

A September 29, 2008 emergency room (ER) report from the Wade Park ER noted that appellant was transferred from the employing establishment medical facility for elevated blood pressure. Appellant denied having any pain and did not mention a back problem.

In an October 6, 2008 letter, Dr. Amy B. Schechter, an internist at the employing establishment, stated that appellant left work on September 29, 2008 by ambulance and was taken to the Wade Park ER for treatment of a hypertension condition. Appellant's blood pressure was well controlled and he was released to return to work.

An October 8, 2008 Wade Park ER report noted that appellant had experienced back pain for four days that he attributed to heavy lifting, pushing and pulling at work. An October 22, 2008 ER report from the employing establishment noted that he began experiencing low back pain three weeks previously. Appellant attributed the back pain to lifting rolling chairs at work. An x-ray report noted an essentially normal lumbar spine.

In a November 13, 2008 statement, appellant changed the date of injury from September 30, 2008 to September 29, 2008. He stated that he was lifting and cleaning a rolling chair at work and lost his footing while lowering the chair. Appellant started to feel light-headed, his vision was blurred and he had back pain. He thought his symptoms were due to the bending that he had performed while performing his cleaning duties. When appellant developed a headache he went to the nurses' station. Because his blood pressure was high, he was sent to the Wade Park ER. Appellant was treated for hypertension and released. Although his back bothered him, he thought it would get better with rest. Appellant returned to work on October 5, 2008 but requested sick leave on October 7, 2008 due to worsening back pain. On October 7, 2008 he told his supervisor that he hurt his back the night he was cleaning rolling stock. Appellant went to the Wade Park ER on October 8, 2008 and was treated for back pain. He returned to the ER on October 22, 2008 due to back pain.

On December 4 and 5, 2008 Donald Sambrook, an employing establishment injury compensation specialist, and Carlton Brown, appellant's supervisor, noted inconsistencies in the factual and medical evidence. Appellant did not file his back injury claim until October 27, 2008 for an injury on September 30, 2008, a date that he was not at work. On November 13, 2008 he changed the date of injury to September 29, 2008. The September 29, 2008 ER report described an elevated blood pressure problem. There was no mention of any back problem. Appellant did not return to work on October 5, 2008 as he claimed. He requested annual leave in lieu of sick leave regarding his blood pressure condition. Appellant stated that his back pain worsened around October 5, 2008 but there was no mention in Dr. Schechter's October 6, 2008 note of a back problem. He did not call to request sick leave on October 7, 2008 as he alleged. Appellant was charged being absent without leave (AWOL) because he did not call in to work. Mr. Brown denied that appellant advised him on October 7, 2008 that he hurt his back the night he was cleaning rolling stock. On October 8, 2008 appellant did not report for work and was again marked AWOL. He visited the Wade Park ER on October 8, 2008 and reported four days of low back pain, approximately October 1 to 5, 2008, a period when he was not at work. Appellant worked from October 12 to 20, 2008 and was off work again from October 21 to 23, 2008. On October 22, 2008 he again visited the Wade Park ER and reported a history of low back pain for three weeks. The employing establishment first learned of appellant's claim for a back injury when he filed a claim on October 27, 2008.

By decision dated December 15, 2008, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an injury on September 30, 2008 as alleged.

On December 23, 2008 appellant requested a review of the written record.

In a May 29, 2009 letter, Deborah Malone, an employing establishment human resources specialist, stated that appellant had corrected his claimed date of injury to September 29, 2008. However, September 29, 2008 ER notes from the Wade Park facility, to which he was transferred for elevated blood pressure, advised that his blood pressure condition was treated and he was not experiencing pain. Ms. Malone noted that appellant did not file a claim until October 27, 2008.

By decision dated July 1, 2009, an Office hearing representative affirmed the December 15, 2008 decision.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, 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.¹ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.² An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the claimant.³

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of

¹ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

² *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁴

ANALYSIS

There are inconsistencies in the factual and medical evidence that cast serious doubt that appellant's back injury was sustained at the time, place and in the manner alleged. On October 27, 2008 appellant initially claimed that his back injury occurred on September 30, 2008. However, the record reflects that he did not work that day. On November 13, 2008 appellant changed the date of injury to September 29, 2008. The September 29, 2008 Wade Park ER report noted that he was treated for elevated blood pressure. Appellant denied having any pain and did not mention any back problem. On October 6, 2008 Dr. Schechter reported that he left work on September 29, 2008 by ambulance and was taken to the Wade Park ER for treatment of a hypertension condition. Appellant's blood pressure was treated and he was released to return to work.

Appellant returned to work on October 5, 2008 but requested sick leave on October 7, 2008 due to worsening back pain. Mr. Brown stated that appellant did not return to work on October 5, 2008. Instead, appellant requested leave regarding his blood pressure condition. He alleged that his back pain worsened around October 5, 2008 but there is no mention of a back problem in Dr. Schechter's October 6, 2008 note. Mr. Brown stated that appellant did not call to request sick leave on October 7, 2008, as alleged. Appellant was charged with AWOL because he did not call in to work. Mr. Brown denied that appellant advised him on October 7, 2008 that he hurt his back the night he was cleaning rolling stock. On October 8, 2008 appellant did not report for work and was again marked AWOL. He visited the Wade Park ER on October 8, 2008 and reported a history of four days of low back pain that he attributed to heavy lifting, pushing and pulling at work. However, from October 1 to 5, 2008, appellant was not at work. He did not describe a specific time, date or precipitating work incident. Appellant worked from October 12 to 20, 2008 and was off work again from October 21 to 23, 2008. On October 22, 2008 he visited the Wade Park ER and reported low back pain for the previous three weeks that he attributed to lifting rolling chairs at work. The medical reports and statements from the employing establishment conflict with appellant's assertions regarding his back condition and his work history in September and October 2008. Appellant's statements are not consistent as to the date of injury, the cause of the back condition and the dates that he worked in September and October 2008.

The Board finds that the evidence is insufficient to establish that appellant sustained an injury on September 29 or 30, 2008 while in the performance of duty.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on September 29 or 30, 2008 while in the performance of duty.

⁴ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 1, 2009 is affirmed.

Issued: May 10, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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