United States Department of Labor
Employees' Compensation Appeals Board

E.H., Appellant	)	
and	)	**Docket No. 08-1683**
	)	**Issued: January 5, 2009**
DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 27, 2008 appellant timely appealed a March 6, 2008 decision of the Office of Workers' Compensation Programs denying his claim for benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury on December 3, 2007.

FACTUAL HISTORY

On December 5, 2007 appellant, then a 32-year-old special agent, filed a traumatic injury claim, Form CA-1, alleging that on December 3, 2007 he jumped over a fence during surveillance and injured his upper back upon impact.

By report dated December 5, 2007, Dr. Michael Anthony Mikus, Board-certified in family and sports medicine, noted that appellant presented with knee pain, which had been

ongoing for two to three weeks. He indicated that appellant had not experienced any recent trauma, but that his knee pain started after he was "doing squats." Dr. Mikus also noted that appellant had experienced pain in the neck/upper back intermittently for several months. He noted that appellant had "no recent trauma" but that he had repetitive strain from computer/deskwork.

By letter dated February 4, 2008, the Office notified appellant that the evidence submitted was insufficient to support his claim because it did not contain a diagnosis of any condition causally related to the alleged December 3, 2007 incident.

In response, appellant submitted a February 15, 2008 medical report from Dr. Mikus, who again noted the presence of intermittent pain in the upper neck and upper back for several months.

Appellant also submitted a February 19, 2008 statement describing his injury. He stated that he scaled a seven-foot fence to ascertain the location of a residence associated with a target of a Drug Enforcement Agency investigation. After scaling the fence, appellant jumped to the ground on the other side. Upon a normal landing, he felt a sharp pain in the upper to middle back, radiating outward. The pain did not subside for several days and still had not healed completely. Appellant iced and rested the injured area prior to consulting with a physician on December 5, 2007, when Dr. Mikus referred him to a chiropractor. He saw the chiropractor and participated in daily stretching and strengthening exercises for the back.

By decision dated March 6, 2008, the Office denied appellant's claim for compensation finding that the evidence was not sufficient to establish that he sustained a back injury. The Office accepted that the December 3, 2007 incident occurred as alleged but noted there was no medical evidence relating a back injury to the incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,[2] including that they sustained an injury in the performance of duty and that any specific condition or disability for which they claim compensation is causally related to that employment injury.[3]

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 or she actually experienced the employment

[1] 5 U.S.C. § 8101 *et seq.*

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[3] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7] The Board has held that the fact that a condition manifests itself or worsens during a period of employment[8] or, moreover, that work activities produce symptoms revelatory of an underlying condition[9] does not raise an inference of causal relationship between a claimed condition and employment factors.

ANALYSIS

Appellant claimed that he sustained an upper back and neck strain in the performance of duty on December 3, 2007 when he jumped off a seven-foot fence. The Office accepted that the incident occurred as alleged but denied the claim on the grounds that appellant submitted insufficient medical evidence to establish an injury.

Appellant submitted several reports from Dr. Mikus, a treating physician, in support of his traumatic injury claim. However, this evidence is deficient for several reasons. The Board notes that none of the reports from Dr. Mikus provides the pertinent history of injury. Dr. Mikus did not describe the incident of December 3, 2007, but stated that appellant did not sustain any recent traumatic injury. On December 5, 2007 he stated that appellant presented with knee pain of two to three weeks' duration and noted his complaint of upper back and neck pain of several months. Dr. Mikus did not provide a definitive diagnosis of any specific neck or back condition, only that appellant had experienced an onset of neck and upper back pain several months prior to December 2007 in conjunction with computer and deskwork. The Board has held that pain is a symptom, not a compensable medical diagnosis.[10]

[4] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[5] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[6] *G.T.*, *supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[8] *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[9] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

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

The medical reports of Dr. Mikus do not provide a diagnosis or address the causal relationship between appellant's employment incident and the alleged injury. They are insufficient to establish that appellant sustained an employment-related injury.[11]

Although appellant submitted a statement detailing how he believed his injury occurred, neither the fact that his claimed back condition became apparent during a period of employment nor his belief that his condition was caused or aggravated by his employment is sufficient to establish causal relationship.[12]

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 6, 2008 is affirmed.

Issued: January 5, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[11] Appellant submitted additional medical evidence to the record following the Office's March 6, 2008 decision. The Board's review of the evidence is however limited to the evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

[12] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007)*; Ruth R. Price*, 16 ECAB 688, 691 (1965).