United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 07-551**
	)	**Issued: July 18, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 20, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decisions dated February 6 and October 27, 2006 denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on April 2, 2005, as alleged.

FACTUAL HISTORY

On April 2, 2005 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on that date he sustained a low back injury when a fellow carrier ran a hamper into him and pushed him into his case. By letter dated April 14, 2005, appellant stated that he wished to drop this claim as it was the opinion of his doctor that the accident probably did not cause further damage to his back.

In a witness statement Jesus (Jesse) Camero stated that on April 2, 2005 he was heading out to load his postal vehicle and accidentally bumped appellant's hamper, but that he did not believe that he bumped the hamper hard enough to cause an injury. He indicated that immediately after the incident appellant did not indicate that he was in pain or was injured. Mr. Camero apologized to appellant but told him that he probably would not have hit his hamper had the tub not been flipped out. He then flipped appellant's tub to inside the hamper. At this point, Mr. Camero stated that appellant cursed at him and told him to mind his own business. He indicated that he did not appreciate appellant's attitude and vulgar language. James Hyman, a coworker stated that on April 2, 2005 he heard Mr. Camero say something to appellant about his hamper sticking out at which time appellant turned around and cursed at Mr. Camero. He also addressed another incident that occurred between Mr. Camero and appellant. In a statement dated May 4, 2005, Christopher Johnson stated that, while he was depositing mail in his trays, Mr. Camero swerved to avoid hitting him and his hamper grazed appellant's hamper. He noted that Mr. Camero apologized to appellant and suggested flipping his tub inside so people would not hit it, at which point appellant cursed at Mr. Camero.

On April 18, 2005 appellant underwent a magnetic resonance imaging (MRI) scan examination of the lumbar spine which Dr. John Rees interpreted as showing degenerative disc disease lower lumbar levels with Grade 1 spondylolisthesis and possible bilateral spondylolysis at L5-S1. Dr. Rees also noted asymmetric disc bulge at this level and a moderate to severe narrowing of right slightly greater than left L5 formaina.

In an April 20, 2005 report, Dr. Daniel J. Sullivan indicated that appellant had a new MRI scan and that appellant's L5-S1 level appeared to be solid fused posterolaterally. However, he noted that these two levels were problematic in the sense that there were considerable degenerative changes and robust facet disease that would necessitate surgery if elected.

In an April 26, 2005 report, Dr. Clark Iorio stated that he conducted a fitness-for-duty examination for the employing establishment. He noted that appellant had a history of a prior back injury while in the military in 1978 and that appellant continued to have pain in his low back. Dr. Iorio noted appellant's past surgical history as bilateral knee arthroscopy and left lumbar fusion in 1978. He diagnosed appellant with degenerative disc disease, L3-4, L4-5 and L5-S1 and status post lumbar posterior lateral fusion L5-S1. Dr. Iorio stated that he believed appellant was at a high risk to reinjure himself.

In a chiropractor's report dated June 29, 2005, Dr. Lynn E. Griffin indicated that appellant stated that he was having significant low back pain which became much worse at work after someone ran a postal cart into his cart. She noted that appellant had a history of not following up on chiropractic care for various reasons. Dr. Griffin noted that appellant was depressed because of his pain and stated that he should take one month off work.

In a July 11, 2005 report, Dr. Narendrantath Lakshmipathy, a Board-certified anesthesiologist, indicated that appellant appeared to have chronic pain, most probably due to lumbosacral spondylosis. Appellant also appeared to have facet related pain clinically at L4-5 and L-S1. He noted that appellant also possibly could have a right L5 radiculitis or nerve root irritation, as he appeared to have some mild hypoesthesia along the right L5 dermatome and very mild weakness over his right extensor hallucis longus. In a medical report dated August 28,

2005, Dr. Lakshmipathy indicated that he last saw appellant on August 11, 2005 when he performed a bilateral L3-4, L4-5 and L5-S1 facet joint injection. Appellant reported a history that on April 2, 2005 a fellow employee's cart ran into appellant's hip. Dr. Lakshmipathy then noted that appellant performed a twisting motion, twisting his back at an awkward position. He noted that the cart pushed appellant into a letter case. Dr. Lakshmipathy noted that at that time appellant developed low back pain but also a recurrence of right leg pain.

In a statement dated August 31, 2005, appellant noted that on the day of the accident his back was already "hurting pretty bad" when "a fellow carrier ran his hamper into my hamper, which caused my hamper to hit me, which caused me to be thrown against my letter case. These events brought about excruciating pain to my lower back and down my right leg." He immediately informed a supervisor and went to his doctor. Appellant saw Dr. Andrew J. Gase, as his physician was not available. Dr. Gase gave him two days off work and told him to see Dr. James M. Felton as soon as possible. Appellant took three weeks off from work and had to be cleared to return to work.

In a September 7, 2005 report, Dr. Felton stated:

> "I have read the statement dated August 31, 2005 prepared by [appellant] regarding the injury sustained on April 2, 2005 regarding the conditions of employment at the [employing establishment].
>
> "I did evaluate [appellant] and diagnosed him with chronic low back pain. A [MRI scan] dated April 18, 2005 showed degenerative disc disease of the lower lumbar levels with Grade [1] spondylolisthesis and possible bilateral spondylosis at L5-S1. There was also asymmetric disc bulge at this level and moderate to severe narrowing of the L5 formamina, right greater than left. There was slight progression and degenerative changes when compared to a previous study.
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> "It is my medical opinion that the diagnosis was aggravated by the conditions of employment described by [appellant] when a coworker's cart ran into him. He was twisted in an awkward position at the time and was also pushed into a letter case. This even caused either an exacerbation of a previous condition or it caused a new injury compounded on a flare-up of his preexisting condition.
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> "Further, I feel that long periods of standing in one position, long periods of walking and long periods of sitting or laying without positional changes are situations which aggravate his condition. I have come to this conclusion based on physical examination, MRI [scan] results and in obtaining a detailed history from [appellant]. While this does limit the duties he is able to perform, it certainly does not prohibit him from working in some capacity."

By letter dated September 15, 2005, the employing establishment controverted the claim.

By letter dated December 20, 2005, the Office asked appellant to submit further information.

In a medical report dated January 13, 2006, Dr. Felton indicated that appellant first saw Dr. Gase for the injury and was told to follow-up with Dr. Felton, which appellant did not do until June 2, 2005.

In a letter dated February 3, 2006, the employing establishment noted that its investigation revealed inconsistencies in appellant's testimony and reiterated its controversion of the claim.

By decision dated February 6, 2006, the Office denied appellant's claim for compensation, finding that he did not establish fact of injury. The Office found that the April 2, 2005 incident occurred but that there was insufficient medical evidence establishing an injury.

By letter dated February 17, 2006, appellant, through his attorney, requested an oral hearing. At the hearing held on August 24, 2006, he testified that he had a prior injury to his back while in the military for which he underwent a fusion at L5-S1. Appellant testified that while he was casing mail on April 2, 2005, a colleague ran a mail cart full of mail into his empty cart causing it to strike him in the left hip. He then hit the metal letter case with his right side. Appellant saw Dr. Gase on that date, as his physician was not available. Immediately following the incident, he experienced chronic pain in the lower back area and shooting pain down his right leg. Appellant noted that he received no medical treatment between April 28 and June 24, 2005.

By letter dated September 22, 2006, the employing establishment responded to the hearing transcript. It contended that appellant was not thrown against the case.

By decision dated October 27, 2006, the Office hearing representative affirmed the February 6, 2006 decision, modified to reflect that the relationship between appellant's back and leg conditions and the work incident had not been established.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or 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 filed within the applicable time limitation; that an injury was sustained while 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] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, namely, he must submit sufficient

[1] 5 U.S.C. §§ 8101-8193.

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*,50 ECAB 313 (1999).

evidence to establish that he 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.[4]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is ought is causally related to a specific employment incident or to specific conditions of employment.[5] 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 the established incident or factor of employment.[6]

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.[7]

ANALYSIS

The Office found that an incident occurred on April 2, 2005 but that it was not of the severity appellant alleged. Appellant alleged that his colleague's hamper ran into his hamper which pushed him into a case. However, appellant's coworkers' statements do not indicate an accident of such severity. The coworkers' statements support that a hamper hit appellant's hamper bumping the back of appellant's legs, but none of the witness observed appellant being pushed into the case. None of the witnesses heard appellant complain of pain at that time. The witnesses did indicate that a verbal altercation followed between appellant and Mr. Camero. Accordingly, the Board finds that the Office properly determined that an incident occurred on April 2, 2005 wherein a colleague's hamper hit appellant's hamper, which bumped into appellant. The Board finds that the evidence does not support that appellant was pushed into the case.

The medical evidence establishes that appellant had an exacerbation of the right L5-S1 radicular pain and chronic degenerative disc disease. Accordingly, appellant has established the existence of a medical condition. However, the Board finds that the medical evidence does not establish a causal relationship between the April 2, 2005 employment incident and appellant's back and leg conditions. Dr. Griffin, the chiropractor, is not considered a physician under the

[4] *Bettye J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *John W. Montoya*, 54 ECAB 306 (2003).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

Act as there is no evidence that she was treating a subluxation diagnosed by x-ray.[8] Two physicians linked appellant's chronic pain and back condition to a work incident. However, both Dr. Lakshmipathy and Dr. Felton relied on appellant's statement that he was pushed into the metal case. As this Board does not accept this fact, these opinions are of diminished probative value.

Dr. Iorio discussed appellant's back injury, which he sustained in the military in 1978 and his preexisting leg condition also suffered in 1978. However, he failed to relate either condition to the April 2, 2005 employment incident.

Accordingly, as appellant did establish fact of injury, the Office properly denied his compensation claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on April 2, 2005, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated October 27, 2006 and of the Office dated February 6, 2006 are affirmed.

Issued: July 18, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[8] The Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *See* 5 U.S.C. § 8101(2).