United States Department of Labor
Employees' Compensation Appeals Board

JAMES M. HARBIN, Appellant	)	
and	)	**Docket No. 04-367**
	)	**Issued: December 2, 2004**
HOUSE OF REPRESENTATIVES, U.S. CAPITOL POLICE, Washington, DC, Employer	)	

Appearances:
James M. Harbin, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 24, 2003 appellant filed a timely appeal from a March 8, 2003 merit decision of the Office of Workers' Compensation Programs denying his claim that he sustained a work-related injury on June 5, 2000. The record also contains a September 2, 2003 decision denying appellant's request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision and the nonmerit decision in this case.

ISSUES

The issues are: (1) whether appellant sustained a work-related injury on June 5, 2000; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On June 17, 2000 appellant, then a 52-year-old police officer, filed a traumatic injury claim alleging that on June 5, 2000 he injured his right shoulder, arm and hand, right hip, calf

and Achilles tendon while training by striking practice targets in a repetitive manner with a baton.

By letter dated August 22, 2002, the Office informed appellant of the evidence needed to support his claim, including a report from his doctor providing a diagnosis and an explanation as to whether the diagnosed condition was causally related to his employment.[1]

By decision dated September 27, 2002, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish fact of injury. The Office found that, while the evidence supported that the June 5, 2000 training occurred, there was no medical evidence that provided a diagnosis that could be connected to the event.

Appellant requested reconsideration and stated in answer to an Office questionnaire that the Office had accepted an October 15, 1996 claim for a herniated disc in the lower back.[2] Appellant also submitted medical reports from Dr. Mark H. Henderson, Jr., his attending Board-certified orthopedic surgeon. On August 21, 2001 Dr. Henderson noted appellant's history of injury, stating that, on June 2, 2000, appellant noticed back and arm pain sustained during physical assault training[3] and that he noted that squatting on the shooting range exacerbated his back, right shoulder and upper extremity. Appellant also noted some paresthetic sensation radiating from the index and long fingers of the right hand which was associated with neck stiffness. Upon examination, Dr. Henderson reported baseline back findings without change with positive seated root signs, full range of motion of the cervical spine with a negative Spurling sign on the right and left side, and normal full range of motion of the shoulder with negative stress abduction, crossover and impingement signs in the Neer and Hawkins' positions. He noted no weakness in abduction or external rotation and noted a negative Superior Labral Anterior Posterior and speed test. The neurovascular status was intact with the upper extremities. Cervical x-rays revealed reverse lordosis at C6-7 and normal shoulder. He diagnosed early cervical radiculopathy, probable C7. In reports dated September 18 and December 18, 2001, and February 5 and May 7, 2002, Dr. Henderson diagnosed right-sided cervical radiculopathy. On July 23, 2002 Dr. Henderson diagnosed herniated disc pulposus at C5-6 and C6-7, and radiculopathy at C7. On August 13, 2002 he diagnosed cubital tunnel syndrome.

In a report dated October 11, 2002, Dr. Henderson stated that he initially treated appellant on August 21, 2001 for low back and right arm pain which was caused by work-related baton training and shooting range training on June 5, 2000. He noted at that time that appellant had a herniated disc pulposus at L5-S1 and diagnosed early cervical radiculopathy, probable at C7, based on radiographs. He then noted that based on an electromyogram evaluation (EMG)[4]

[1] The employing establishment received appellant's claim on June 17, 2000 but forwarded it to the Office on July 26, 2002.

[2] No other claims are before the Board on the present appeal.

[3] The date of injury was June 5, 2000.

[4] Dr. Henderson noted that the test was an EMG nerve conduction velocity test.

appellant had mild ulnar neuropathy consistent with cubital tunnel syndrome without major enervation evidence.

By decision dated March 8, 2003, the Office modified the September 27, 2002 decision to find that appellant established an injury on June 5, 2000, but denied his claim on the grounds that the evidence failed to establish a causal relationship between his injury and his condition.[5]

On March 14, 2003 appellant requested reconsideration and stated that he would submit additional medical evidence from Dr. Henderson. He also addressed training issues with the employing establishment and noted his disagreement with the Office's analysis of his medical evidence.

By decision dated September 2, 2003, the Office denied review of appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[6] 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 filed within the applicable time limitation; that an injury was sustained while 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.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[8]

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.[9] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the claimed condition, as well as any attendant disability, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal

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[5] The context of this decision indicates that the Office accepted that the claimed incident occurred; however, there is no indication that the Office accepted that the employment incident caused an injury.

[6] 5 U.S.C. §§ 8101-8193.

[7] *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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

relationship.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned 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 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.[11]

ANALYSIS -- ISSUE 1

There is no dispute that the claimed training incident involving the baton occurred as alleged on June 5, 2000. With regard to whether the accepted incident caused an injury, appellant submitted several reports from Dr. Henderson in support of his claim.

In the August 21, 2001 report, Dr. Henderson related appellant's history of injury regarding his low back and arm pain in which appellant considered the conditions to have been caused by his training exercises in June 2000. He also noted appellant's prior back injury. However, the doctor did not provide his own rationalized medical opinion addressing the causal relationship between these conditions and employment factors. The October 11, 2002 report diagnosing cubital tunnel syndrome likewise did not include a rationalized medical opinion associating his condition with his employment. The remaining reports note appellant's cervical radiculopathy but do not relate that condition to factors of his federal employment. The Board has long held that medical reports not containing rationale on causal relation are entitled to little probative value.[12] Appellant therefore failed to establish that he sustained a work-related injury on June 5, 2000.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 (a) of the Act,[13] the Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal arguments not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

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[10] *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002).

[11] *Joan F. Burke*, 54 ECAB ___ (Docket No. 01-39, issued February 14, 2003).

[12] *Annie L. Billingsley,* 50 ECAB 210 (1998).

[13] 5 U.S.C. §§ 8101-8193. *See supra* note 4. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[14] 20 C.F.R. § 10.606(b).

ANALYSIS -- ISSUE 2

The underlying issue in this case, whether appellant's work-related incident on June 5, 2000 caused his diagnosed condition, is medical in nature. Appellant did not submit any new and relevant medical evidence with his reconsideration request.

In support of his request for reconsideration, appellant submitted a statement generally disagreeing with the Office's handling of his claim. Appellant did not show that the Office erroneously applied or interpreted a specific point of law in the previous decisions, nor did he make a relevant legal argument not previously considered by the Office. The Board finds that appellant's arguments lack a reasonable color of validity.[15] As noted above, appellant also did not submit new and relevant medical evidence. Appellant therefore has not established that the Office improperly denied his request for reconsideration because he did not show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant failed to establish that his conditions were caused by factors of his federal employment or that the Office properly refused to reopen his claim for merit review.

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[15] While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity. *John F. Critz,* 44 ECAB 788, 794 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 2 and March 8, 2003 be affirmed.

Issued: December 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member