

Board further found that the Office had improperly denied merit review of the claim in its August 29, 2006 decision. Appellant had submitted a March 6, 2006 report from Dr. Hieu Ball, the attending orthopedic surgeon, who provided a history of injury and noted a magnetic resonance imaging scan from November 2004 revealed a mild disc herniation at C7-T1. Dr. Ball further stated in pertinent part, “The lifting of the box placed extreme pressure on her cervical spine herniating the disc. This herniation produced symptoms of pain and numbness in the right hand, which quickly began to manifest in the right arm. This would be a normal progression since the original source of injury was in her cervical/thoracic spine.” The case was remanded to the Office for a decision on the merits of the claim. The history of the case was documented in the Board’s prior decision and is incorporated herein by reference.

By decision dated May 24, 2007, the Office denied modification of the prior decisions. The Office stated that Dr. Ball’s report “does not contain sufficient medical reasoning” to establish an injury causally related to the lifting incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing that he or she sustained an injury while in the performance of duty.³ In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally, this can be established only by medical evidence.⁴ While appellant has the burden of proof to establish her claim, the Office shares responsibility in the development of the evidence.⁵

ANALYSIS

In his March 6, 2006 report, Dr. Ball provided an unequivocal opinion that appellant sustained a C7-T1 disc herniation as a result of the November 17, 2000 lifting incident. While the Office stated that Dr. Ball did not provide sufficient medical reasoning, it did not acknowledge that he supported his opinion with additional explanation. Dr. Ball stated that the lifting of the box caused pressure on the cervical spine and herniated the disc. He indicated that the herniation produced initial symptoms of pain and numbness in the right hand and subsequently into the arm, which was consistent with a disc herniation. Dr. Ball had been treating appellant since October 2001 and he provided an accurate history of injury.

² 5 U.S.C. §§ 8101-8193.

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁴ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁵ *William J. Cantrell*, 34 ECAB 1233 (1983).

The Board finds that the medical evidence is sufficient to require further development on the issue of whether appellant sustained a herniated C7-T1 disc causally related to the November 17, 2000 employment incident. While Dr. Ball did not completely discuss the medical history following the employment incident, he does provide an uncontroverted opinion on causal relationship and he supported his opinion with medical rationale. Appellant has submitted probative medical evidence supporting causal relationship that is sufficient to require further development of the evidence.⁶ The case will be remanded to the Office to secure medical evidence of sufficient probative value to resolve the issue of whether appellant sustained an injury causally related to the November 17, 2000 employment incident. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

CONCLUSION

The evidence is sufficient to require further development on the issue of whether appellant sustained a cervical or thoracic injury causally related to the November 17, 2000 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁶ See *Robert A. Redmond*, 40 ECAB 796 (1989).