



In an August 29, 2003 note, Dr. John Stevenson found that appellant had neck, right shoulder and arm pain due to right neural foraminal narrowing at C6-7. In an October 13, 2004 report, a physician's assistant stated that a recent fall had exacerbated appellant's low back pain with a new component of left leg pain. An October 16, 2004 magnetic resonance imaging scan by Dr. M.A. Baker, a radiologist, found minimal degenerative disc changes at L5-S1 and otherwise a negative examination of the lumbar spine. In a December 1, 2004 report, his assistant noted that appellant's pain was unrelenting since her fall at work on September 24, 2004. Dr. Baker described discogenic back pain due to degenerative disc disease at L5-S1. In a December 8, 2004 history and physical report, Dr. Stevenson diagnosed discogenic back pain due to degenerative disc disease and noted appellant's history of injury, as follows:

“[Appellant] noted that she has been [experiencing] increasing low back pain over the last several months. She had a history of both back and neck pain in the past which were doing relatively well until recently while at work. [Appellant] noticed an increase in her low back pain with radiation into her left calf. At work, a chair that she was sitting in apparently collapsed and it was shortly after this incident she developed an increase in her low back pain as well as pain down into her left calf region.”

Appellant underwent a posterior lumbar interbody fusion at L5-S1 on December 9, 2004. Work status update reports dated October 1, 2004 through September 14, 2005 were received. Appellant filed a claim for compensation for the period December 15, 2004 through January 8, 2005.<sup>1</sup>

On February 15, 2005 the Office denied appellant's claim finding that the medical evidence was not sufficient to establish an injury.

On February 18, 2005 appellant requested an oral hearing. The hearing was held on August 17, 2006. In an August 26, 2005 letter, Dr. Stevenson stated that appellant's need for surgery on December 9, 2004 and was directly related to her September 24, 2004 accident and that it was necessary for her to have a sedentary job. In a July 12, 2006 letter, Dr. Stevenson stated that appellant underwent surgery on December 9, 2004 and that her need for surgery was directly related to her work-related accident on September 24, 2004.

By decision dated November 3, 2006, the Office accepted that the September 24, 2004 incident occurred. It found that Dr. Stevenson's opinion was insufficient to establish that appellant sustained a low back condition necessitating surgery causally related to the September 24, 2004 work incident.

In a March 14, 2007 letter, Dr. Stevenson opined that appellant's work incident was a material aggravation of her preexisting degenerative changes of the spine. He opined that appellant did not have any pain or symptoms prior to the September 24, 2004 incident, but that her preexisting condition made her more prone to injury and the need for surgery.

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<sup>1</sup> The issue of disability for this time period was not adjudicated by the Office. Therefore, the Board does not have jurisdiction to address this alleged period of disability. *See* 20 C.F.R. § 501.2(c).

On July 3, 2007 the Office denied modification of the November 3, 2006 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> The second component is whether the employment incident caused a personal injury.<sup>6</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>7</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

The Board notes, as set forth above, that the record contains medical evidence indicating that there is a causal relationship between appellant's employment incident and her lower back condition of degenerative disc disease at L5-S1. Dr. Stevenson's letters consistently opine that appellant's current back condition and need for surgery was directly related to her work incident. In the March 14, 2007 letter, Dr. Stevenson clarified that the work incident was a material aggravation of appellant's preexisting degenerative back condition. He explained that, although

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<sup>2</sup> 5 U.S.C. §§ 8101-8193

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB345 (1989).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *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 4. 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 the claimant's specific employment factors. *Id.*

appellant had a preexisting condition, the condition was asymptomatic prior to September 24, 2004. He further explained that the preexisting condition did make appellant more prone to injury; therefore, her fall from her chair at work did aggravate the underlying condition such that surgery was required.

The Board finds that the report from Dr. Stevenson regarding the causal relationship between appellant's back condition and the September 24, 2004 incident, while not fully rationalized, is sufficient to require further development of the case record by the Office.<sup>8</sup> Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup> Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. It will remand the case for further development of the medical evidence.

### 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 September 24, 2004.

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<sup>8</sup> See *Felix Flescha*, 52 ECAB 268 (2001); *John J. Carlone*, *supra* note 6; *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>9</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 3, 2007 decision of the Office of Workers' Compensation Programs are set aside and remanded for further development consistent with this decision.

Issued: January 15, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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