

**United States Department of Labor
Employees' Compensation Appeals Board**

P.B., Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF INDIAN AFFAIRS, Tonalea, AZ, Employer**

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**Docket No. 08-1337
Issued: March 12, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 2, 2008 appellant filed a timely appeal from the March 6, 2008 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 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 August 3, 2007.

FACTUAL HISTORY

On August 5, 2007 appellant, a 41-year-old maintenance worker, filed a traumatic injury claim alleging that, on August 3, 2007, he sustained injuries to his legs and right arm, when he fell from a ladder at work.

Appellant was treated by Dr. Darrell Bunch, a treating physician. In an August 3, 2007 report from Page Hospital, Dr. Bunch stated that appellant presented with pain in his knees, ankles and back, after falling off a ladder at work. He noted a prior back injury in 1998, when

appellant fell from a horse. Dr. Bunch's August 4, 2007 discharge summary reflected a final diagnosis of low back, shoulder and ankle pain. In an August 8, 2007 attending physician's report (Form CA-20), appellant stated that he sustained injuries to his right shoulder and low back on the date in question, when he slid down a ladder and hit his head. Dr. Bunch diagnosed bilateral knee pain and tenosynovitis of both ankles and indicated, by placing a checkmark in the "yes" box, his belief that appellant's condition was caused or aggravated by an employment event. On August 8, 2008 he stated that appellant spent the night in the hospital after falling from a ladder at work. Dr. Bunch diagnosed minor contusions of the knees, shoulder and back pain and tenosynovitis of the ankles and recommended that appellant be "off work" for two weeks.

In notes dated August 22, 2007, Dr. Bunch related appellant's complaints of persistent leg, neck and low back pain and opined that he was disabled from August 3 to 22, 2007. On September 4, 2007 he stated that appellant was experiencing persistent pain and had been disabled since August 3, 2007. Attending physicians' reports dated September 4 and 13, 2007 reflected diagnoses of tenosynovitis, knee pain and lower back pain. In both reports, Dr. Bunch checked the "yes" box, indicating his belief that appellant's condition was causally related to his employment injury.

In a report dated September 7, 2007, Dr. Romas Lewicky, a treating physician, stated that appellant was experiencing pain in his low back, knees, feet, ankles, right shoulder, right elbow and right wrist after falling from a ladder on August 3, 2007. His examination of the lumbar region revealed decreased forward flexion, with pain and spasm and, tenderness to the touch over the L4-5 area. Dr. Lewicky found decreased sensation in the feet and deep tendon reflexes were absent. He found slight varus in the knees bilaterally; crepitus and popping under the right patella; tenderness over the right medial meniscus; and anterior tenderness over the left knee. Dr. Lewicky diagnosed contusions of the lower limbs and neck; a tear of the right medial meniscus; and a herniated lumbar disc. He recommended "no work for at least one month while he [was] recovering from his relatively severe fall."

The record contains physical therapy reports and notes for the period August 8 to September 6, 2007. The record also contains: an August 3, 2007 report of a computerized tomography (CT) scan of the head, brain and cervical spine; x-rays of the chest, feet and the lumbosacral and thoracic spine dated August 3, 2007; and a report of a September 26, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine.

In a letter dated November 15, 2007, the Office advised appellant that the information submitted was insufficient to establish his claim. It requested additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Medical evidence submitted by appellant included a November 27, 2007 report from Dr. Franklin Roth, Board-certified in the field of family medicine, who diagnosed degenerative joint disease (DJD) of the knees bilaterally, lumbar disc disease and spinal stenosis. Dr. Roth stated that appellant's knee condition was aggravated by a fall at work.

In a narrative report dated December 11, 2007, Dr. Bunch stated that he examined appellant on August 3, 2007, after he fell from a ladder at work. Appellant was admitted to the hospital for observation. X-rays at the time were unremarkable and he was released the next day. On August 8, 2007 appellant complained of lower back pain, as well as pain in his knees, ankles, right shoulder and elbow. An MRI scan of the lumbar spine revealed disc disease with a bulge at L4 and L5, degenerative joint disease of the facet joints and spinal stenosis at L4-L5.

Appellant submitted reports dated October 23 and 29, 2007 and January 3, 2008 from Dr. James E. Thomas, Board-certified in the field of family medicine, who diagnosed lower back, knee and bilateral ankle pain. On January 3, 2008 Dr. Thomas indicated that appellant sustained injuries on August 3, 2007, when he fell approximately 15 feet from a ladder. By placing a checkmark in the appropriate box, he indicated his belief that appellant's condition was caused by his employment injury.

By decision dated March 6, 2008, the Office denied appellant's claim. Accepting that the work event occurred as alleged, it found that the medical evidence did not contain a diagnosis that could be connected to the accepted event and, therefore, was insufficient to establish that appellant had sustained an injury under the Federal Employees' Compensation Act on August 3, 2007.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.¹ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."²

An employee seeking benefits under the Act has the burden of proof 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 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place

¹ 5 U.S.C. § 8102(a).

² This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

³ *Robert Broome*, 55 ECAB 339 (2004).

and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁵ An award of compensation may not be based on appellant's belief of causal relationship.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁷ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.⁸

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁹

ANALYSIS

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

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.¹⁰ However, it is well established that proceedings under the Act are not adversarial in nature and

⁴ *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). See 20 C.F.R. § 10.5(q), (ee).

⁵ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ 20 C.F.R. § 10.303(a).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹¹

The Office accepted that the August 3, 2007 incident occurred as alleged, but found that there was no medical evidence that provided a diagnosis that could be connected to that injury. The Board finds, however, that the medical evidence of record supports that appellant sustained a work-related injury on August 3, 2007.

Dr. Bunch examined appellant on the date of the accepted incident, noting his complaints of pain in his knees, ankles and back, after falling off a ladder at work. After keeping him overnight for observation, he diagnosed low back, shoulder and ankle pain. On August 8, 2007 noting an increase in pain following the August 3, 2007 fall, Dr. Bunch diagnosed contusions of the knees, bilateral knee pain, tenosynovitis of both ankles and shoulder and back pain. His attending physician's reports consistently reflected his belief that appellant's condition and resulting disability, was caused or aggravated by the employment incident. The Board notes that Dr. Bunch expressed his opinion on causal relationship by placing a checkmark in the "yes" box on the Office's form. The Board has previously found that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work event caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.¹² However, in this case, the opinion expressed by the physician is supported by his treatment of appellant's injuries immediately following the accepted incident, which included an overnight stay in a hospital. While Dr. Bunch's reports do not provide rationale, they do support appellant's claim that he sustained a traumatic injury on the date in question.

The remaining medical evidence of record also supports appellant's claim. On September 7, 2007 Dr. Lewicky stated that appellant was experiencing pain in his low back, knees, feet, ankles, right shoulder, right elbow and right wrist after falling from a ladder on August 3, 2007. His examination of the lumbar region revealed decreased forward flexion, with pain and spasm, and tenderness to the touch over the L4-5 area. Dr. Lewicky found decreased sensation in the feet and deep tendon reflexes were absent. He found slight varus in the knees bilaterally; crepitus and popping under the right patella; tenderness over the right medial meniscus; and anterior tenderness over the left knee. Dr. Lewicky diagnosed contusions of the lower limbs and neck; a tear of the right medial meniscus; and a herniated lumbar disc. He recommended "no work for at least one month while [appellant was] recovering from his relatively severe fall." Dr. Lewicky's recommendation that appellant refrain from working for a month in order to recover from the effects of the August 3, 2007 fall, effectively constitutes an opinion that his diagnosed conditions were causally related to the fall.

On November 27, 2007 Dr. Roth diagnosed DJD of the knees bilaterally, lumbar disc disease and spinal stenosis. He stated that appellant's knee condition was aggravated by a fall at work. Dr. Thomas diagnosed lower back, knee and bilateral ankle pain, indicating that appellant sustained injuries on August 3, 2007, when he fell approximately 15 feet from a ladder. By

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004). See also *Virginia Richard*, *supra* note 10; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

¹² See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

placing a checkmark in the appropriate box, he indicated his belief that appellant's condition was caused by his employment injury. While these physicians did not provide rationale for their opinions, their reports provide support for appellant's claim that he sustained an injury on August 3, 2007 and are factually consistent with his treatment for his employment-related injury.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained an employment-related injury to his lower extremities and back and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim they raise an uncontroverted inference between appellant's claimed condition and the accepted employment incident and are sufficient to require the Office to further develop the medical evidence and the case record.¹³ On remand the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incident and shall issue an appropriate decision in order to protect his rights of appeal.

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.

¹³ See *Virginia Richard*, *supra* note 10; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: March 12, 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