

By decision dated October 3, 2008, the Office denied the claim. While it accepted that the incident occurred as alleged, there was no medical evidence of record demonstrating that the accepted employment incident caused a diagnosed injury.

Appellant disagreed and on October 10, 2008, through his attorney, requested an oral hearing.

Appellant thereafter submitted a September 5, 2008 x-ray report, read by Dr. Stephen W. Sabo, an orthopedist. The findings indicated diffuse lumbar osteophytosis, with disc narrowing at L1-2 and marked facet arthropathy at L4-5 and L5-S1.

Appellant also submitted a September 20, 2008 report of Dr. Edward J. Dailey, Diplomate, American Chiropractic Board of Radiology, who reviewed the x-rays of appellant's lumbar spine and diagnosed postural change of the lumbar spine, advanced spondylosis at L1-2 and L2-3 with moderate spondylosis at T12-L1 and mild to moderate at L3-4 and L4-5. Dr. Dailey also diagnosed multilevel lumbar facet arthrosis, most advanced at L4 through S1, and posterior subluxation at the L2 and L3 levels.

On October 8, 2008 Dr. Ramon R. De Guzman, a neuroradiologist, reported that the magnetic resonance imaging (MRI) scan revealed neural foraminal stenosis and spinal stenosis.

At the hearing, conducted on February 4, 2009, appellant testified that he stopped working for the employing establishment because his job required him to drive 150 miles per day and he was unable to obtain a transfer. He testified that the driving was difficult because of his back injury. Appellant worked for the employing establishment from June 2007 through August 2008 and alleged he never had back problems until he began working for the employing establishment. He also described how his back injury occurred.

In a consultation report dated November 7, 2008, Dr. Kenneth S. Moss, an anesthesiologist, noted appellant's history of injury: that his back pain began in September 2008 when a heavy chain fell, striking his right shoulder and low back. He noted appellant's MRI scan examination findings and thereafter diagnosed degenerative changes of appellant's low back, with a significant myofascial component.

By decision dated April 7, 2009, the Office hearing representative affirmed the denial of the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

injury.³ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

The Office accepted that the identified employment incident occurred as alleged. Appellant's burden was to establish that this incident caused a medically-diagnosed injury. 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, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the accepted employment incident. The Board finds that appellant has not submitted sufficient medical evidence and therefore has not established he sustained an injury in the performance of duty causally related to his employment on July 25, 2008.

Appellant submitted reports from Drs. Sabo, Dailey,⁸ De Guzman and Moss. Each of these reports have little probative value on the issue of causal relationship because they lack an opinion explaining how the accepted employment incident caused the conditions diagnosed.⁹

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *G.T., id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁷ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁸ 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.⁸ Because Dr. Dailey diagnosed lumbar subluxation, demonstrated by x-rays to exist, he qualifies as a "physician" for purposes of the Act and this analysis.

⁹ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

The reports from Drs. Sabo, Dailey and De Guzman reviewed x-ray and/or MRI scan findings and offered diagnostic impressions. These physicians provided no medical history or medical opinion to causally relate appellant's diagnosed conditions to his employment incident. This deficiency reduces the probative value of these reports such that they are insufficient to satisfy appellant's burden of proof.

While Dr. Moss did relate a history of injury, he related that appellant's symptoms began when heavy chains struck his right shoulder and back. The opinion of a 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 factor.¹⁰ Dr. Moss' report is of limited probative value because it is not based on an accurate history of injury, and because it provides no medical rationale to explain the cause of appellant's diagnosed condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.

The Board finds that appellant has not satisfied his burden of proof to establish he sustained an injury in the performance of duty causally related to his employment on July 25, 2008.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty causally related to his employment on July 25, 2008.

¹⁰ *Roy L. Humphrey*, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT April 7, 2009 and October 3, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board