

accepted for an L4-5 disc herniation sustained in 1983 and aggravation of an L4-5 disc herniation in 1991.

In an April 3, 2006 report, Dr. Kent A. Campbell, an attending osteopathic physician, Board-certified in family practice, diagnosed low back pain and noted work restrictions.

In a May 17, 2006 letter, the Office advised appellant of the type of additional evidence needed to establish his claim.¹ Appellant submitted additional evidence.

In an April 14, 2006 letter, Dr. Campbell noted appellant's history of back injuries beginning with the 1983 L4-5 disc herniation. He opined that "steel work" aggravated the accepted lumbar injuries, totally disabling appellant for work from February 22 to April 14, 2006.

An April 21, 2006 lumbar magnetic resonance imaging (MRI) scan showed a central and right paracentral herniation at L2-3 encroaching the thecal sac and right L3 descending nerve root, unchanged from March 14, 2005 studies.

In a June 6, 2006 letter, Dr. Campbell stated that appellant was injured "on or about February 22, 2006," aggravating his back while lifting heavy steel and grinding welds. He explained that it was "impossible to tell exactly when [appellant's] newest herniation occurred but it stands to reason that is probably when it occurred.... [T]he diagnosis of herniated nucleus pulposus is present and most certainly a result of an injury at work."

By decision dated June 22, 2006, the Office denied the claim as he submitted insufficient factual evidence to corroborate the claimed February 22, 2006 incident.

In a June 20, 2007 letter, appellant requested reconsideration. He submitted a May 24, 2007 report from Dr. Kenneth R. Smith, Jr., a Board-certified neurosurgeon and impartial medical examiner, for File No. xxxxxx656. Dr. Smith stated that appellant twisted his back then slipped while working in a confined area in February 2006, causing or exacerbating a ruptured disc at L2-3, requiring surgery in February 2007. Appellant also submitted an October 24, 2005 report from Dr. Campbell noting radicular pain into both lower extremities and diagnosing low back pain.

By decision dated August 13, 2007, the Office affirmed the prior decision, finding that the new evidence submitted was insufficient to establish fact of injury.

In an August 29, 2007 letter, appellant requested reconsideration, asserting that the medical evidence was sufficient to require further development. He submitted additional evidence.

In an August 17, 2007 letter, the employing establishment confirmed that appellant was injured on February 22, 2006. A coworker corroborated that, on February 22, 2006, appellant

¹ In a May 19, 2006 report, an Office medical adviser reviewed evidence from File No. xxxxxx656. He noted that an L2-3 disc herniation was evident on January 2, 2003 and April 21, 2006 studies.

fell from a mail chute and immediately complained of back pain. Appellant was granted leave on February 22, 2006 to seek medical treatment.

In a February 22, 2006 chart note, Dr. Campbell stated that appellant presented with severe low back pain and lumbar radiculopathy after lifting heavy steel and working in awkward positions. He found positive straight leg raising tests, diminished deep tendon reflexes in both legs and significant spasm at the lumbosacral junction. Dr. Campbell diagnosed low back pain. Appellant presented again on February 23 and 24, 2006 with intense low back and bilateral lower extremity pain such that he could no longer stand erect. Dr. Campbell recommended hospitalization. Appellant's symptoms improved slightly through April 13, 2006.

By decision dated November 5, 2007, the Office modified its previous decision, finding that appellant had established the February 22, 2006 incident as factual. It denied the claim as the medical evidence was insufficient to establish causal relationship.

In a December 5, 2007 letter, appellant requested reconsideration. He submitted the Office's November 30, 2007 decision in File No. xxxxxx656, finding that Dr. Campbell's testimony at an October 2006 telephonic hearing established that the February 22, 2006 incident constituted an intervening incident.

By decision dated February 21, 2008, the Office denied modification, finding that Dr. Campbell's reports were insufficiently rationalized to establish that the February 22, 2006 incident caused an injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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 jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.⁵ Second, the employee must submit sufficient

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS

The Office accepted that, on February 22, 2006, appellant slipped and fell from a mail chute. He claimed that this incident caused a herniated L2-3 disc. The Office denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship.

Appellant submitted reports from Dr. Campbell, an attending osteopathic physician, Board-certified in family practice. On February 22, 2006 Dr. Campbell opined that lifting steel and working in awkward positions caused low back pain. However, pain is a symptom and not a diagnosis.⁷

Regarding causal relationship, Dr. Campbell stated that appellant was totally disabled for work from February 22 to April 14, 2006 due to “steel work” aggravating the accepted lumbar injuries. However, he did not state that appellant fell from a mail chute on February 22, 2006, as appellant claimed and the employing establishment corroborated. Similarly, Dr. Smith, a Board-certified neurosurgeon and impartial medical examiner for File No. xxxxxx656, noted that appellant slipped in February 2006, but did not mention the fall from a mail chute. Thus, neither physician described the claimed causative incident. Medical opinion based on an incomplete or inaccurate factual history is of little probative value.⁸

Also, Dr. Campbell stated both that appellant herniated the disc on February 22, 2006 and that it was impossible to determine when the herniation occurred. The equivocal nature of this reasoning further diminishes the probative value of his opinion.⁹ The Board therefore finds that the Office properly denied appellant’s claim, as he submitted insufficient medical evidence to establish a causal relationship between the February 22, 2006 incident and the claimed herniated L2-3 disc.

CONCLUSION

The Board finds that appellant has not established that he sustained a lumbar injury on February 22, 2006 in the performance of duty.

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *See Robert Broome*, 55 ECAB 339 (2004).

⁸ *M.W.*, 57 ECAB 710 (2006); *Beverly R. Jones*, 55 ECAB 411 (2004).

⁹ *T. M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 21, 2008, November 5 and August 13, 2007 are affirmed.

Issued: June 19, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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