United States Department of Labor
Employees' Compensation Appeals Board

F.T., Appellant	)	
and	)	**Docket No. 07-1565**
	)	**Issued: November 14, 2007**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Brooksville, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 22, 2007 appellant timely appealed the December 21, 2006 and March 7, 2007 decisions of the Office of Workers' Compensation Programs. 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 May 13, 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 May 13, 2006 appellant, a 57-year-old part-time flexible clerk, filed a traumatic injury claim alleging that he injured his lower back that day when he bent over to pick up a tray from an upright. According to him, the injury occurred at 2:30 a.m. However, appellant's regular tour of duty was scheduled to begin at 3:00 a.m. The employing establishment challenged the claim on

the basis that he stated that he injured himself at 2:30 a.m., but did not clock in for work until 3:00 a.m.[1]

Appellant was treated in the Oak Hill Hospital emergency room on the morning of May 13, 2006 for complaints of low back pain after picking up a container earlier that morning. He was diagnosed with acute myofascial lumbar strain and low back pain. Appellant received an injection of Toradol for pain and was discharged from the emergency room at 4:50 a.m. On May 24, 2006 he was seen by a neurologist, who diagnosed lumbago with left-side radiculopathy. Appellant was placed on light duty, with restrictions of no bending and no lifting or pushing in excess of 20 pounds. On June 5, 2006 he was placed on bed rest, retroactive to May 24, 2006.

A June 8, 2006 lumbar magnetic resonance imaging (MRI) scan revealed degenerative disc disease at L2-3 through L4-5, multilevel facet joint atrophy, Grade 1 spondylolisthesis at L4, and diffuse annular bulges at L3-4 and L4-5, with foraminal narrowing and encroachment at the L3 and L4 nerve roots.

In a decision dated July 7, 2006, the Office denied appellant's claim because he failed to establish fact of injury. The Office found that, while appellant claimed to have been injured at 2:30 a.m., the record indicated that he did not clock in until 3:00 a.m. on May 13, 2006. Thus, there was no evidence to support his allegation that he was at work at 2:30 a.m. The injury did not arise in the performance of duty.

On July 26, 2006 appellant requested a review of the written record. In a statement accompanying the request, he explained that, on May 13, 2006, he arrived at work at 2:53 a.m. and used his badge card to access the building's rear entrance. Appellant further stated that the injury occurred at approximately 3:30 a.m., when he bent over to retrieve a tray of mail from an upright. He said he immediately notified the supervisor, Adam Morris, who gave him a Form CA-1 to fill out before going to the hospital. Appellant explained that his earlier representation that the injury occurred at 2:30 a.m. was inadvertent. He assumed responsibility for this error and surmised that it was likely due to his inability to think straight because of the pain he was experiencing at the time.

By decision dated December 21, 2006, the Office hearing representative found that on May 13, 2006 at approximately 3:00 a.m., appellant bent over to pick up a tray from an upright. However, the hearing representative found that appellant failed to establish that the May 13, 2006 employment incident caused or contributed to any medical condition. Therefore, the claim was again denied because of appellant's failure to establish fact of injury.

On February 22, 2004 appellant requested reconsideration.[2] He argued about the prior discrepancy regarding the timing of the May 13, 2006 employment incident. However, appellant

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[1] In subsequent correspondence with the Office, the employing establishment characterized appellant as a disgruntled employee with a history of questionable veracity. It was also noted that he received a 14-day suspension less than 48 hours prior to the alleged May 13, 2006 injury. According to the employing establishment, appellant reported his injury to an acting supervisor at approximately 3:15 a.m. on May 13, 2006.

[2] Appellant had earlier requested an appeal before the Board, which he withdrew by letter dated February 7, 2007. Docket No. 2007-685 (issued March 15, 2007).

did not submit any new medical evidence or raise any particular arguments regarding the adequacy of the medical evidence. In a decision dated March 7, 2007, the Office denied his request for reconsideration.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[3] 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.[4]

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.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

ANALYSIS

Despite the accuracy of appellant's account of the May 13, 2006 employment incident, the Office accepted that appellant bent over to pick up a tray from an upright at approximately 3:00 a.m. This finding, however, only satisfied one prong of the "fact of injury" analysis. The remaining question was whether the May 13, 2006 employment incident caused a personal injury. Upon reviewing the medical evidence, the hearing representative found that appellant did not establish an employment-related medical condition. The Board disagrees with this finding.

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[3] 5 U.S.C. §§ 8101-8193 (2000).

[4] 20 C.F.R. § 10.115(e), (f) (2007); *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.*

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

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

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997). The fact that the etiology of a disease or condition is unknown or obscure does not relieve an employee of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship. *Judith J. Montage*, 48 ECAB 292, 294-295 (1997).

Within an hour of the May 13, 2006 employment incident appellant sought treatment for his back injury at the Oak Hill Hospital emergency room. He provided the emergency room medical staff with a history of injury consistent with what he reported on his May 13, 2006 Form CA-1. The emergency room physical examination revealed evidence of muscle spasms and appellant complained of sharp pain in the lower left portion of his back, with pain radiating to his left leg. Dr. Kenneth M. DeGraaf, Board-certified in emergency medicine, examined appellant that morning and diagnosed acute myofascial lumbar strain and low back pain. The emergency room records identified the mechanism of injury as "lifting" and the initial onset of symptoms was noted as "[one to two] hours ago."[8] The medical evidence is sufficient, based on the emergency room examination results, to find that appellant sustained a lumbar strain as a result of the May 13, 2006 employment incident. Accordingly, the hearing representative's December 21, 2006 decision will be modified to reflect the acceptance of appellant's claim for a lumbar strain.

Less than a month after the May 13, 2006 employment injury, a lumbar MRI scan revealed multilevel degenerative disc disease, spondylolisthesis and diffuse annular bulges at L3-4 and L4-5. However, there is no medical evidence of record that attributes these conditions, either directly or by way of aggravation, to appellant's May 13, 2006 employment injury. As such, appellant's low back conditions as represented on the June 8, 2006 lumbar MRI scan, cannot be accepted as employment related based on the current record.

CONCLUSION

Appellant sustained a lumbar strain in the performance of duty on May 13, 2006. The hearing representative's December 21, 2006 decision is modified to reflect acceptance of the claim for lumbar strain only.

[8] This information was obtained and recorded at 4:34 a.m. on May 13, 2006.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.[9]

Issued: November 14, 2007
Washington, DC

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

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

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

[9] In view of the Board's disposition on the merits of the claim, the Office's March 7, 2007 nonmerit decision is rendered moot.