

FACTUAL HISTORY

On March 10, 2004 appellant, then a 57-year-old transportation security screener, filed a claim for compensation alleging that he sustained an injury in the performance of duty that day when another screener walked into him, causing his low back to slam against a horizontal metal bar. An attending physician's form report dated March 11, 2004 found muscle spasms and stiffness and diagnosed acute low back pain. With an affirmative mark, the physician, whose name is illegible, indicated that the condition found was caused or aggravated by the March 10, 2004 incident.

On April 29, 2004 the Office asked appellant to submit within 30 days additional information to support his claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. The Office stated: "This explanation is crucial to your claim."

The Office received a disability slip, several treatment notes and a second attending physician's form report, which also supported causal relationship with an affirmative mark.

In a decision dated June 4, 2004, the Office denied appellant's claim for compensation. The Office found that the evidence supported that the March 10, 2004 incident occurred as alleged but that there was no medical evidence providing a diagnosis that could be connected to the event. Pain, the Office explained, was considered a symptom, not a diagnosis.

On June 16, 2004 appellant requested reconsideration. He submitted a June 15, 2004 report from Dr. Milan Sheth, a Board-certified specialist in internal medicine, who stated:

"[Appellant] came into the office on March 11, 2004 complaining of localized back pain. He proceeded to tell me that he was pushed by a coworker, and hit a metal bar at work.

"In my opinion this is a new occurrence of the condition of low back pain (724.2) and muscle spasm (728.85). It appears [he] received a significant blow to the back causing him muscle stiffness requiring physical therapy and further neurological evaluation.

"I am enclosing medical records documenting the above disclosure."

On May 12, 2004 Dr. Mohammed I. Hussain, a consulting neurologist, reported that appellant had an injury at work on March 10, 2004 when he hit the lower right side of his back. Dr. Hussain reported normal nerve conduction studies of both legs but stated that "needle exam[ination] is consistent for local irritability for paraspinal muscles, a radiculitis."

On April 26, 2004 Dr. James G. Place, a radiologist, reported that x-rays of the cervical spine revealed mild hypertrophic spurs likely associated with mild degenerative disease. He reported that x-rays of the lumbar spine revealed degenerative changes in the form of hypertrophic spurs. No other abnormalities were seen.

On May 5, 2004 Dr. Hussain related the following history of injury:

“Patient presents with low back pain, neck pain and shoulder pain. Patient states that on March 10, 2004 he was pushed against a metal rail at work and hit the lower right side of his back. Patient states that approximately one week later he began to experience right shoulder and neck pain. Patient is also complaining of right arm and hand numbness at times with shooting pains down his right leg and foot with occasional numbness as well. Patient does report pain is continuous.”

Objective findings included sensory perception sensations that were intact in all areas except gradient loss below the knee, right more than left. Dr. Hussain also noted that appellant favored his right leg. His assessment was back pain, lumbago; leg pain and sensory changes; cervicalgia. Dr. Hussain completed an attending physician’s form report that same day indicating that he did not believe that appellant’s condition was caused or aggravated by the employment activity described.

In a decision dated September 17, 2004, the Office reviewed the merits of appellant’s claim and denied modification of the June 4, 2004 decision. The Office found that the evidence submitted failed to contain any medical documentation providing a definitive diagnosis that could be attributed to the incident of March 10, 2004.

On November 7, 2004 appellant again requested reconsideration. He submitted an October 13, 2004 report from Dr. Hussain, who stated:

“Patient presented with lower right side back pain and discomfort. These symptoms started on March 10, 2004 since injury to back at work. Initial evaluation was on May 5, 2004.

“Back, neck and right leg pain, and tenderness. NCS/EMG [nerve conduction study/electromyography] was scheduled and performed on May 12, 2004, showing normal NCS and increased irritability of paraspinal muscles correspondent with radiculitis, back pain, lumbago and cervicalgia.

“Offer symptomatic treatment and aquatic therapy for improvement in symptoms.”

Appellant also submitted medical information of general application on the nature of lumbago, radiculitis and cervicalgia.

In a decision dated November 30, 2004, the Office denied appellant’s request for reconsideration, finding that he provided no additional evidence or argument to establish that he sustained a diagnosed medical condition as a result of a specific work incident occurring on March 10, 2004.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue,³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

ANALYSIS -- ISSUE 1

The Office accepts that the incident on March 10, 2004 occurred as alleged, that another screener walked into appellant, causing his low back to strike a horizontal metal bar. The issue is whether this incident caused an injury.⁷ This was the basis of the Office's denial of benefits on June 4 and September 17, 2004. Although the Office emphasized the need for a definitive diagnosis of an underlying medical condition, and not merely a subjective complaint or a symptom of an unspecified medical condition, appellant has submitted medical evidence that identifies certain pathologies. Dr. Hussain, the consulting neurologist, reported that "needle exam[ination] is consistent for local irritability for paraspinal muscles, a radiculitis."⁸ Dr. Place, the radiologist, reported that x-rays revealed mild hypertrophic spurs in the cervical spine likely associated with mild degenerative disease, as well as degenerative changes in the lumbar spine in

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ "Traumatic injury" means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee) (1999).

⁸ His diagnoses of lumbago and cervicgia are simply another way of reporting low back and neck pain. These terms identify no etiologic pathology.

the form of hypertrophic spurs. The question for determination is whether the March 10, 2004 incident at work caused or aggravated any of these diagnosed medical conditions.

Appellant submitted two form reports indicating with an affirmative mark that his acute lumbar pain was caused by the March 10, 2004 incident. Even if the Board overlooks the absence of a diagnosed medical condition in these reports, the physician who indicated a causal relationship offered no explanation whatsoever. It is not enough for a physician to indicate that a causal relationship exists. The physician must provide sound medical rationale explaining the nature of the relationship between the established employment incident and the diagnosed condition. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion is of diminished probative value and is insufficient to establish causal relationship.⁹ Moreover, Dr. Hussain completed a form report indicating that he did not believe that appellant's condition was caused or aggravated by the employment activity described. This evidence does not support appellant's claim for compensation.

Dr. Sheth, an internist, reviewed appellant's history of injury and complaint of localized back pain. He stated that in his opinion this was "a new occurrence of the condition of low back pain," and that it appeared appellant received a significant blow to the back "causing muscle stiffness that required physical therapy and further neurological evaluation." However, Dr. Sheth did not provide a firm diagnosis of a specific medical condition. Back pain and muscle stiffness are symptoms, not an identification of an underlying pathology. It is not known from Dr. Sheth's report, for instance, whether appellant's back pain and muscle stiffness are indications of a soft-tissue injury, such as a contusion, or whether they are symptoms of an aggravation of a degenerative disease. Dr. Sheth did not explain that the blow to appellant's back resulted in a specific injury as he did not firmly diagnose any particular medical condition. His opinion is of diminished probative value in establishing that appellant sustained an injury in the performance of duty.

Because the medical evidence contains no reasoned discussion of causal relationship, one that soundly explains how appellant's contact with a coworker and a horizontal metal bar caused or aggravated a firmly diagnosed medical condition, appellant has not met his burden of proof to establish the essential element of causal relationship. The Board will therefore affirm the Office's June 4 and September 17, 2004 decisions denying his claim for compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹⁰ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹¹

⁹ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.605 (1999).

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹²

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS -- ISSUE 2

In his November 7, 2004 request for reconsideration, appellant made no attempt to show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. Instead, he submitted Dr. Hussain's October 13, 2004 report and information of general application on the nature of Dr. Hussain's diagnoses.

Dr. Hussain's report is duplicative of the evidence previously considered. Appellant's complaint and history were already reported, as were Dr. Hussain's findings and his diagnoses of radiculitis, back pain/lumbago and cervicalgia. Moreover, this report is not relevant to the issue of causal relationship because it offers no reasoned opinion on whether the March 10, 2004 incident caused or aggravated appellant's medical conditions. General information on the nature of Dr. Hussain's diagnoses, while also new to the record, is not relevant to the issue of causal relationship. By its very nature, this evidence cannot address the circumstances of appellant's March 10, 2004 employment incident and/or how the accepted incident caused or aggravated a diagnosed medical condition. This evidence is, at best, of general application. It does not address the essential deficiency of appellant's claim.¹⁴

Because appellant's November 7, 2004 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of his claim, the Board will affirm the Office's November 30, 2004 decision denying his request for reconsideration.

¹² *Id.* at § 10.606.

¹³ *Id.* at § 10.608.

¹⁴ See *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980) (newspaper clippings, medical texts and excerpts from publications of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish the element of causal relationship. He has submitted no medical narrative discussing how the March 10, 2004 employment incident caused or aggravated a firmly diagnosed medical condition, and not merely a subjective complaint or symptom of an unidentified medical condition. The Board also finds that the Office properly denied his November 7, 2004 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the November 30, September 17 and June 4, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 1, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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