

heavy travel bag from the roller to conduct a secondary screening and injured his back when he turned to take the bag to the inspection table. He stopped work on May 20, 2003 and returned on May 23, 2003.

By decision dated March 29, 2004, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence was sufficient to show that the claimed lifting incident occurred as alleged; however, there was no medical evidence supporting that it caused a diagnosed condition.

The Office received a package of materials on March 29, 2004, which was comprised of diagnostic test results dated May 20, 2003. Dr. Kenneth Barnwell, Board-certified in internal medicine, submitted a May 20, 2003 report. He noted that appellant had a two-week history of left flank pain and a low grade fever and diagnosed "gas pain" and left flank pain. In a separate report also dated May 20, 2003, Dr. Barnwell noted that appellant was seen for complaint of back pain and related that the event which precipitated the pain was lifting luggage at work. He assessed left upper quadrant abdominal pain, allergic pollen-induced rhinitis, elevated blood pressure without a diagnosis of hypertension and low back pain. In reports dated June 26 to December 30, 2003, Dr. Barnwell repeated the history of injury contained in his May 20, 2003 report and assessed mid back strain or low back pain, muscle spasm, paresthesias, chronic rhinitis, mixed hyperlipidemia, dyshidrosis and tension headaches. In a December 30, 2003 report, he discussed sinus symptoms and abdominal pain, which began six to nine months prior with no apparent trigger.

A January 12, 2004 magnetic resonance imaging (MRI) scan read by Dr. Hugo Falcon, a Board-certified diagnostic radiologist, revealed multi-level degenerative disc disease and spondylosis, with the two most severely affected levels at L1-2 and L2-3 where left-sided disc herniation caused neural compression. At L4-5 appellant had facet arthropathy, disc bulging and a small herniation with lateral recess stenosis bilaterally. He noted mild degenerative disc disease and disc protrusion at L5-S1, with a slight encroachment on the S1 root without definite placement.

In a January 16, 2004 report, Dr. Barnwell advised that the event which precipitated appellant's pain was lifting luggage at work and that aggravating factors contributing to his back pain may be lifting, bending over and twisting. Associated symptoms included persistent stiffness and paravertebral muscle spasm with weakness of the right upper leg and right lower leg. Dr. Barnwell noted that the pain worsened with walking, back flexion and back extension. He diagnosed a herniated lumbar disc, chronic low back pain, tension headache and elevated blood pressure.

In a February 17, 2004 report, Dr. Darrell Simone, a Board-certified anesthesiologist, noted that appellant was injured on the job in September 2003, when he was lifting luggage and experienced low back pain. He noted that appellant had previously had low back pain in May 2003, which was felt to be a soft tissue injury. Dr. Simone noted that previous treatment included nonsteroidal anti-inflammatories, analgesics and muscle relaxants. He noted that no physical therapy, injection therapy or surgery was prescribed. Dr. Simone diagnosed lumbar radiculitis and lumbar spondylosis with facet arthropathy. In a February 19, 2004 progress note,

he repeated the diagnoses and prescribed a right S1 transformational epidural steroid injection under fluoroscopic guidance.

In a March 19, 2004 report, Dr. Barnwell reviewed his previous dates of treatment and advised that appellant's onset of treatment was timed to an injury sustained at work in May 2003. He opined that appellant's symptoms resulted from repetitive motion involving lifting/twisting greater than 70-pound loads, on a repetitive basis. Dr. Barnwell advised that appellant had exacerbations in the past that resulted in temporary incapacitation from his regular job duties. He related that with continued exposure to the repetitive occupational stressors, appellant was likely to have recurrent pain and disability related to the problem.

Appellant requested reconsideration on April 19, 2004.

By decision dated July 15, 2004, the Office denied modification of the March 29, 2004 decision. The Office found that appellant had not provided sufficient evidence to support that he sustained a diagnosed medical condition as a result of a specific work incident on May 19, 2003.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶ 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.⁷

¹ The Office noted that appellant filed a second claim for a traumatic injury, while lifting luggage, in September 2003, under claim No. 062106853.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

ANALYSIS

Appellant alleged that he reinjured his back while lifting a moderately heavy bag at work. There is no dispute that he lifted baggage at work on May 19, 2003. The Board finds that the record supports the claimed incident occurred as alleged.

However, the medical evidence is insufficient to establish that the employment incident caused an injury. The medical evidence contains no firm diagnosis, no rationale⁸ and no explanation of the mechanism of injury regarding the incident of May 19, 2003.

Appellant submitted reports from Dr. Barnwell and Dr. Simone. However, neither doctor provided a specific opinion explaining how any diagnosed condition was caused or aggravated by the lifting incident on May 19, 2003. Dr. Barnwell treated appellant beginning on May 20, 2003 for conditions including back pain, flank pain and gas pain. He noted that appellant related a two-week history of flank pain, including a low grade fever and gas pain. Dr. Barnwell noted his explanation that the event which precipitated his pain was a lifting incident at work. However, other than a diagnosis of pain, he did not diagnose a specific condition or specifically address the issue of causal relationship by stating how the lifting activity at work on May 19, 2003 caused or aggravated an injury. Dr. Barnwell treated appellant on June 26, September 16 and December 30, 2003 and repeated his diagnoses, which included chronic rhinitis and tension headaches. On January 16, 2004 he opined that appellant had a herniated disc. However, Dr. Barnwell did not specifically relate the herniated disc to the incident of lifting on May 19, 2003. Furthermore, the diagnosis came almost eight months after the incident and subsequent to a second claimed work injury in September 2003.⁹ On March 19, 2004 Dr. Barnwell, alleged that appellant's onset of symptoms commenced in May 2003, but due to repetitive motion on a repetitive basis and not specifically to the traumatic incident of May 19, 2003. His reports did not address how the May 19, 2003 lifting incident caused or aggravated a low back injury.¹⁰

On February 17, 2004 Dr. Simone diagnosed lumbar radiculitis and lumbar spondylosis and noted that appellant was injured in September 2003. Regarding the May 2003 lifting incident, he referred to it as a soft tissue injury. However, Dr. Simone did not explain the medical processes by which particular employment activities caused appellant's condition. Without any reasoning to support the conclusion, this report is insufficient to meet his burden of proof.¹¹

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ The record does not reflect that a decision has been rendered regarding the September 30, 2003 incident.

¹⁰ The Board notes that, if appellant regards the cumulative effect of his history of alleged employment-related injuries as causing a diagnosed condition and disability, he can file a claim for an occupational disease (Form CA-2).

¹¹ See *George Randolph Taylor*, *supra* note 8.

Appellant also submitted several diagnostic reports and an MRI scan, however, these reports do not address the issue of the causal relationship between his back condition and his federal employment.

Because the medical reports submitted by appellant do not address how the May 19, 2003 lifting incident caused or aggravated a low back injury, these reports are of limited probative value¹² and are insufficient to establish that the May 19, 2003 employment incident caused or aggravated a specific injury.

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.

ORDER

IT IS HEREBY ORDERED THAT the July 15 and March 29, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 18, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹² See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).