United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 07-1097**
	)	**Issued: September 10, 2007**
U.S. POSTAL SERVICE, POST OFFICE, West Palm Beach, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated June 12, September 15 and December 16, 2006 denying his claim for an employment-related 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 met his burden of proof in establishing that he sustained an injury in the performance of duty on March 14, 2006, as alleged.

FACTUAL HISTORY

On March 29, 2006 appellant, then a 45-year-old mail handler, filed a traumatic injury claim alleging that, on March 13, 2006, while reaching above his head to get a pack of mail, he injured his lower back. In a statement dated May 10, 2006, appellant modified this claim to indicate that the correct date of injury was March 14, 2006. The employing establishment controverted the claim. In a letter dated April 11, 2006, a manager for the employing

establishment indicated that, at the time of the alleged injury, appellant was working with restrictions of no lifting over 10 pounds and that "it remains unclear how he could sustain an injury performing the tasks he was assigned."

In a medical report dated April 10, 2006, Dr. Steven Dutcher, an osteopath, indicated that appellant was complaining of back pain. He noted that appellant indicated that his back pain started approximately on March 13, 2006 and that the pain was predominant when he twisted his low back. Dr. Dutcher listed his impressions as: (1) herniated nucleus pulposus lumbar -- clinically a left S1 radiculopathy; (2) pain low back; and (3) degenerative disc disease. On the same date, Dr. Dutcher released appellant to return to work for four hours a day with no lifting more than five to ten pounds a day, and no twisting or bending.

In a report dated April 28, 2006, Dr. Lorna Sohn Williams, a neuroradiologist, interpreted a magnetic resonance imaging (MRI) scan as showing an L3-4 and L5-S1 disc bulge; L4-5 central and left paracentral protrusion unchanged when compared to the prior examination; and probable T12-L1 disc bulge also unchanged when compared to the prior study.

By letter dated May 11, 2006, the Office requested further information. In response, appellant submitted a May 8, 2006 report from Dr. Dutcher who restated his prior impressions and referred appellant for pain management based on continuing complaints and findings on the imaging studies.

In a medical report dated June 1, 2006, Dr. Williams S. Berman, a Board-certified physiatrist, listed his impressions as: (1) left L4-5 disc herniation; (2) probable left L3-4 disc herniation; (3) left L4 radiculopathy with proximal left leg weakness; (4) gait and activities of daily living dysfunction secondary to disc injury and radiculopathy. He noted that he was concerned because appellant's ability to stand and walk appeared to be significantly compromised. Dr. Berman believed that appellant was incapable of employment at this time.

By decision dated June 12, 2006, the Office denied appellant's claim, finding that there was insufficient evidence addressing how appellant's federal duties caused his injury.

On June 22, 2006 appellant requested reconsideration. He noted that the Office did not consider Dr. Berman's report or the MRI scan. On August 18, 2006 the employing establishment noted that appellant was receiving ongoing medical care for a serious condition prior to the injury and that he had extremely poor attendance. The employing establishment indicated that this demonstrated an ongoing/unresolved condition, not a new injury.

In a medical report dated June 29, 2006, Dr. Berman recommended that appellant be off work until a "definitive correctional procedure is performed" due to the "acuity and severity of his left leg weakness and radicular pain."

By decision dated September 15, 2006, the Office reviewed appellant case on the merits but determined that there was insufficient opinion from a physician to establish causal relationship.

On October 11, 2006 appellant requested reconsideration. He submitted an October 10, 2006 facsimile from Dr. Dutcher who indicated that appellant came to see him on April 10, 2006

and reported an on-the-job injury that occurred on March 13, 2006. Dr. Dutcher diagnosed back pain and left leg radiculopathy. He indicated that he reviewed the MRI scan which showed a disc herniation to the left at L4-5. Dr. Dutcher stated: "After reviewing [appellant's] medical records, including previous and most recent MRI scans, [his] physical requirements as a mail handler, I feel as though the medical evidence establishes a causal relationship between the on-the-job injury and [his] present symptoms." Appellant also submitted an undated note, received by the Office on October 16, 2006, from Dr. Rosa Romigosa, a Board-certified internist, who stated that appellant saw her on March 15, 2006 and reported an on-the-job injury that occurred on March 14, 2006. Dr. Romigosa opined: "After reviewing patient's medical records including previous and most recent MRI [scans] [on] the physical requirements of a mail handler in the [employing establishment] as well as the medical reports supplied to me by Dr. Berman, [r]ehab[ilitation and] [p]ain [s]pecialist, and Dr. Dutcher, [n]eurosurgeon, I can report that patient's present symptoms correlate with on job injury incurred on March 14, 2006."

In a decision dated December 15, 2006, the Office denied modification of its September 15, 2006 decision. It found that appellant had not provided rationalized medical evidence that his condition was causally related to the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that an 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. 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.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first 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 actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[4] An employee may establish that the employment incident occurred as alleged, but fail to show that his disability related to the employment incident.

In order to satisfy the burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the

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[1] 5 U.S.C. § 8122(a).

[2] *Id.*

[3] *John J. Carlone*, 41 ECAB 345 (1989).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

employment incident.[5] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[6] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[7]

ANALYSIS

The Office found that an incident occurred on March 14, 2006, as alleged. The remaining issue is whether appellant sustained an injury caused by this employment incident. This must be established by probative medical evidence.[8] Appellant submitted reports by his treating physicians, Drs. Dutcher and Romigosa. Both physicians opined that appellant's symptoms correlated with his on-the-job injury. However, neither of these physicians provided a rationalized medical opinion as to how they reached their stated conclusions. Dr. Dutcher and Dr. Romigosa indicated that they based their conclusions on a review of the medical records, physical examinations and review of the requirements of appellant's position. They did not specifically address appellant's prior medical history of treatment for his back. Neither physician fully explained how reaching above his head on March 14, 2006 would cause or contribute to disc bulging at L3-4 and L5-S1 or disc herniation. This is especially problematic as there is evidence that appellant had a prior back condition. Dr. Berman offered no opinion as to the cause of appellant's disc herniation or radiculopathy. He simply discussed the MRI scan results and did not draw any conclusions on causation.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[9] There is insufficient medical evidence to establish that appellant sustained an injury on March 14, 2006. Accordingly, the Board finds that appellant failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on March 14, 2006, as alleged.

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[5] *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Nicolette R. Kelstrom,* 54 ECAB 570 (2003).

[7] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Jamel A. White*, 54 ECAB 224 (2002).

[8] *Gary L. Fowler*, *supra* note 5.

[9] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 567 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 16, September 15 and June 12, 2006 are affirmed.

Issued: September 10, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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