

FACTUAL HISTORY

On July 12, 2007 appellant, then a 48-year-old mail handler, filed a traumatic injury claim alleging that on July 4, 2007 he sustained a herniated disc in his lower back while lifting and moving boxes.¹

In a July 12, 2007 statement, appellant's supervisor stated that appellant seemed to be in pain on that day and she released him to go home. He mentioned that he had moved and was performing repair work on his new residence, including painting, installing drywall and repairing flood damage. The supervisor noted that on July 6, 2007 appellant's wife called to advise that he was admitted to the hospital for flu-like symptoms that were nonwork related. On July 19, 2007 an employing establishment human resources specialist controverted appellant's claim, noting that he did not provide the time the alleged injury occurred and he mentioned to his supervisor that he had been performing repair work on his home.

In a July 9, 2007 note, Dr. Maryann Gul stated that appellant was not able to lift over 10 pounds due to a disc herniation. The note contained no medical history, findings on physical examination or an opinion as to the cause of the condition. Appellant submitted a July 12, 2007 report from a physical therapist.

On July 26, 2007 the Office asked appellant to submit additional evidence within 30 days, including a full description of the events leading up to the alleged back injury on July 5, 2007, how the injury occurred and a medical report explaining how his back condition was causally related to the July 5, 2007 incident. No additional evidence was received.

By decision dated August 26, 2007, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his back condition was causally related to his work activity on July 5, 2007.

In a hospital report dated July 10, 2007, Dr. Stephen M. Kralovic, a Board-certified internist specializing in infectious diseases, stated that appellant presented to the emergency room on July 6, 2007 with fever, chills, nausea, a headache and lower back pain. The lower back pain began one-week earlier. He noted that appellant began a job at the employing establishment on June 18, 2007 which involved lifting and moving 40- to 50-pound boxes from one table to another. A magnetic resonance imaging (MRI) scan revealed an extruded herniated disc at L4-5. Dr. Kralovic advised appellant to follow up with a neurosurgeon for evaluation of his disc herniation.

Appellant submitted a statement indicating that his supervisor misunderstood what he told her about repairing his house. He told her that he planned to perform much of the work himself, but had not yet begun any repairs at the time that he spoke to her. Appellant denied that his back condition was caused or aggravated by any activity at his house. He asserted that he

¹ During the telephonic hearing held on December 13, 2007, appellant stated that his work shift carried over from July 4 to 5, 2007. He claimed that the injury occurred on July 5, 2007.

sustained his herniated disc while moving boxes from a conveyor belt at the employing establishment.

Appellant requested a telephonic hearing that was held on December 13, 2007. The Office hearing representative advised him that the medical evidence was insufficient and, within 30 days, he needed to submit a medical report which explained how his herniated disc was causally related to his lifting boxes on July 5, 2007. No additional medical evidence was submitted.

By decision dated February 27, 2008, an Office hearing representative affirmed the August 26, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.⁶

² 5 U.S.C. §§ 8101-8193.

³ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 5.

ANALYSIS

Appellant alleged that on July 5, 2007 he sustained a herniated disc in his lower back while lifting and moving boxes at work. The employing establishment did not dispute that appellant would have lifted and moved boxes at work on July 5, 2007. The issue is therefore whether appellant has established that his herniated disc was caused by this work factor.

Appellant submitted a report from a physical therapist. A physical therapist does not qualify as a physician under the Act.⁷ Registered nurses, licensed practical nurses, physician's assistants and physical therapists are not physicians as defined under the Act and their opinions are of no probative value.⁸ Consequently, the physical therapist's report is not sufficient to establish that appellant sustained a work-related back injury on July 5, 2007.

On July 9, 2007 Dr. Gul stated that appellant was not able to lift over 10 pounds due to a disc herniation. The note contained no medical history, findings on physical examination or a rationalized opinion as to the cause of the back condition and whether it was related to his lifting boxes on July 5, 2007. Due to these deficiencies, Dr. Gul's note is not sufficient to establish that appellant sustained a herniated disc in the performance of duty on July 5, 2007.

Dr. Kralovic stated that appellant presented to the emergency room on July 6, 2007 with fever, chills, nausea, a headache and lower back pain. The lower back pain began one week earlier. He noted that appellant began a job at the employing establishment on June 18, 2007 which involved lifting and moving 40- to 50-pound boxes from one table to another. An MRI scan revealed an extruded herniated disc at L4-5. Dr. Kralovic advised appellant to follow up with a neurosurgeon for evaluation of his disc herniation. The history given by him of back pain beginning one week earlier than appellant's July 6, 2007 emergency room visit is not consistent with his claim that his back condition occurred on July 5, 2007. Further, Dr. Kralovic provided insufficient medical rationale explaining how appellant's work activities caused his herniated disc. As noted, to establish a causal relationship between appellant's condition and the employment event or incident, he must submit rationalized medical opinion evidence. 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 appellant. Dr. Kralovic's report did not meet these criteria. For these reasons, his report is not sufficient to establish that appellant's herniated disc was causally related to his work activity on July 5, 2007.

The Board notes that at the December 13, 2007 telephonic hearing, the Office hearing representative advised appellant that he needed to submit a medical report which explained how his herniated disc was related to lifting and moving boxes on July 5, 2007. Appellant did not provide such a report.

⁷ See 5 U.S.C. § 8101(2) which provides: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law"; see also *Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁸ *Id.*

There is no medical evidence containing a complete and accurate factual and medical background, physical findings on examination and medical rationale explaining how appellant's back condition was causally related to the July 5, 2007 lifting incident at work. Therefore, the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on July 5, 2007 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 27, 2008 and August 26, 2007 are affirmed.

Issued: October 15, 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