United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 11-507**
	)	**Issued: September 14, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, North Chicago, IL, 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 December 27, 2010 appellant filed a timely appeal from a December 3, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on October 9, 2010.

FACTUAL HISTORY

On October 15, 2010 appellant, then a 57-year-old housekeeping aide, filed a traumatic injury claim alleging that on October 9, 2010 he sustained pain in the groin area after tilting a

[1] 5 U.S.C. § 8101 *et seq.*

chair and sliding it across the floor in the performance of duty. He stopped work on October 14 and returned on October 15, 2010. The employing establishment controverted the claim.

In a letter dated October 22, 2010, OWCP requested additional factual and medical evidence from appellant and the employing establishment.

In a November 2, 2010 report, Dr. Jordan Kharofa, a radiation oncologist, noted that appellant presented for evaluation and treatment of his prostate cancer. He indicated that appellant presented with a direct inguinal hernia, which he explained could not be repaired in a timely fashion as appellant was undergoing radiation treatment for prostate cancer. Dr. Kharofa explained that the hernia would be repaired following the completion of his radiation treatment. He advised that appellant return to "light duty without heavy labor in the interim as this may exacerbate his condition."

In a November 3, 2010 statement, appellant indicated that he injured himself when he pulled chairs away from the table so that he could dust mop under the table and then wet mop the floor. He noted that the injury occurred on October 9, 2010 at approximately 2:00 p.m., at which time he experienced pain in his groin. Appellant took a pain pill and believed that he would feel better; but on the next day, he advised a fellow employee that he hurt again and informed his supervisor who advised him to pick up laundry; however, he told the nurses' aids that he was hurt and they helped him get through that day. On October 12, 2010 he had a scheduled appointment for radiation therapy and found out how serious his injury was. Appellant was unable to schedule an appointment with his physician until October 15, 2010.

By decision dated December 3, 2010, OWCP denied appellant's claim finding that he provided insufficient medical evidence to establish that his claimed hernia was causally related to the accepted work incident of October 9, 2010.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[8]

ANALYSIS

OWCP accepted that appellant tilted a chair and slid it across the floor on October 9, 2010. Appellant, however, has not submitted sufficient medical evidence to establish that this incident caused his hernia. His burden is to demonstrate that the accepted employment incident caused an injury. Causal relationship is a medical issue that can only be established by probative medical opinion evidence.

The only medical evidence of record at the time of OWCP's December 3, 2010 decision is the November 2, 2010 report from Dr. Kharofa, who noted treating appellant for prostate cancer and advised that appellant also had a direct inguinal hernia. Dr. Kharofa explained that the hernia could not be repaired while appellant was undergoing treatment for prostate cancer. He recommended that appellant return to light duty without heavy labor. The Board finds that this report does not provide a history of the incident accepted in this case or any opinion regarding how his hernia was due to or contributed to by the October 9, 2010 incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Because the medical report submitted by appellant does not address how the October 9, 2010 incident at work caused or aggravated a hernia, it is of limited probative value.[11] The medical record is insufficient to establish that the October 9, 2010 employment incident caused or aggravated the claimed injury.

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

[7] *Id*.

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

Appellant has not submitted medical opinion evidence explaining how the October 9, 2010 employment incident caused or aggravated a medically-diagnosed injury. The Board finds that appellant has not established that his claimed condition is causally related to the October 9, 2010 work incident.[12]

CONCLUSION

The Board finds that appellant has not met his burden of proof it establish that he sustained a traumatic injury, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2011
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

[12] Following issuance of OWCP's December 3, 2010 decision, OWCP received additional evidence from appellant. The Board may not consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.