

and it flipped, causing him to injure his low back and right elbow. He noticed that screws were missing from the chair but did not stop work.

Appellant submitted reports dated May 13 to July 28, 2010 from Dr. Brian J. Battersby, Jr., a Board-certified orthopedic surgeon and treating physician, who noted that appellant presented with posterior lumbar pain and aching. Dr. Battersby listed the date of injury as April 26, 2010 and noted that the onset of back pain began at work after a fall. He advised that the location of the pain was in the lower lumbar region bilaterally and the quality was achy and dull. Appellant described the pain as a 4 out of 10 and the severity was moderate. Dr. Battersby provided restrictions on appellant's activity which included reaching overhead, lifting and bending. He diagnosed degenerative lumbar disease and a lumbosacral intervertebral disc. In subsequent reports, Dr. Battersby provided an additional diagnosis of lumbago. His restrictions were modified to include no lifting greater than 20 pounds.

By letter dated August 12, 2010, OWCP advised appellant that additional factual and medical evidence was needed. Appellant was requested to provide a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. OWCP explained that a physician's opinion on causal relation was crucial to his claim and allotted 30 days to submit the requested information.

In an August 16, 2010 report, Dr. Battersby repeated his findings and adjusted appellant's lifting restriction to no more than 30 pounds. OWCP also received treatment notes from a physical therapist.

By decision dated September 23, 2010, OWCP denied appellant's claim on the grounds that the medical evidence did not establish that his back condition was causally related to the April 26, 2010 incident.

Appellant requested reconsideration on January 13, 2011. He explained that he was testing wires and sat down in his chair. When appellant leaned back, the chair moved backward and he fell striking the concrete floor hard, jarring and injuring his back. He remained there until the pain subsided. Appellant noted that upon examining the chair, he discovered that screws had been removed. He reported the incident to his supervisor but the individual he suspected of removing the screws would not admit to doing so.

OWCP subsequently received additional copies of previous reports. In a September 14, 2010 report of record, Dr. Walter L. Clements, a physician specializing in occupational medicine, provided a lifting restriction of no more than 30 pounds.

In a September 9, 2010 report, Dr. Battersby noted that he treated appellant for an on-the-job injury to his low back. Appellant related a history that his injury occurred when he was leaning back while sitting in his chair when it flipped over. He presented with posterior lumbar pain, aching and stiffness with symptoms reported as being moderate and continuous in duration. On examination there was mild-to-moderate tenderness in the lumbar area and the sacral coccygeal and pelvis areas. Dr. Battersby determined that appellant had mildly restricted movement in all directions and pain. He stated that x-rays were taken and revealed degenerative changes in the lumbar area. Dr. Battersby advised that appellant was placed on an anti-

inflammatory medication, started with physical therapy and returned to work with restrictions. Appellant continued to have low back pain and the work restrictions were continued. Dr. Battersby diagnosed degenerative lumbar disease and explained that it was a preexisting condition. He explained that appellant did not have any symptoms regarding his back until his injury at work and opined, “therefore I feel this [was] an aggravation of the degenerative process in his back and is directly related to his injury at work.” In an October 13, 2010 report, Dr. Battersby stated, “we are not sure why [workers’ compensation] will not approve [appellant], he has an obvious problem, it happened at work, it [i]s documented.”

By decision dated March 3, 2011, OWCP denied modification of its September 23, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. 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.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS

Appellant alleged that he sustained an injury to his back on April 26, 2010 when he leaned back in his chair and he fell to the floor. OWCP found that the April 26, 2010 incident, occurred as alleged.

Regarding the medical component of fact of injury, the Board notes that the medical evidence submitted by appellant generally supports that his back was injured on April 26, 2010. The record contains several reports from Dr. Battersby who diagnosed degenerative lumbosacral disc and lumbago. He obtained a history that appellant leaned back in a chair and fell to the

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

floor. Dr. Battersby stated that appellant sustained an aggravation to his preexisting degenerative lumbar disease. He noted treating appellant for an on-the-job injury to his low back. Dr. Battersby described an accurate history of the incident accepted in this case. He explained that appellant presented on May 13, 2010 with posterior lumbar pain, aching and stiffness. Dr. Battersby advised that x-rays revealed degenerative changes in the lumbar region and diagnosed preexisting degenerative lumbar disease. He noted that appellant did not have any symptoms regarding his back until the incident at work and stated, “therefore I feel this [was] an aggravation of the degenerative process in his back and is directly related to his injury at work.” Although Dr. Battersby’s reports are not sufficiently rationalized to meet appellant’s burden of proof, they support the claim and are sufficient to require further development.⁷

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁸

The Board will remand the case to OWCP for appropriate further development on whether appellant sustained an aggravation of his preexisting lumbar degenerative disease on April 26, 2010. Following this, and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant’s claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁸ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: May 1, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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