U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD A. ZEIGLE and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Bellaire, TX

Docket No. 02-1787; Submitted on the Record;
Issued December 4, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an injury in the performance of duty on May 3, 2001.

On June 7, 2001 appellant, then a 42-year-old service representative, filed a traumatic injury claim (Form CA-1), alleging that on May 3, 2001 he injured his lower back when the chair he was sitting in suddenly dropped 12 to 15 inches. Appellant stopped work on June 4, 2001 and returned on August 31, 2001.

In a June 4, 2001 note, Dr. Clemis L. Jackson, a Board-certified attending physician, indicated that appellant had been under his care for chronic lower back strain/pain.

By letter dated July 12, 2001, the Office of Workers' Compensation Programs requested additional information.

In a report dated June 25, 2001, Dr. Richard R.M. Francis, a Board-certified attending physician, diagnosed a herniated disc at L5-S1 including "far lateral dis[c] herniation with compromise with an exiting L5 nerve root as well as marked stenosis at L3-4, L4-5 and L5-S1." Appellant related the history of his injury as "having left[-]sided leg pain dating back approximately six week ago" and that the "pain came on suddenly and descends down the posterior aspect of the left leg as far as the ankle and is associated with numbness over the calf, dorsum of the foot and toes."

By decision dated August 14, 2001, the Office denied appellant's claim on the basis that the failed to establish that his condition was caused by his injury.

In August 27, 2001 report, Dr. Jackson stated:

> "[Appellant] reports an accident, which occurred at work on May 3, 2001 in which his lower back was injured. Patient reports falling 3 feet from the chair, in which he was sitting. [Appellant]'s fall could possibly have caused the herniated disc. [Appellant]'s MRI [magnetic resonance imaging scan] report shows L5 and S1 disc herniation."

By letter dated September 2, 2001, appellant requested a written review of the record.

By decision dated February 11, 2002, an Office hearing representative affirmed the denial of appellant's claim. The hearing representative found the evidence of record insufficient to establish that the chair dropped as appellant alleged. She also found the medical evidence insufficient to support that appellant sustained an injury on May 3, 2001.

In a letter dated Mach 3, 2002, appellant requested reconsideration and submitted evidence in support of his request.

On June 5, 2002 the Office denied appellant's request for reconsideration in a merit decision. The Office modified the decision to accept that appellant experienced the incident he alleged to have caused his condition, but found the medical evidence insufficient to support that he sustained a injury due to his the May 3, 2001 injury.

The Board finds that appellant not established that he sustained an injury in the performance of duty on May 3, 2001.

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[1] In this case, the Office accepted that appellant actually experienced the claimed event. The Board finds that the evidence of record supports this incident.

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[2] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[3]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must

[1] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *Gloria J. McPherson*, 51 ECAB 441 (2000); *see John J. Carlone*, 41 ECAB 354 (1989).

[3] *Gary J. Watling*, 52 ECAB ___ (Docket No. 00-634, issued March 1, 2001).

be based on a complete factual and medical background of the claimant, 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

In the instant case, appellant was informed that he needed to submit a comprehensive medical report from his treating physician explaining how work factors or incidents in his employment caused or contributed to his claimed condition. However, none of the medical reports in the record provided a rationalized medical opinion explaining why particular work factors identified by appellant caused his alleged injury.

The only medical evidence which mentions the May 3, 2001 employment incident, is the August 27, 2001 report by Dr. Jackson. In his report, the physician related appellant stating he injured his back in a work accident on May 3, 2001. He opined "[Appellant]'s fall could possibly have caused the herniated disc. [Appellant]'s MRI [scan] report shows L5 and S1 disc herniation." Dr. Jackson's opinion that appellant's herniated disc could have been caused by the May 3, 2001 fall is speculative in nature and thus insufficient to meet his burden of proof.[5]

Dr. Jackson in a June 4, 2001 note, indicated that he had been treating appellant for lower back strain/pain. In a June 25, 2001 report, Dr. Francis diagnosed a herniated disc and related that appellant stated that he had been having leg pain for approximately six weeks. As neither Drs. Francis nor Jackson rendered a finding on causation their reports are of little probative value.[6]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[7] To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

[4] *James Mack*, 43 ECAB 321 (1991).

[5] *See Lucrecia M. Nielsen*, 42 ECAB 583 (1991) (To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value).

[6] *Linda I. Sprague*, 48 ECAB 386 (1997) (Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[7] *Donald W. Long*, 41 ECAB 142 (1989).

The June 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member