

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

A.L., Appellant)	
)	
and)	Docket No. 09-2101
)	Issued: April 23, 2010
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Chicago, IL,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2009 appellant filed a timely appeal of the October 30, 2008 and July 10, 2009 merit decisions of the Office of Workers' Compensation Programs finding that he did not sustain an injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a back injury on April 3, 2008, as alleged.

On appeal, appellant contends that, although the evidence is insufficient to establish that he sustained a back injury on April 3, 2008, it is sufficient to establish that he sustained a back injury on June 18, 2008.

FACTUAL HISTORY

On July 2, 2008 appellant, then a 47-year-old clerk, filed a claim (Form CA-2a) assigned Office File No. xxxxxx991 alleging that on April 3, 2008 he sustained a recurrence of disability of a November 15, 2006 injury.¹ He hurt his back while unloading a trailer. By letter dated September 12, 2008, the Office advised appellant that his claim was being adjudicated as a new traumatic injury claim. It assigned the claim, File No. xxxxxx916.

By letter dated September 15, 2008, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a rationalized medical report from an attending physician which described a history of injury, a firm diagnosis, findings, symptoms and test results treatment provided, prognosis, period and extent of disability and opinion with medical reasons on why the diagnosed condition was caused or aggravated by the claimed injury.

In an April 9, 2008 routing slip, appellant stated that he sustained a back injury in November 2006 when he tripped over a faulty dock plate. He aggravated this injury on April 3, 2008 while unloading a trailer. Appellant took pain medication and left work early on April 7, 2008. He stated that his November 2006 back injury never completely healed.

In disability certificates dated June 25 to July 24, 2008, Dr. Diana A. Chicos, an attending Board-certified internist, advised that appellant was unable to work from June 18 to July 29, 2008. In an October 13, 2008 letter, she stated that he had been under her care since injuring his back on May 22, 2008. Appellant experienced low back pain radiating down his left leg while lifting at work. Dr. Chicos diagnosed sciatica and low back pain.

By decision dated October 30, 2008, the Office denied appellant's claim. It found the evidence insufficient to establish that the April 3, 2008 incident occurred at the time, place and in the manner alleged. The medical evidence was also insufficient to establish an injury causally related to the claimed incident.

On November 25, 2008 appellant requested reconsideration. In an undated narrative statement, he contended that the medical evidence submitted contained incorrect dates regarding his visit to Dr. Chicos' office and claimed injury. Appellant advised Dr. Chicos that he sustained an injury on April 3, 2008 and not on May 22, 2008. The injury occurred as a result of pulling rather than lifting heavy equipment while unloading his truck.

In a November 12, 2008 letter, Dr. Chicos stated that she evaluated appellant on May 22, 2008 regarding his complaints of low back pain radiating down his left leg due to pulling equipment on April 3, 2008. She reiterated her prior diagnoses of sciatica and low back pain.

By decision dated January 7, 2009, the Office modified the October 30, 2008 decision to find the factual evidence sufficient to establish that the April 3, 2008 incident occurred as

¹ The record does not indicate that the Office has accepted that appellant sustained an employment-related back injury on November 15, 2006.

alleged. However, it denied the claim on the grounds that the medical evidence was insufficient to establish an injury causally related to the accepted employment incident.

On May 26, 2009 appellant requested reconsideration. He alleged that the instant claim was improperly treated as a new traumatic injury rather than a recurrence of his November 15, 2006 injury. Appellant stated that he did not receive medical treatment for an April 3, 2008 injury. He sustained back injuries on April 7 and 9, May 25 and June 18, 2008 while unloading a trailer at work. Following the June 18, 2008 injury, appellant was unable to return to work. He stated that his July 2, 2008 Form CA-2a should have listed June 18, 2008 as the date of his alleged recurrence of disability rather than April 3, 2008. Appellant indicated that he also gave Dr. Chicos the wrong date of injury.

By decision dated July 10, 2009, the Office denied modification of the January 7, 2009 decision.² It found the evidence submitted insufficient to establish that he sustained an injury causally related to the April 3, 2008 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁵

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁶ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

² The Board notes that, although the Office stated that it did not review the merits of appellant's claim, it weighed the probative value of the evidence submitted with his request for reconsideration.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

The Board notes that the Office properly adjudicated appellant's claim as a traumatic injury.¹¹ The Office accepted that he was unloading heavy equipment from his trailer truck on April 3, 2008 while working as a clerk at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that appellant's back condition was caused or aggravated by the April 3, 2008 employment incident.

Dr. Chicos' disability certificates found that appellant was totally disabled for work from June 18 to July 29, 2008. This evidence does not provide a firm medical diagnosis or address the causal relationship between the April 3, 2008 employment incident and any disabling condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² The Board finds that Dr. Chicos' disability certificates are insufficient to establish appellant's claim.

Similarly, Dr. Chicos' reports are insufficient to establish appellant's claim. She originally reviewed a history that on May 22, 2008 appellant was lifting at work when he sustained a back injury. Subsequently, Dr. Chicos corrected the statement of injury to reflect that he was pulling equipment on April 3, 2008 when he sustained a back injury. She stated that appellant suffered from sciatica and low back pain. However, Dr. Chicos did not provide an opinion addressing the causal relationship between the diagnosed conditions and the April 3, 2008 employment incident.¹³ The Board finds that her reports are insufficient to establish appellant's claim.

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

¹¹ See 20 C.F.R. § 10.5(x), which provides in pertinent part: Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in 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. While appellant contended before the Office that his current back condition was not a result of a new injury, but rather was a recurrence of his November 15, 2006 injury, the instant claim relates to a specific intervening incident that occurred on April 3, 2008, which, constitutes a traumatic injury. See 20 C.F.R. § 10.5(ee), which provides in pertinent part: Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.

¹² *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ *Id.*

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted April 3, 2008 employment incident. Appellant did not meet his burden of proof.

The Board further finds that appellant's contention on appeal, that he sustained a back injury on June 18, 2008 rather than on April 3, 2008 has not been established. As noted, Dr. Chicos' medical records do not provide an opinion addressing whether appellant's back conditions were caused either by an April 3, 2008 employment incident or to an employment incident allegedly occurring on another date.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a back injury on April 3, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2009 and October 30, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 23, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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