

FACTUAL HISTORY

This case has previously been before the Board. In a January 4, 2005 decision,¹ the Board affirmed the Office's March 19, 2004 decision. The Board found that none of the physicians of record provided a sufficient explanation to support how appellant's back condition was caused or contributed to by the July 2, 2001 incident instead of his 30-year history of lumbar problems. The facts of this case are set forth in the Board's January 4, 2005 decision and are herein incorporated by reference.

By decisions dated March 17, 2006 and May 21, 2007, the Office denied appellant's requests for modification.

In a report dated July 2, 2007, Dr. Robert Warren, Board-certified in psychiatry and neurology, stated that he examined appellant on June 20, 2007. He reviewed the history of injury and appellant's medical records and advised that appellant had degenerative disease of the lumbar spine at L3-4 and L4-5 which was aggravated by the July 2, 2001 work injury. Dr. Warren opined that appellant had an underlying problem with his lumbar spine, spinal stenosis, which predisposed him to having lower back symptoms, particularly with being confined in a very small car in an uncomfortable position. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the lumbar spine, nerve conduction and electromyogram testing of the lower extremities in order to render a fully informed opinion.

In an October 8, 2007 report, Dr. Neville Alleyne, Board-certified in orthopedic surgery, stated findings on examination and advised that appellant was experiencing increased low back and bilateral leg pain. Appellant underwent a lumbar MRI scan on July 12, 2007 which showed that he had severe spinal stenosis, lateral recess at L3-4 secondary to disc disease, but especially severe posterior facet arthropathy; moderate to severe spinal stenosis at L4-5, secondary to disc disease, again, especially from posterior facet arthropathy; and left lateral recess narrowing at L5-S1 secondary to posterior facet arthropathy, with no focal disc herniation. Dr. Alleyne recommended a decompressive laminectomy at L3 to S1.

In a report dated November 12, 2007, Dr. Alleyne stated that he performed a decompressive laminectomy procedure at L3 to S1 with medial, facetectomy and foraminotomies on October 9, 2007. He advised that appellant was doing well post surgically.

By letter dated February 8, 2008, appellant's attorney requested reconsideration.

By decision dated May 6, 2008, the Office denied modification of its prior decisions denying the claim.

By letter dated May 13, 2008, appellant's attorney requested reconsideration.

¹ Docket No. 04-1692 (issued January 4, 2005). On September 27, 2002 appellant, then a 55-year-old quality assurance specialist, alleged that he aggravated a preexisting low back condition on July 2, 2001 while entering and exiting a government car. By decision dated July 18, 2003, the Office denied his claim, finding that he did not submit sufficient medical evidence to establish that the July 2, 2001 incident caused an injury. By decision dated March 19, 2004, the Office denied appellant's request for modification.

In a November 8, 2007 report, received by the Office on May 19, 2008, Dr. Warren opined that appellant had a significant, preexisting low back condition which progressed over time but had nothing to do with the July 2, 2001 work incident. He advised that the findings of facet and ligament changes were of a degenerative nature and were not due to an acute injury. Dr. Warren stated that appellant's preexisting nonoccupational changes predisposed him to exacerbations under certain circumstances. The fact that appellant had significant degenerative disease of the lumbar spine, combined with being a large man sitting in a tight space with his lower back confined and flexed, would have been sufficient to cause an exacerbation of his underlying medical condition. Dr. Warren indicated that the July 2001 incident was work related because the vehicle appellant was given was unsuited for his preexisting condition, causing him to experience increased symptoms and an exacerbation of his condition.

By decision dated September 16, 2008, the Office denied modification of its prior decisions. On January 28, 2009 appellant's attorney requested reconsideration.

In a May 28, 2009 decision, the Office denied appellant's reconsideration request on the grounds that it did not raise substantive legal questions or include new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated July 22, 2009, appellant's attorney requested reconsideration. Counsel requested clarification as to whether the Office had previously reviewed Dr. Warren's July 2, 2007 medical report. She noted that the Office merely made reference to Dr. Warren's June 20, 2007 evaluation and contended that, because the medical evidence submitted was uncontroverted, the Office had the burden to further develop the claim.

Appellant submitted an October 24, 2007 report from Dr. Warren in which he reiterated his findings and conclusions.

Appellant submitted progress reports from Dr. Alleyne dated February 25, May 29 and June 23, 2008. Dr. Alleyne stated findings on examination and summarized findings and conclusions as previously submitted. In a December 1, 2008 report, he advised that appellant had been experiencing some increasing discomfort into his middle and upper back and into his left leg. Dr. Alleyne related that appellant's lower back pain was aggravated by a February 14, 2008 motor vehicle accident. He reiterated that appellant's underlying asymptomatic stenosis was aggravated by the use of an undersized car at work on July 2, 2001, which caused prolonged back problems and necessitated surgical intervention.

By decision dated October 21, 2009, the Office denied modification of its prior decisions.²

² The Office noted that appellant had filed a separate claim for the February 14, 2008 vehicular accident, claim number xxxxxx272, which the Office denied.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that 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 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 upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "fact of injury" has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that an employee's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Office accepted that on July 2, 2001 appellant entered and exited from a compact government vehicle. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ The Board finds that appellant has not submitted rationalized medical evidence to establish that the July 2, 2001 employment incident

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e)(e).

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 6.

caused or contributed to his claimed lumbar condition on necessitated surgery at L3 to S1 on October 9, 2007.

Dr. Warren stated that appellant had preexisting degenerative lumbar disease at L3-4 and L4-5, underlying spinal stenosis, which made him susceptible to experiencing low back symptoms. He indicated that appellant's condition was aggravated and became symptomatic on July 2, 2001 when he was confined in the space of a small car in an uncomfortable position. Dr. Alleyne stated in his October 8, 2007 report that appellant had increasing low back pain and bilateral leg pain. He noted that the July 12, 2007 MRI scan demonstrated spinal stenosis at L3-4, L4-5 and L5-S1 secondary to disc disease, with severe posterior facet arthropathy. Dr. Alleyne performed a decompressive laminectomy, L3 to S1, on October 9, 2007, which partially ameliorated appellant's lower back symptoms. He stated in his December 1, 2008 report that appellant had been experiencing some increasing discomfort into his middle and upper back and into his left leg and advised that his lower back pain was aggravated by a February 14, 2008 vehicular accident. Dr. Alleyne opined that appellant's July 2, 2001 work incident was the result of underlying asymptomatic stenosis aggravated by his use of a small car.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ Although Drs. Warren and Alleyne presented diagnoses of appellant's condition, the physicians did not sufficiently address how these conditions were causally related to the July 2, 2001 work incident. Their reports did not explain how appellant sustained a low back injury because he was entering and exiting a compact car on July 2, 2001. The medical opinions from Drs. Warren and Alleyne regarding causal relationship are of diminished probative value in that they did not provide adequate medical rationale in support of their conclusions.¹² The physicians did not adequately describe appellant's accident or how the accident would have been competent to cause the claimed condition.¹³ There is, therefore, no rationalized evidence in the record that appellant's low back injury was work related. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of July 2, 2001 caused or contributed to the claimed lower back injury.

On appeal to the Board, appellant's attorney contends that the Office erred in denying compensation for the July 2, 2001 work incident in light of the ample medical evidence submitted and in light of appellant's 30-year history of low back problems. The Board notes that the Office fully considered the medical evidence of record in its October 21, 2009 decision. The medical evidence and legal arguments appellant presented were given thorough consideration in numerous decisions dated from July 2003.

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹² *William C. Thomas*, 45 ECAB 591 (1994).

¹³ The Board notes that the descriptions of appellant's July 2, 2001 work incident and alleged injury provided by Drs. Warren and Alleyne were substantially similar to those considered and rejected by the Board in its January 4, 2005 decision.

The Office advised appellant of the evidence required to establish his claim. The reports of Dr. Warren and Dr. Alleyne do not adequately explain the medical process which the July 2, 2001 incident would aggravate appellant's condition. Accordingly, he did not establish that he sustained a low back injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a lower back injury on July 2, 2001.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 15, 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