

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

D.S., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Bridgeton, MO, Employer**

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**Docket No. 06-1275
Issued: September 13, 2006**

Appearances:
D.S., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 15, 2006 appellant filed a timely appeal from a February 28, 2006 merit decision of the Office of Workers' Compensation Programs, finding that he did not sustain an injury while in the performance of duty. 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 has established that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On November 28, 2005 appellant, then a 45-year-old airway transportation system specialist, filed a claim for an occupational disease (Form CA-2) alleging that on July 26, 2005 he first realized that his degenerative disc disease, bulging disc and spinal stenosis were caused by factors of his federal employment. He stated that since 1999, he engaged in repetitive lifting and carrying and removed and installed flush light units, which weighed about 70 pounds each.

Appellant contended that this work and heavy lifting duties damaged and caused a degenerative disc in his lower back.

By letter dated December 9, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office advised him about the factual and medical evidence he needed to submit to establish his claim.

In an undated statement, appellant related that his lower back pain developed after he began working at the employing establishment and that he managed the pain with medication. He attributed problems with his lumbar discs at L4, L5 and S1 to the duties described in his CA-2 form. He stated that his condition increasingly worsened, which caused him to request more powerful pain medication. Prior to his current work assignment but after he started working at the employing establishment, he was diagnosed with having a slightly herniated disc between L4-5. His treatment was limited to medication for discomfort.

Appellant submitted progress notes from Heidi Dresner, a registered nurse. In a September 8, 2005 progress note, she restricted him from repetitive bending, twisting and lifting and lifting more than 35 pounds at work. Her November 10, 2005 progress note indicated that bending, lifting and twisting at work aggravated appellant's back condition. Ms. Dresner's September 8, 2005 prescription reiterated his work restrictions.

A September 8, 2005 medical report signed by Ms. Dresner and Dr. Stephen G. Smith, an attending Board-certified anesthesiologist, indicated that appellant had a long history of lower back problems and was treated with a round of lumbar epidural steroid injections. On physical examination, Dr. Smith reported a 50 percent decrease in his symptoms. He noted that appellant had an 80 percent decrease in symptoms following the first injections but his job required him to do much repetitive lifting, bending and twisting. Dr. Smith restricted him from repetitive bending, twisting or lifting and lifting over 35 pounds at work.

A July 26, 2005 report of Dr. M. Collette Schmidt-Turner, a Board-certified internist, found that appellant could not perform any heavy lifting at work due to lumbar disease.

An unsigned report dated May 26, 2005 of Dr. Hilton I. Price, a Board-certified radiologist, provided the results of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. Dr. Price found two-level disease with spinal stenosis at L4-5 and L5-S1 associated with a broad-based bulge at L4-5 with superimposed lateral disc herniation on the right side with foraminal encroachment. He also found that central disc herniation at L5-S1 was likely with evidence of root compression. On July 28 and August 4 and 25, 2005 Dr. Smith injected appellant's lumbar spine with an epidural steroid.

In a December 19, 2005 letter, appellant further described the physical requirements of his airways facilities system specialist position to which he attributed his back pain. In addition, he provided a list of his attending physicians. Appellant submitted a May 18, 2005 report, which contained a physician's signature, findings on physical examination and diagnoses that were all illegible. In a July 14, 2005 report, Dr. Daniel J. Scodary, a Board-certified neurosurgeon, provided a history of appellant's lower back pain, symptoms and medical treatment. He reviewed the May 26, 2005 MRI scan results and reported his findings on physical examination.

Dr. Scodary opined that appellant did not demonstrate any neurogenic claudication secondary to his spinal stenosis but “probably” had lower back problems secondary to his severe degenerative disease. He did not recommend surgical intervention at that time because appellant did not have any significant conservative management up to that time. Dr. Scodary recommended physical therapy and pain clinic injections and stated that, if his condition did not improve, some type of degenerative disc stabilization procedure may be required.

Appellant submitted medical evidence pertaining to poor treatment of his low back. An unsigned report dated December 20, 1989 of Dr. Sanford E. Rabushka, a Board-certified radiologist, provided results of a computerized tomography (CT) scan of appellant’s lumbar spine. Dr. Rabushka found a bulging disc or possible central herniation at L4-5 and a herniated disc at L5-S1 with superior migration of a fragment located mainly on the left. On September 16, 1992 Dr. Kil S. Lee, a Board-certified radiologist, performed a CT scan of appellant’s lumbar spine. He found a medium sized central bone spur and focal disc bulge or herniation at L5-S1, a medium sized central focal disc bulge at L4-5 and no significant spinal stenosis. In an October 5, 1992 report, Dr. William F. Hoffman, a Board-certified neurosurgeon, diagnosed a bulging disc at L4-5, which was relatively unchanged from a 1989 x-ray examination and disc herniation at L5-S1.

In a July 25, 2005 report, Dr. Smith opined that appellant had a herniated disc with spinal stenosis and discogenic symptoms based on his history and findings on physical and objective examination.

In a December 27, 2005 report, Dr. Turner opined that appellant suffered from chronic low back pain. He noted that appellant had been seen by multiple specialists for this condition and that he had been diagnosed with wide spread disc disease.

By decision dated February 28, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. The medical evidence failed to establish a causal relationship between the alleged back conditions and his employment duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant 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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁴

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between his back conditions and his federal employment.

The record reveals that as early as 1989 appellant was diagnosed with a bulging disc at L4-5, possible central herniation at L4-5 and a herniated disc at L5-S1. He received epidural steroid injections in the lumbar spine.

Appellant submitted unsigned reports and a May 18, 2005 report which contained an illegible signature of a physician. These reports have no probative value as the author(s) cannot be identified as a physician.⁵ As the reports lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.⁶

The treatment record of Ms. Dresner, a nurse, indicated that appellant was seen in conjunction with Dr. Smith. She noted his physical limitations for work.⁷ Dr. Smith's September 8, 2005 report precluded appellant from repetitive bending, twisting and lifting and lifting more than 35 pounds at work. He indicated that these work duties caused appellant to experience increased back pain. Dr. Smith provided treatment consisting of lumbar epidural injections but he did not provide a diagnosis for appellant's back condition and failed to explain how appellant's employment caused or contributed to his back symptoms for which treatment was administered. His reports which indicated that appellant received a lumbar steroid epidural on July 28 and August 4 and 25, 2005, are insufficient to establish his claim. Dr. Smith failed to

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁶ *See Merton J. Sills*, 39 ECAB 572 (1988).

⁷ *See Betty G. Myrick*, 35 ECAB 922 (1984).

provide a diagnosis for appellant and he did not address whether the diagnosed condition was caused by factors of appellant's federal employment.

Dr. Hoffman's October 5, 1992 report found that appellant sustained a bulging disc at L4-5 that was relatively unchanged from a 1989 x-ray examination and disc herniation at L5-S1. Dr. Smith's July 25, 2005 report found that appellant sustained a herniated disc with spinal stenosis and discogenic symptoms. In a July 26, 2005 report, Dr. Turner opined that appellant could not perform any heavy lifting at work due to lumbar disease. The physicians each reported on diagnostic studies obtained from 1989 to 2005. The reports are of diminished probative value because they failed to address how the diagnosed conditions were caused or aggravated by factors of appellant's employment.

In a July 14, 2005 report, Dr. Scodary opined that appellant did not demonstrate any neurogenic claudication secondary to spinal stenosis but "probably" had lower back problems secondary to his severe degenerative disease based on his history and findings on physical examination. Dr. Scodary's opinion regarding the cause of appellant's lower back did not address how the spinal stenosis was caused or contributed to by appellant's work duties. It is, therefore, of diminished probative value.⁸ The Board finds that his opinion is insufficient to establish appellant's burden of proof.

Dr. Turner opined in a December 27, 2005 report that appellant suffered from chronic low back pain but did not attribute it to factors of appellant's federal employment. The Board notes that pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation.⁹ As Dr. Turner did not address causal relationship and provides no rationale, his opinion is, therefore, insufficient to establish appellant's burden of proof.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back condition causally related to factors of his federal employment as an airway transportation systems specialist. He did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

⁸ See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

⁹ See *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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