Board finds that Dr. Kinlaw's opinion lacks probative value.

In her December 5, 2003 report, Dr. Dreyer provided diagnoses of spinal stenosis with L3-4 spondylolisthesis; L5-S1 disc degeneration; and right greater than left trochanteric bursitis. She provided a history of appellant's injury as reported, and results of her examination. However, she failed to provide any opinion as to the cause of appellant's diagnosed condition. In fact, she indicated that appellant could not recall any particular injury. Similarly, Dr. Dreyer's January 20 and May 18, 2004 reports do not provide any opinion on causal relationship. Accordingly, Dr. Dreyer's reports also lack probative value.

In his October 14, 2004 report, Dr. Silcox provided diagnoses of Grade 1 spondylolisthesis of L3-4 with foraminal stenosis and degenerative disc disease at L5-S1 with foraminal stenosis. In a report dated January 6, 2005, Dr. Heller indicated that x-rays of the lumbar spine taken that date demonstrated a previously undetected pars defect at the L3 level, as well as a Grade 1 isthmic spondylolisthesis, and severe disc degeneration at the L3-4 level with bone on bone encroachment. He also noted disc degeneration at a moderate level at the L5-S1 level. However, neither physician offered an opinion or an explanation as to the cause of appellant's condition. Therefore, their reports do not constitute probative medical evidence.

In his September 1, 2005 report, Dr. Dansley stated that appellant began experiencing a burning pain in her hips on the day after she changed a tire and lifted heavy computer equipment on July 21, 2003. He opined that “leaning forward and lifting heavy objects either caused the spondylolisthesis or aggravated the condition.” Dr. Dansley’s opinion is speculative, in that he does not state with certainty whether or not the spondylolisthesis preexisted the work injury. Moreover, Dr. Dansley has failed to provide an explanation as to how the accepted incident could have caused appellant’s diagnosed condition. Therefore, his report is of diminished probative value. The Board again notes that the facts on which Dr. Dansley based his opinion conflict with appellant’s claim that her pain did not begin until two weeks after the July 21, 2003 employment incident.

As there is insufficient rationalized medical evidence of record establishing that appellant injured her back while in the performance of duty as alleged, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2006 and May 2, 2005 decisions of the Office of Workers’ Compensation Programs are affirmed.

Issued: July 20, 2006
Washington, DC

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

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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