United States Department of Labor
Employees' Compensation Appeals Board

B.E., Appellant	)	
and	)	**Docket No. 07-1829**
	)	**Issued: December 18, 2007**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Clackamas, OR, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 7, 2007 denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on March 12, 2007.

FACTUAL HISTORY

On March 12, 2007 appellant, a 52-year-old surface maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on that date he hurt his lower back "while

exiting the shop mule" in Compound D.[1] In a witness statement dated March 12, 2007, Carolyn Hyland, a coworker, indicated that appellant told her his back was bothering him and that he might have hurt it while getting out of the shop mule while working in Compound D.

On March 27, 2007 the Office notified appellant that the evidence submitted was insufficient to establish his claim and advised him to provide additional documentation, including a firm diagnosis and a physician's opinion as to how his injury resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury; statements from any witnesses or other documentation supporting his claim; and the reason he delayed seeking medical treatment.

In response to the Office's request, appellant submitted reports and physician's notes from Dr. Michael Adams, a Board-certified family practitioner. In a report dated March 17, 2007, he indicated that appellant had sustained a strain of his lumbar region on March 12, 2007. Dr. Adams stated that "he was working and basically was walking around and twisted his lower back." He noted that appellant did not recall anything specific, "just acute onset of pain in the lower back." In an accompanying work restriction form, Dr. Adams indicated that appellant was able to return to work on March 16, 2007 with restrictions, including minimal stooping, twisting and bending and lifting no more than 10 pounds. In response to a question as to whether he believed appellant's condition was a result of industrial exposure, Dr. Adams stated, "Yes." On March 19, 2007 he diagnosed lumbar strain and indicated that appellant was "not authorized" to work on March 14 and 15, 2007, but that modified work was authorized from March 16 to 21, 2007. On March 21, 2007 Dr. Adams stated that appellant was completely asymptomatic and was able to return to work with no restrictions. Appellant also submitted a July 13, 2001 report from Dr. Alec J. Karty, a Board-certified osteopath, specializing in occupational medicine, and a June 18, 2003 decision from the Department of Veterans Affairs relating to a service-connected left foot condition.

Appellant submitted a sworn statement dated April 3, 2007, in which he indicated that on March 12, 2007 he had driven the shop mule (warehouse tractor) to Compound D. At approximately 11:30 a.m., he stopped the mule to look at some electrical generators and opened the driver door to get out. Appellant stated his belief that, when he stepped out and down to exit the mule, he hurt his lower back "somehow." He indicated that the "pain was not so bad until later in the day," and that, before going home at 3:30 p.m., he informed his supervisor that his back was "starting to hurt more."

In a merit decision dated May 7, 2007, the Office denied appellant's claim, finding that the evidence was insufficient to establish that the event had occurred as alleged and, therefore, insufficient to establish that he had sustained an injury under the Federal Employees' Compensation Act.

[1] The Board notes that the imaged version of the CA-1 reflects that the date of the alleged injury was March 13, 2007. However, the original, hand-written version of the CA-1 reflects the date of injury as March 12, 2007.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act has the burden of proof to establish 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 performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident, or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that

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[2] 5 U.S.C. § 8101 *et seq.*

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury," as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q), (ee).

[7] *See Betty J. Smith, supra* note 6.

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[9]

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[10]

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his back on March 12, 2007.

Appellant claimed in his CA-1 form that on March 12, 2007 he sustained a lumbar strain at work, "while exiting the shop mule" in Compound D. He mentioned no detailed account of and stated no apparent cause for the injury. Appellant presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor has he even alleged that he experienced a specific event, incident or exposure at a definite time, place and manner.[11] No evidence whatsoever was presented of a causal relationship between the alleged injury and a diagnosed condition.

Appellant's vague recitation of the facts as he perceived them does not support his allegation that a specific event occurred which caused an injury.[12] In fact, there are inconsistencies in the evidence which cast serious doubt on the validity of his claim. In his sworn statement dated April 3, 2007, appellant indicated that on March 12, 2007 he had driven the shop mule to Compound D; that at approximately 11:30 a.m., he stopped the mule to look at some electrical generators and opened the driver door to get out; and that when he stepped out and down to exit the mule, he hurt his lower back "somehow." However, on March 17, 2007 Dr. Adams related appellant's report that he was "working and basically was walking around and twisted his lower back." He also noted that appellant did not recall anything specific, "just acute onset of pain in the lower back." Appellant has given inconsistent versions of the facts surrounding his alleged injury but has not presented any probative evidence to corroborate either of them. As Ms. Hyland did not actually witness the alleged incident, her statement is of limited probative value. Moreover, her report merely documents appellant's uncertainty as to the cause of his claimed back condition. Additionally, appellant's representation that his back "hurt" does

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *See Betty J. Smith*, *supra* note 6; *see also Tracey P. Spillane*, *supra* note 6.

[12] *See Dennis M. Mascarenas*, *supra* note 9.

not describe the occurrence of an injury, but rather describes the result of an injury, which could have occurred at any time, or over a period of time.

In *Tracey P. Spillane*,[13] an employee filed a claim alleging that she sustained an allergic reaction at work. However, because she did not clearly identify the aspect of her employment which she believed caused her to suffer the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves," the Board held that she had not adequately specified the employment factors which she felt caused her need for medical treatment, nor did she specify details such as the extent and duration of exposure to any given employment factors. Medical reports reflected that the employee had not clearly reported to her physicians that she felt her claimed condition was due to a specific and identifiable employment factor. Similarly, in the instant case, appellant's allegations are vague and speculative and do not relate with specificity the cause of the injury (*e.g.*, the fact that he tripped or slipped on a step), or the exact and immediate consequence of the injury (*e.g.*, the fact that he fell, stumbled, had to sit down, or twisted his back as he lowered his body from the mule). Therefore, appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty, and it is not necessary to discuss the probative value of the medical reports.[14]

Appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged, or that the alleged incident caused his condition.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a traumatic injury to his back in the performance of duty on March 12, 2007.

[13] *See Tracey P. Spillane*, *supra* note 6.

[14] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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