United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 08-1040**
	)	**Issued: September 5, 2008**
DEPARTMENT OF HOMELAND SECURITY, MOLOKAI AIRPORT, Maunaloa, HI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2008 appellant, through his attorney, filed timely appeals from decisions of the Office of Workers' Compensation Programs dated October 17, 2007 and January 29, 2008 denying his claim for compensation for an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on June 26, 2007, as alleged.

FACTUAL HISTORY

On June 27, 2007 appellant, then a 47-year-old transportation security screener, filed a traumatic injury claim alleging that on June 26, 2007 he sustained an injury to the upper left side of his chest when, while lifting a bag, he heard a pop near his chest in the left side. In support of his claim, appellant submitted a July 2, 2007 attending physician's report by Dr. Daniel S. McGuire, a general practice physician, indicating that appellant sustained a muscle strain. He

checked the box indicating that he believed that this condition was caused or aggravated by his employment injury but did not explain his answer. Dr. McGuire signed a duty status report dated July 2, 2007 indicating that appellant was unable to resume work. He also signed multiple notes indicating that appellant was unable to work from July 2 through September 4, 2007 due to a left chest muscle strain and indicating that appellant could not perform light work. On August 30, 2007 Dr. McGuire indicated that appellant could return to work two hours a day from September 4 through 10, 2007. Appellant submitted handwritten progress notes from Dr. McGuire dated from June 26 through September 12, 2007 indicating that Dr. McGuire treated him for muscle strain and prescribed diazepam and Naprosyn. In a note dated September 14, 2007, Dr. McGuire stated that appellant was injured on the job on June 26, 2007 and has not responded to conservative therapy. He noted that appellant had been referred to a specialist for further treatment.

A chest x-ray taken on June 26, 2007 was interpreted as showing no infiltrates and no definite mediastinal abnormalities. A computerized tomography scan taken on August 22, 2007 was interpreted as showing no pneumothorax or pleural effusions, no definite rib fractures or soft tissue abnormalities along the chest wall and lungs clear.

By decision dated October 17, 2007, the Office denied appellant's claim. The Office found that, although the evidence was sufficient to establish that appellant experienced the claimed employment factor in the manner alleged, the claim was denied because there was no evidence to support that there was a diagnosed condition and that this condition resulted from the accepted work factors.

On November 14, 2007 appellant filed a request for reconsideration. He noted that his chest still hurt when he inhales or moves a certain way. In further support of his claim, appellant submitted a magnetic resonance imaging (MRI) scan taken on November 13, 2007 that was interpreted as negative chest MRI scan (no pulmonary mass, no adenopathy, no thoracic muscle injury) but that appellant had linear signal intensity in the structures in the lung bases that was likely atelectasis.

By decision dated January 29, 2008, the Office reviewed the case on the merits and determined that appellant's MRI scan revealed a diagnosis of likely atelectasis and that therefore appellant had established a diagnosed medical condition. However, the Office found that the claim remained denied because there was still no evidence of causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the

[1] 5 U.S.C. §§ 8101-8193.

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.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

In order to satisfy the burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[5] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[6]

ANALYSIS

In the instant case, the Office accepted that the employment incident occurred as alleged and that a diagnosis of a medical condition, atelectasis, was established. However, the Board finds that appellant submitted no medical evidence that the atelectasis was sustained as a result of the accepted work incident, nor did appellant submit any evidence that he sustained any other medical condition as a result of the work incident. Dr. McGuire's unexplained conclusion that appellant had a muscle strain causally related to his federal employment does not constitute rationalized medical opinion evidence. In order to be considered rationalized, the opinion of a physician 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 the claimant's employment incident.[7] As Dr. McGuire provided no such explanation, his medical notes are insufficient to establish causal relationship.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[8] There is insufficient medical evidence to establish that appellant sustained an injury on June 26, 2007. Accordingly, the Board finds that appellant failed to meet his burden of proof.

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

[3] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Jamel A. White*, 54 ECAB 224 (2002).

[7] *See Gary L. Fowler*, *supra* note 5.

[8] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on June 26, 2007, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 29, 2008 and October 17, 2007 are affirmed.

Issued: September 5, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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