

Penniman, an attending Board-certified osteopath specializing in occupational medicine, released him to work full duty with no restrictions.

On March 28, 2008 Dr. Penniman diagnosed thoracic and lumbar strain. He stated that appellant's symptoms of numbness, tingling and radicular pain had worsened following his return to work without restrictions two weeks earlier. On April 4, 2008 Dr. Penniman provided restrictions, which included: lifting a maximum of 10 pounds intermittently; sitting and standing up to four hours; walking, climbing, kneeling, bending, stooping, pulling and pushing up to one hour and driving up to four hours.

On June 3, 2008 Dr. Penniman amended his diagnoses to include lumbar disc displacement without myelopathy. A magnetic resonance imaging (MRI) scan revealed a broad-based disc protrusion at L5-S1, which barely abutted the S1 nerve on the left, as well as a disc bulge at L4-5 and L3-4. Dr. Penniman stated that appellant's condition was secondary to the October 12, 2007 injury.

On July 2, 2008 Dr. Penniman stated that appellant "reinjured his back at work on Monday, two days ago." Appellant reported that, while he was walking to work, the pain in his lower back worsened and, after approximately 90 minutes, he had to stop working. On examination, he had limited range of motion, movement of the lower back caused pain and straight leg raising test was negative bilaterally. Dr. Penniman found that he was incapacitated from June 30 to July 2, 2008, but that he could return to work with restrictions, including lifting or carrying no more than 10 pounds intermittently, sitting or reaching above the shoulder no more than four hours continuously, standing no more than four hours intermittently, walking no more than one hour continuously, bending or stooping no more than one hour intermittently and driving no more than two hours intermittently.

In a July 8, 2008 duty status report, Dr. Penniman opined that appellant was unable to return to work and that he "need[ed] to be lying down continuously due to the fact that his condition continues to deteriorate." He listed the date of injury as October 12, 2007.

In a July 8, 2008 report entitled "Employer Discharge Summary," Dr. Penniman stated that, effective that date, appellant was released to work on a modified basis. Appellant complained that his condition continued to worsen and that he was having excruciating pain when upright, either sitting or standing. On examination, Dr. Penniman found that movement of the low back caused pain, range of motion was limited, straight leg raising test was negative bilaterally, there was no tenderness to palpation and strength and sensation in the lower extremities was normal. He diagnosed thoracic and lumbar strain and lumbar disc displacement without myelopathy and opined that these conditions were related to work activities.

Appellant submitted a July 29, 2008 report from Dr. Christian L. Bonasso, a Board-certified neurological surgeon. The history of illness reported by Dr. Bonasso reflected that appellant's symptoms started while at work on October 12, 2007, that pain radiated from his back to around his chest and that he occasionally had radicular dysesthesias down his legs. Examination revealed 5/5 strength in both upper and lower extremities. Deep tendon reflexes and sensation were intact. No pathological reflexes were noted. An MRI scan revealed mild degeneration with disc bulging at L5-S1, very mild bilateral neural foraminal encroachment and

no signs of instability. Dr. Bonasso diagnosed lumbar sprain/strain and suggested adding bilateral lower extremity lumbar radiculopathy to the list of diagnosed conditions. He recommended against surgical intervention at that time.

In an August 5, 2008 duty status report, Dr. Penniman stated that appellant “needs to be lying down continuously as he awaits further evaluation from a pain specialist with possible epidural steroid injections.”

Appellant filed a claim for compensation for total disability for intermittent periods commencing July 12, 2008. On August 19, 2008 the Office informed appellant that the evidence submitted was insufficient to establish that his disability was due to his accepted condition. It advised him to clarify his current condition was causally related to the accepted October 12, 2007 injury and, if so, to submit a medical report explaining the relationship. The Office also asked appellant to clarify whether he was claiming that he had sustained a new injury rather than a recurrence of the accepted injury. Appellant filed subsequent claims for periods of total disability through September 4, 2008.

On September 4, 2008 Dr. Penniman responded to the questions posed in the Office’s August 19, 2008 letter. He advised that appellant did not sustain a new back injury, but rather, “he reagravated the original injury.” Dr. Penniman stated, “The same injury and pain that had improved to some degree became worse on July 2, 2008.” He noted that appellant’s current condition was due to “herniated lumbar disc displacement without myelopathy.” On September 4, 2008 Dr. Penniman released appellant to work on a modified basis.

By decision dated November 6, 2008, the Office denied appellant’s claims for wage-loss compensation from July 12 through September 4, 2008 on the grounds that the medical evidence failed to establish that he was disabled due to the accepted October 12, 2007 injury.

On November 14, 2008 appellant, through counsel, requested a telephonic hearing. In an August 5, 2008 report, Dr. Penniman stated that appellant “went to lift his mailbag up on his shoulder, [and] his whole back area gave out on him.” He noted that appellant’s pain, which began nine months earlier, seemed to be constant but was exacerbated by walking. On examination, range of motion was limited. Straight leg raising test was negative bilaterally. There was no tenderness to palpation of the lumbar spine. Strength and sensation in the lower extremities was normal. Dr. Penniman reviewed the results of a May 8, 2008 MRI scan of the lumbar spine, which revealed broad-based disc protrusion at L5-S1, which barely abutted the S1 nerve root on the left, and nearly abutted the right S1 nerve root, and disc bulge at L4-5 and L3-4 without herniation or stenosis. He diagnosed thoracic strain, lumbar strain and lumbar disc disorder with myelopathy, and indicated that appellant’s work status was “restricted duty.” Dr. Penniman stated, “The cause of this problem is related to work activities.”¹

On December 3, 2008 appellant submitted a claim for a traumatic injury (Form CA-1) alleging that he sustained a back injury on July 12, 2008, while sorting mail. At the time of the

¹ The Board notes that the record contains copies of medical reports from Dr. Penniman through March 9, 2009, which did not address appellant’s claimed disability during the period in question.

injury, he was standing on a thin mat. When appellant turned around and picked up some flats from a tub, he felt pain in his low back and his legs went numb.

At the March 2, 2009 hearing, appellant testified that, on July 12, 2008, while casing mail, he turned to pick up some magazines and felt numbness, tightness and burning up his legs “to where I couldn’t stand up.” He stated that he ended up collapsing onto his case and someone had to wheel him out of the building. Appellant further testified that he collapsed for the first time on July 2, 2008, when he turned to the side to pick up some magazines. He noted that his doctor removed him from work following the July 12, 2008 incident.

By decision dated May 13, 2009, the Office hearing representative affirmed the November 6, 2008 decision, finding that appellant had not submitted sufficient medical evidence to establish that his disability from July 12 through September 4, 2008 was due to the accepted October 12, 2007 employment injury. The hearing representative also found that there was insufficient evidence to support that he sustained a traumatic injury on July 12, 2008.

LEGAL PRECEDENT -- ISSUE 1

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury.² The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.³

Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work. Appellant’s burden of proving he was disabled on particular dates requires that he furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally

² *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

³ *Fereidoon Kharabi*, *supra* note 2.

⁴ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁵ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁶ 20 C.F.R. § 10.5(x).

related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸ To establish that a claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁹

ANALYSIS -- ISSUE 1

Appellant filed claims for compensation alleging that he was disabled from July 12 through September 4, 2008 due to the accepted October 12, 2007 injury. The Board finds, however, that he failed to submit any probative medical evidence demonstrating total disability for this period of time due to his accepted condition.

On August 5, 2008 Dr. Penniman stated that appellant "needs to be lying down continuously as he awaits further evaluation from a pain specialist with possible epidural steroid injections." He noted that appellant's pain, which began nine months earlier, seemed to be constant but was exacerbated by walking. Dr. Penniman provided examination findings and reviewed the results of a May 8, 2008 MRI scan of the lumbar spine, which revealed broad-based disc protrusion at L5-S1, barely abutting the S1 nerve root on the left and nearly abutting the right S1 nerve root. It also showed a disc bulge at L4-5 and L3-4 without herniation or stenosis. Dr. Penniman diagnosed thoracic strain, lumbar strain and lumbar disc disorder with myelopathy and advised that appellant's work status was "restricted duty." He stated, "The cause of this problem is related to work activities." Dr. Penniman's report lacks probative value on several counts.

Dr. Penniman did not address the period of appellant's alleged disability. As noted, the Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought.¹⁰ Dr. Penniman also failed to explain how appellant's current condition was causally related to the accepted injury, rather than to an intervening event.¹¹ A statement that appellant's "problem" is related to work activities, is insufficient to establish a causal relationship between the diagnosed conditions and the October 12, 2007 injury. Further, as the claim was accepted only for lumbar and thoracic strains, it was incumbent upon Dr. Penniman to provide medical evidence of bridging symptoms between the present condition, which included lumbar disc disorder with

⁷ *Mary A. Ceglia, supra* note 5.

⁸ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁹ *C.W.*, 60 ECAB ____ (Docket No. 07-1816, issued January 16, 2009).

¹⁰ *Fereidoon Kharabi, supra* note 2.

¹¹ The Board notes that on July 2, 2008 Dr. Penniman stated that appellant reinjured his back at work two days previously while walking to work and opined that he was incapacitated from June 30 to July 2, 2008,

myelopathy, and the accepted injury.¹² He failed to do so. For all of these reasons, the August 5, 2008 report is of limited probative value.

On September 4, 2008 Dr. Penniman informed the Office that appellant did not sustain a new back injury, but rather, “he reagravated the original injury.” He stated, “The same injury and pain that had improved to some degree became worse on July 2, 2008.” Dr. Penniman further stated that appellant’s current condition was due to “herniated lumbar disc displacement without myelopathy.” He did not identify a period of disability, as required in a compensation claim. Moreover, Dr. Penniman did not explain how appellant’s current diagnosed condition was causally related to the accepted injury. His blanket statement that appellant reagravated the original injury is not only insufficient to serve as a bridging symptom, but rather suggests that the condition was caused by a separate incident.

On July 29, 2008 Dr. Bonasso noted that appellant’s symptoms started while at work on October 12, 2007, that his pain radiated from his back to around his chest and that he occasionally had radicular dysesthesias down his legs. He provided examination findings and reviewed MRI scan results, which showed mild degeneration with disc bulging at L5-S1 and very mild bilateral neural foraminal encroachment. Dr. Bonasso diagnosed lumbar sprain/strain, suggested adding bilateral lower extremity lumbar radiculopathy to the list of diagnosed conditions and recommended against surgical intervention at that time. As his report does not address whether appellant was disabled due to the accepted injury, it is of diminished probative value and is insufficient to establish appellant’s claim. Further, Dr. Bonasso did not express an opinion as to the cause of appellant’s current condition. Medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹³ The remaining medical evidence, including reports from Dr. Penniman and test results, which did not explain how appellant’s condition was causally related to the accepted condition, is of limited probative value and insufficient to establish his claim.

The evidence of record also fails to establish that appellant sustained a recurrence of disability. A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without a new or intervening injury.¹⁴ Appellant submitted no rationalized medical evidence supporting that he experienced a spontaneous change in his medical condition due to the accepted injury. Rather, he reported to the Office and to his physician that he experienced intervening incidents on July 2 and 12, 2008, which triggered his alleged disabling symptoms. The Board finds that appellant’s claim does not meet the definition of a recurrence of disability.¹⁵

¹² *C.W.*, *supra* note 9.

¹³ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ *See supra* note 6 and accompanying text.

¹⁵ *See Bryant F. Blackmon*, 56 ECAB 752 (2005). The Board notes that appellant did not allege a change in his light or limited-duty requirements.

For the reasons stated, the Board finds that appellant failed to sustain his burden of proof in establishing that he was totally disabled due to his accepted employment condition from July 12 through September 4, 2008.

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act¹⁶ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹⁷ 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."¹⁸

An employee seeking benefits under the Act has the burden of proof to establish 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 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.¹⁹ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, 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, and that such event, incident or exposure caused an injury.²⁰

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.²¹

¹⁶ 5 U.S.C. § 8101 *et seq.*

¹⁷ *Id.* at § 8102 (a).

¹⁸ 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).

¹⁹ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

²⁰ *See Paul Foster*, 56 ECAB 208 (2004). *See also Betty J. Smith*, 54 ECAB 174 (2002); *Tracey P. Spillane*, 54 ECAB 608 (2003). 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).

²¹ *See Paul Foster*, *supra* note 20.

ANALYSIS -- ISSUE 2

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury on July 12, 2008. There are inconsistencies in the evidence which cast serious doubt on the validity of his claim.

Appellant filed compensation claims alleging that he was totally disabled from July 12 through September 4, 2008 due to his October 12, 2007 employment injury. Not until December 3, 2008, following the November 6, 2008 decision denying his compensation claims, did he allege that he had sustained a traumatic injury on July 12, 2008 while sorting mail. On his CA-1 claim form, appellant stated that, when he turned around and picked up some flats from a tub, he felt pain in his lower back and his legs went numb. At the March 2, 2009 hearing, he testified that, on July 12, 2008, while casing mail, he turned to pick up some magazines and felt numbness and tightness in this and burning up his legs “to where he couldn’t stand up.” Appellant stated that he ended up collapsing onto his case, and someone had to wheel him out of the building. He did not provide any evidence to substantiate either version of his allegations.

There is no medical evidence of record that supports appellant’s claim that he sustained a back injury on July 12, 2008. Dr Penniman opined that appellant’s back pain worsened on June 30, 2008 while he was walking to work and stated that he was incapacitated from June 30 to July 2, 2008. However, none of his reports reflects a statement by appellant that corroborates the allegations contained in his traumatic injury claim.

The Board finds that appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged.²² The inconsistencies in both his allegations and the medical evidence of record, as well as the unexplained delay in reporting the alleged injury, cast serious doubt on the validity of his claim.²³ Appellant provided no evidence to corroborate any version of the alleged facts. The Board finds that he has failed to establish his claim.

On appeal, appellant’s representative contends that the Office’s decisions were contrary to fact and law. For reasons previously stated, the Board finds that his argument is without merit.

CONCLUSION

The Board finds that appellant has not established entitlement to wage-loss benefits from July 12 through September 4, 2008. The Board further finds that the evidence does not establish that he sustained a traumatic injury while in the performance of duty on July 12, 2008.

²² See *Paul Foster*, *supra* note 20; see also *Betty J. Smith*, *supra* note 20.

²³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2009 and November 6, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 16, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board