

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

H.H., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION, MEDICAL)
CENTER, Loma Linda, CA, Employer)

Docket No. 08-1968
Issued: March 13, 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 July 7, 2008 appellant filed a timely appeal from the April 3, 2008 merit decision of the Office of Workers' Compensation Programs' hearing representative, which denied his hernia claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a hernia injury in the performance of duty on December 1, 2005.

FACTUAL HISTORY

On December 9, 2005 appellant, then a 54-year-old voucher auditor/agent cashier, filed a claim alleging that he sustained a low back injury in the performance of duty on December 1, 2005: "Due to the limited amount of chairs I had to use a sled type chair from noon 11/30/05

to 12/01/05 this constant sliding twisting and pushing injured my back.” The Office accepted his claim for lumbar strain.

On March 12, 2007 appellant, then a lead teller, filed a claim alleging that he also sustained a hernia injury on December 1, 2005: “Moving boxes, and a heavy chair because no regular chairs were suitable. Filed claim for back ... did not know I had hurt my stomach until much later when I started having pains.” He stated that he first noticed the pain in his stomach in April 2006.

An August 21, 2006 treatment note diagnosed “medical illness” and indicated that appellant’s condition was not work related. A February 2, 2007 treatment note diagnosed “hernia, pain” and indicated that work connection was undetermined.

On March 19, 2007 Dr. John P. Seymour, an internist specializing in occupational medicine, reported that the original injury occurred on December 1, 2005, when appellant’s back seized up on him. Appellant did not notice anything happening to his stomach, but in April of the next year, Dr. Seymour believed, that appellant did notice a bump and tenderness and kind of a turning sensation in the periumbilical region, especially when he was lying supine when sleeping at night. Dr. Seymour stated that appellant “needed to have this presented as part of the original claim with the thinking that the lifting event was the cause of his hernia, having no previous troubles and that he did not notice the problem due to severe back pain.” He diagnosed umbilical hernia.

In a decision dated May 7, 2007, the Office denied appellant’s hernia claim.¹ It noted that appellant did not seek treatment for the condition until over a year after the alleged injury. The Office also noted no medical opinion evidence causally relating the claimed condition to the December 1, 2005 work activity.

Appellant requested a hearing before an Office hearing representative, which was held on January 24, 2008. He testified that he did not notice any problems with his stomach until he moved from California to Oregon in 2006. After the hearing, appellant submitted additional medical evidence.

On April 23, 2007 Dr. Seymour reported that the injury “occurred as a sudden event December 5, [sic] 2005, from having to move a heavy chair which involved twisting repetitively.” Current clinical examinations revealed painful lumbar range of motion without radicular findings and a reducible hernia. He stated that appellant’s umbilical hernia was not obvious initially with the significant pain from the acute lumbar strain.

On February 20, 2008 Dr. Seymour stated that appellant appeared to have developed an umbilical hernia from the acute lifting event that caused his back injury. “I know of no evidence to the contrary,” he stated.

¹ The Office also denied a recurrence of appellant’s accepted lumbar sprain, which is not an issue on this appeal.

In a decision dated April 3, 2008, an Office hearing representative affirmed the denial of appellant's hernia claim. The hearing representative found that appellant failed to present medical evidence from his physician relating the claimed condition to the work incident.

On appeal, appellant submitted copies of Dr. Seymour's April 23, 2007 and February 20, 2008 reports and questioned why this evidence was not in his record.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ 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 of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ 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.⁷

ANALYSIS

To support his hernia claim, appellant submitted several reports from Dr. Seymour. These reports offer little support for his claim that he sustained a hernia injury in the performance of duty on December 1, 2005.

In his March 19, 2007 report, Dr. Seymour gave no opinion on whether appellant sustained a hernia injury on December 1, 2005. He reported the history that appellant gave to him and described how appellant "needed to have this presented." Dr. Seymour offered no evidence or medical rationale to support that the injury occurred as alleged.

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

Dr. Seymour's April 23, 2007 report is not much better. He stated that the injury occurred as a sudden event from having to move a heavy chair, which involved twisting repetitively. Dr. Seymour added that the umbilical hernia was not obvious initially because of acute lumbar strain. He presented, at best, a speculative theory of what could have happened on December 1, 2005, but he offered no evidence or medical rationale to establish that a hernia injury occurred on that date as a matter of fact.

On February 20, 2008 Dr. Seymour sounded less certain about the injury. He attributed the hernia to an "acute lifting event." This is not consistent with the contemporaneous descriptions of what happened on December 1, 2005 or with the history of injury Dr. Seymour previously reported.⁸ Dr. Seymour further stated, "I know of no evidence to the contrary." But there is evidence to the contrary. Appellant had no symptoms or physical complaints consistent with a hernia on December 1, 2005. He displayed no physical manifestations of a hernia until April 2006, after he moved to Oregon. Appellant was not diagnosed with a hernia until February 2, 2007. It was only after he was diagnosed with a hernia that he attempted to make any connection to his December 1, 2005 low back injury. These circumstances are not consistent with a traumatic tearing of appellant's abdominal wall on December 1, 2005. Because appellant did not notice the hernia until after he moved to Oregon, Dr. Seymour should have addressed whether he did any lifting or other physical activity during the move or thereafter that could account for appearance of the hernia at that time.

Although the medical opinion of a physician supporting causal relationship need not reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.⁹ A physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background.¹⁰

Because appellant did not submit such medical opinion evidence, the Board finds that he has not met his burden of proof to establish that he sustained a hernia injury in the performance of duty on December 1, 2005. The Board will affirm the Office's April 3, 2008 decision denying his hernia claim.

⁸ A December 1, 2005 hospital record stated that appellant complained of a sudden, sharp low back pain "when pushed heavy chair while twisting back in file room." A December 2, 2005 hospital record described what happened as follows: "[Appellant] was sitting in a slide chair, breaking down vet [?] files, moving chair all day, had gotten up to copy, getting ready to sit down and back 'went out' and developed strong pain in mid back, no radiation." Dr. Seymour described the following history of injury on March 19, 2007: "[Appellant] was in apparently a very heavy chair, a sled-type chair, it was on carpet, he had to get up and twist and get back and move the chair apparently frequently. He back apparently seized up on him." He did not describe an acute lifting incident.

⁹ *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

¹⁰ *Connie Johns*, 44 ECAB 560 (1993). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a hernia injury in the performance of duty on December 1, 2005.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 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