United States Department of Labor
Employees' Compensation Appeals Board

H.W., Appellant	)	
and	)	**Docket No. 07-2358**
	)	**Issued: February 27, 2008**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Little Rock, AR, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 1, 2007 which denied his traumatic injury claim. Pursuant to 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 in the performance of duty on March 31, 2006.

FACTUAL HISTORY

On April 7, 2006 appellant, then a 53-year-old baggage handler, filed a claim alleging that on March 31, 2006 he sustained a left lower back injury while lifting bags in the performance of duty. He submitted office visit notes from a chiropractor and physical therapy

notes dating from April 14, 2006. These notes referenced appellant's complaints but did not provide a diagnosis or opinion regarding the cause of his condition.

In a July 5, 2006 letter, the Office informed appellant that the evidence submitted was insufficient to support his claim and that a physician's report was needed. Additional physical therapy notes and chiropractor visit notes were submitted, again merely noting his symptoms.

On August 7, 2006 the Office denied appellant's claim finding that, while the claimed event occurred as alleged, there was no medical evidence of a diagnosed condition connected to the event.

On August 28, 2006 appellant requested review of the written record. The Office did not issue a decision in response to appellant's request.

On April 26, 2007 the Office received an April 18, 2006 attending physician's report from Dr. Stephen F. Bennet, a chiropractor, as well as a narrative report dated July 24, 2006. In the July 24, 2006 report, Dr. Bennet responded to the Office's July 5, 2006 letter requesting additional information. He stated that appellant injured his back on September 15, 2005 when he tried to stop an 85-pound bag from falling off a table and aggravated his back condition on March 31, 2006 when lifting heavy bags at work. Dr. Bennet found that the cervical x-rays demonstrated multiple level cervical subluxations and the lumbar radiographs revealed lumbar subluxations at L4-5. He explained that appellant's September 15, 2005 injury had shown some improvement but had not resolved; therefore, normal joint and muscle function had not returned. Dr. Bennet further explained that: "when you take this compromised condition and placed it under additional stress, ultimately it results in addition injury to an already injured area." He concluded that appellant's current lumbar subluxations occurred due to the trauma of lifting heavy bags at work on the day in question. Finally, Dr. Bennet noted that he treated appellant with chiropractic adjustments to the spine and physical therapy.

An April 26, 2006 x-ray report was also received.

On May 5, 2007 appellant requested reconsideration. Additional documents were submitted. An August 18, 2006 a magnetic resonance imaging (MRI) examination reported mild degenerative changes at L3-4 and L4-5 without significant canal stenosis or foraminal narrowing. An August 23, 2006 clinic visit note from Dr. Linda Bunch, Board-certified in internal medicine, noted that appellant had persistent lumbar back pain sustained after an injury at work in April 2006.

On August 1, 2007 the Office issued a merit decision denying the modification of appellant's claim finding that the evidence was still insufficient.

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

[1] 5 U.S.C. §§ 8101-8193

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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6]

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained a traumatic injury in the performance of duty on March 31, 2006.

The Office accepted that the events occurred as alleged, that appellant was lifting bags in the performance of duty on March 31, 2006. The Office initially denied appellant's claim on August 7, 2006 because appellant had submitted chiropractic and physical therapy notes which referenced his symptoms, but appellant had not submitted any medical evidence which offered a diagnosis of his condition and which causally related the diagnosed condition to the alleged injury.

Following the initial denial of his claim, appellant continued to submit chiropractic and physical therapy notes, however he also submitted a July 24, 2006 narrative report from Dr. Bennet, as well as an April 26, 2006 x-ray report, a August 18, 2006 MRI scan report, and an August 23, 2006 clinic note from Dr. Bunch, followed by a range of motion test.

The Office conducted a merit review of the case on August 1, 2007 and denied modification of the denial of the claim. In the decision dated August 1, 2007, the Office stated

---

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

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 3. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

that the new evidence appellant submitted consisted of a report dated August 23, 2006 from Dr. Robert Daniel, a range of motion test, physical therapy notes, a Form CA-17 dated October 12, 2006, a Form CA-20 dated April 18, 2006 and office notes. However the Board finds that there is no report in the record from Dr. Daniel. Additionally the Office did not acknowledge that it had received the July 24, 2006 narrative report from Dr. Bennet, the April 26, 2006 x-ray report, the August 18, 2006 MRI scan report, or the August 23, 2006 clinic note from Dr. Bunch.

The Board finds that medical evidence related to appellant's claim was received but not reviewed by the Office prior to its rejection of appellant's request for reconsideration. Therefore, in accordance with Board precedent, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's request for reconsideration.[7]

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty on March 31, 2006.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2007 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision.

Issued: February 27, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[7] *William A. Couch*, 45 ECAB 548 (1990).