United States Department of Labor
Employees' Compensation Appeals Board

LINDA D. PEAK, Appellant	)	
and	)	**Docket No. 04-2070**
	)	**Issued: February 7, 2005**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Pittsburgh, PA, Employer	)	

Appearances:
Linda D. Peak, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 19, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 26, 2004 denying her claim of injury on December 3, 2003, and a June 2, 2004 decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on December 3, 2003; and (2) whether the Office properly denied her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 23, 2003 appellant, then a 39-year-old supervisory clerk, filed a traumatic injury claim alleging that she injured her back while moving boxed case files on December 3, 2003. She stopped work on December 4, 2003.

The employing establishment stated that appellant worked an 8-hour shift on December 5, 8, 9 and 11, 2003, seven hours on December 12, 2003 and 6 hours on December 29, 2003.

Dr. Anita L. Cardone, appellant's attending physician and a Board-certified family practitioner, examined appellant on December 12, 2003 and noted a work-related back injury sustained on December 3, 2003. As result of the injury she was off work on December 4, 10 and 12, 2003 from noon time and beyond. Dr. Cardone noted that appellant was medically excused from work. In reports dated December 15, 2003, Dr. Cardone stated that appellant had right-sided lumbosacral muscle spasm, prescribed physical therapy three times a week for four weeks, and that she was off work from December 15, 2003.

On January 7, 2004 Dr. Cardone noted appellant's absences from work on certain days in December and placed her off work for December 15, 16, 18 and 19, 2003 and from December 22 to 26, 2003 and continuing from December 29, 2003. She noted that on December 22, 2003 appellant began a work hardening program.

On February 6, 2004 appellant filed a claim for wage loss from January 17 to February 1, 2004.

By letter dated February 19, 2004, the Office advised appellant of the deficiencies of her claim and requested that she submit a physician's report explaining why her diagnosed condition was caused or aggravated by the claimed incident.

By decision dated March 26, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish fact of injury. The Office explained that, while the evidence of record supported that the claimed lifting incident occurred on December 3, 2003, the medical evidence was insufficient to establish a causal relationship between the claimed condition and the event.

On May 3, 2004 appellant filed a request for reconsideration and asserted that she sought to have her physician submit additional medical evidence.

On June 2, 2004 the Office denied appellant's request for reconsideration on the grounds that no new evidence was submitted in support of the request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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 of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury."[1] 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]

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.[3] 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 relationship.[4]

ANALYSIS -- ISSUE 1

Appellant filed a claim for a traumatic injury alleging that she injured her back while moving heavy boxes on December 3, 2003. The Board finds that the evidence supports that the claimed incident occurred on December 3, 2003 as alleged. However, the Board also finds that appellant has submitted insufficient medical evidence to establish a causal relationship between her back condition and the December 3, 2003 employment incident.

Dr. Cardone, an attending physician, stated that appellant's back condition and disability resulted from a incident of December 3, 2003. While these reports generally support causal relationship between the employment and the claimed injury, they are insufficient to meet appellant's burden of proof, which includes the necessity of rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship.[5] The brief reports from Dr. Cardone do not contain rationale explaining how the employment factors identified by appellant, moving heavy boxes, caused or aggravated a back injury. Although Dr. Cardone diagnosed lumbosacral muscle spasm, she did not list a history of injury indicating how appellant sustained the injury. None of the reports described appellant's job, her lifting on December 3, 2003 or how specific employment duties caused or aggravated the

[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[3] *Elaine Pendleton*, *supra* note 1.

[4] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[5] *See also 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).

diagnosed condition that resulted in disability. For example, Dr. Cardone did not reference the lifting of boxes, or any other specific employment factors, coupled with a medical explanation of how such an activity would cause or aggravated a particular back condition. Other than noting muscle spasm, no specific diagnosis was listed.

Appellant has failed to establish that she sustained a work-related injury causally related to the December 3, 2003 incident. The Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[6] the Office's regulation provide that a claimant's application for reconsideration must be submitted in writing and set forth arguments or contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[7] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.[8] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[9]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on May 3, 2004 and indicated that she planned to submit additional evidence. Appellant noted that she had sought medical evidence from her physician and generally indicated that her claim should be accepted; however, no new medical evidence accompanied the reconsideration request. The underlying issue in this case is medical in nature, *i.e.*, as whether the accepted incident caused a back injury and disability for work. Appellant did not submit any evidence or argument which shows 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 and did not submit relevant and pertinent new evidence not previously considered by the Office. The Office properly denied her request for reconsideration without reviewing the merits of the claim.

[6] 5 U.S.C. § 8128(a). Under section 8128(a) of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

[7] 20 C.F.R. §§ 10.609(a) and 10.606(b).

[8] 20 C.F.R. § 10.607(a).

[9] 20 C.F.R. § 10.608(b).

CONCLUSION

The Board finds that appellant failed to submit the necessary factual evidence to establish that she sustained a work-related injury on December 3, 2003 as alleged. The Board also finds that the Office properly denied appellant's request for reconsideration.[10]

ORDER

IT IS HEREBY ORDERED THAT the June 2 and March 26, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 7, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] The Board notes that appellant submitted additional evidence after the Office rendered its June 2, 2004 decision. As this evidence was not considered by the Office prior to its June 2, 2004, the evidence represents new evidence that cannot be considered by the Board. The Board's jurisdiction is limited to reviewing evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).