United States Department of Labor
Employees' Compensation Appeals Board

C.K., Appellant	)	
and	)	**Docket No. 07-271**
	)	**Issued: March 26, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Greenville, SC, Employer	)	

Appearances:
Thomas M. Gagné, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2006 appellant filed a timely appeal of the June 6 and August 14, 2006 decisions of the Office of Workers' Compensation Programs.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on April 19, 2006; and (2) whether the Office properly denied further merit review of appellant's claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 21, 2006 appellant, a 51-year-old rural carrier, filed a claim for a traumatic back injury on April 19, 2006. Appellant stated that he lifted two boxes of mail from the floor and

[1] The Office denied appellant's traumatic injury claim on the merits in the June 6, 2006 decision and subsequently denied reconsideration on August 14, 2006.

half way through the lift he felt a pop in the middle of his back. In support of his claim, appellant submitted an April 19, 2006 appointment verification form from Milestone Family Medicine. Appellant was seen by Dr. John E. Melba, a Board-certified family practitioner, who did not provide a specific diagnosis. Dr. Melba advised that appellant could return to work on April 20, 2006. He also indicated that appellant should not lift anything for two weeks.

On May 1, 2006 the Office advised appellant that the information received was insufficient to establish that he sustained an injury on April 19, 2006. The Office requested additional factual information regarding the circumstances of the claimed injury as well as evidence of a medical diagnosis resulting from the alleged lifting incident on April 19, 2006.

The Office subsequently received an April 24, 2006 duty status report (Form CA-17) from Dr. Melba that included a diagnosis of "back pain." Appellant also submitted a May 10, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed a broad-based right posterior paracentral disc protrusion at L5-S1. Dr. Melba submitted a May 23, 2006 note, stating that appellant was seen on April 24, 2006 for low back pain and referred to Southeastern Neurological Center. According to Dr. Melba, appellant stated that his injury occurred while lifting at work.

In a decision dated June 6, 2006, the Office denied appellant's traumatic injury claim. The Office found that the evidence supported that the April 19, 2006 lifting incident occurred as alleged. However, the medical evidence did not include a diagnosis that could be connected to the accepted employment incident.

With the assistance of counsel, appellant requested reconsideration on June 16, 2006. Counsel indicated his intention to submit evidence providing a firm diagnosis linked to the April 19, 2006 incident, including proper ICD-9 diagnosis codes. The Office did not subsequently receive any additional evidence. By decision dated August 14, 2006, the Office denied the request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

[2] 5 U.S.C. § 8101 *et seq*. (2000).

[3] 20 C.F.R. § 10.115(e), (f) (2006); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS -- ISSUE 1

The Office accepted that the April 19, 2006 lifting incident occurred as alleged. Appellant, however, failed to establish that he sustained a low back injury as a result of the accepted employment incident. Dr. Melba diagnosed low back pain. However, a diagnosis of pain will not suffice for purposes of establishing a claim under the Act.[6] The only other medical evidence submitted was the May 10, 2006 lumbar MRI scan. While the scan revealed a L5-S1 disc protrusion, the report did not identify a date of injury or otherwise relate the findings to the April 19, 2006 lifting incident. Because the record did not include a specific diagnosis attributable to the April 19, 2006 employment incident, the Office properly denied appellant's traumatic injury claim.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.[7] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[8] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[9]

ANALYSIS -- ISSUE 2

Appellant's June 16, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

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

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Robert Broome*, 55 ECAB 339, 342 (2004).

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b)(2).

[9] 20 C.F.R. § 10.608(b).

Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[10] Appellant also failed to satisfy the third requirement under section 10.606(b)(2). He did not submit any relevant and pertinent new evidence with his June 16, 2006 request for reconsideration. Although appellant's counsel indicated an intention to submit additional medical evidence, no such evidence was received by the Office. As there was no relevant and pertinent new evidence for the Office to consider, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).[11] Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the June 16, 2006 request for reconsideration.

CONCLUSION

Appellant failed to establish that he sustained a low back injury as a result of the April 19, 2006 employment incident. The Board also finds that the Office properly denied appellant's request for a review of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the August 14 and June 6, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[10] 20 C.F.R. § 10.606(b)(2)(i) and (ii).

[11] 20 C.F.R. § 10.606(b)(2)(iii).