

By letter dated November 20, 2007, the Office notified appellant of the deficiencies in his claim and requested that he provide additional medical and factual evidence.

Appellant submitted medical notes dated October 17 through November 16, 2007, from Dr. Babak Behta, Board-certified in family medicine, who reported appellant's complaints of low back pain, which radiated down to just underneath his buttock area, similar to the pain associated with a previous herniated disc for which he underwent surgery. A magnetic resonance imaging (MRI) scan did not show any significant problem. Dr. Behta diagnosed back pain extending to the buttock area and provided restrictions on walking, climbing, lifting, bending and stooping.

In an October 23, 2007 diagnostic report, an MRI scan revealed a mild enhancing extradural scar formation extending to the right neural foramen, slight spinal stenosis at the L4-5 level and a mild posterocentral focal disc bulge, which was further compressing the thecal sac slightly. A handwritten note dated October 26, 2007, stated that there was no sign of a herniated disc.

In an attending physician's report (Form CA-20) dated November 14, 2007, Dr. Behta reported appellant's complaint of back pain radiating into his right buttock. An MRI scan did not reveal any significant abnormality. Where asked whether the condition was caused or aggravated by an employment activity, Dr. Behta checked the box marked "no."

In a November 29, 2007 medical report, Dr. Michael G. Radley, a Board-certified neurosurgeon, stated that appellant presented with complaints of leg pain. He listed appellant's prior history of lumbar surgery in 2005 for predominately posterior leg pain. Appellant recently experienced some recurrent symptoms, which worsened with sitting, standing still and twisting. He also felt a popping sensation on October 6, 2007 while performing leg lifts. Dr. Radley noted that an MRI scan of the lumbar spine revealed postsurgical changes at the L5-S1 level on the right, but that no definite recurrence was seen. He diagnosed recurrent right leg pain and postsurgical change at right L5-S1.

On December 7, 2007 appellant underwent diagnostic and therapeutic transforaminal epidural steroid injections at the L5 and S1 levels. In an operative report, he was diagnosed with radiculitis, neuritis, lumbar degenerative disc disease and lumbar spinal stenosis.

By decision dated December 28, 2007, the Office denied the claim, finding that appellant did not submit medical evidence sufficient to establish the October 6, 2007 employment incident as the cause of his back condition.

On March 14, 2008 appellant filed a request for reconsideration. In a February 5, 2008 report, Dr. Radley stated that appellant hurt himself while working out at work. In an undated medical note, Dr. Daniel Sullivan, an osteopathic physician, stated that appellant was being treated for right sciatica secondary to a work-related injury.

By decision dated June 11, 2008, the Office denied modification of its December 28, 2007 decision, on the grounds that the medical evidence was insufficient to establish his claim because it did not establish the causal relationship between the work incident and the diagnosed condition.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he is an "employee" within the meaning of the Act³ and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

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.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on 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 employee.⁸

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

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

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Office accepted that the October 6, 2007 incident occurred as alleged. The issue is whether appellant established that he sustained an employment-related back injury on October 6, 2007. The Board finds that he has not met his burden of proof. While appellant submitted medical evidence addressing his back injury, none of the reports contain a rationalized medical opinion addressing the causal connection between his back condition and the October 6, 2007 employment incident.⁹

Dr. Behta's medical notes dated October 17 through November 16, 2007 discuss appellant's back condition and a previous herniated disc for which he underwent surgery. He failed to address the cause of appellant's current back condition. Dr. Behta did not adequately explain how the accepted incident caused or aggravated appellant's preexisting low back condition. His reports are of diminished probative value on whether appellant's condition is causally related to his employment.¹⁰ Moreover, a November 14, 2007 attending physician's report contradicts appellant's claim, as Dr. Behta indicated that the condition was not related to the employment activity.

In a November 29, 2007 medical report, Dr. Radley diagnosed recurrent right leg pain and postsurgical change at the right L5-S1. He reported appellant's history of a previous lumbar condition, that he had injured himself running in September 2007 and that on October 6, 2007 he felt a popping sensation while performing leg lifts. Dr. Radley did not provide any medical opinion regarding the cause of appellant's condition beyond the recounting of his medical history. He did not address how the accepted incident was sufficient to aggravate appellant's preexisting condition.¹¹ The only medical opinion provided by Dr. Radley regarding causation is a February 5, 2008 medical note. Dr. Radley stated that appellant hurt himself while working out at work. This note is insufficient to establish appellant's claim as Dr. Radley did not provide any reasoning to support causation and did not provide findings based on a history of the employment incident and on examination of appellant.¹² Similarly, Dr. Sullivan also failed to explain how appellant's right sciatica condition was secondary to a work-related injury.¹³

The evidence submitted by appellant does not provide a rationalized medical opinion describing the relationship between his back condition and the October 6, 2007 employment incident. The Board finds that he did not meet his burden of proof to establish his claim.¹⁴

⁹ See *Victor J. Woodhams*, *supra* note 8.

¹⁰ See *Robert Broome*, 55 ECAB 339 (2004).

¹¹ See *Roy H. Snipes*, 32 ECAB 1398 (1981) (where the Board found that a physician's opinion lacked probative value as he relied on appellant's subjective complaints and failed to cite objective evidence to support his opinion).

¹² See *Victor J. Woodhams*, *supra* note 8.

¹³ See *id.*

¹⁴ See *id.*

CONCLUSION

The Board finds that appellant did not establish that he sustained a back injury in the performance of duty on October 6, 2007, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2008 and December 28, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 2, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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