United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 07-1946**
	)	**Issued: December 27, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
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 July 17, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 3, 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 January 30, 2006.

FACTUAL HISTORY

On January 30, 2006 appellant, a 56-year-old firefighter, filed a traumatic injury claim alleging that he injured his back on that date while riding in a fire truck. He stated that, while he was "sitting in the rear of the fire apparatus, the driver came to an abrupt and violent stop causing [him] to sprain/strain [his] lower back." Supervisor Anthony Volpe controverted the

claim, noting that appellant was already favoring his back when he reported for duty on the date in question.

On February 16, 2006 the Office informed 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 requested appellant to provide a detailed description as to how the injury occurred, including the cause of the injury and statements from any witnesses or other documentation supporting his claim.

Appellant submitted a report dated February 7, 2006 from Dr. Richard D. Hindes, a Board-certified orthopedic surgeon. He provided diagnoses of lumbosacral strain and previous osteoarthritis, right hip and the history of injury, as reported by appellant. Appellant stated that he was riding in the rear seat of the fire engine when the driver stopped abruptly, causing him to fly forward, injuring his back. He indicated that he had acute onset of low back pain at the time of the accident and was taken to the North Shore Veterans Hospital emergency room for evaluation.

In a report dated January 30, 2006, Dr. Mark Williams, a Board-certified general surgeon, indicated that appellant reported to the employee health emergency room "with sudden low back pain sustained while twisting, while riding on a fire truck earlier this morning with no trauma." He diagnosed lumbar muscle strain.

On February 8, 2006 Mr. Volpe expressed his opinion that the injury was not work related, as appellant was already favoring his back when he reported to work on January 30, 2006. He stated that appellant may have aggravated his back condition when the truck stopped noting that he complained of pain immediately thereafter.

On February 24, 2006 the employing establishment controverted appellant's claim, citing numerous inconsistencies in the evidence. It provided witness statements, dated February 9, 2006, from fellow firefighters. Joseph Zuco stated that he observed appellant limping and bent over at the beginning of his tour on the date of the alleged injury. In describing the stop alleged by appellant to have caused his injury, Mr. Zuco indicated that "when the vehicle stopped, [he] did [not] move at all." Christopher Pross stated that the vehicle stopped at a stop sign and that appellant's description of the stop as "violent and abrupt" was "untrue" and "exaggerated." He indicated that the stop was hard, "but not hard enough to throw anyone out of their seat or hurt them." Mr. Volpe stated that he "absolutely would not use the words 'abrupt and/or violent'" to describe the stop.

In a letter to the Office dated March 11, 2006, appellant stated that, at the time of the alleged January 30, 2006 accident, he was riding in the rear of the fire truck after a call. The driver was arguing with the shift operator, when he "suddenly jammed his foot on the brake pedal, throwing [him] forward on the seat that [he] was in." He stated that he was able to grab onto a fire extinguisher that was mounted in front of him and landed on his knees on the floor of the vehicle, twisting his back in the process. Appellant related that immediately following the incident he experienced extremely sharp pain in his lower back which required emergency room treatment.

In a February 28, 2006 report, Dr. Peter J. Stumpf, a chiropractor, indicated that appellant injured his back on January 30, 2006 when he was an unrestrained passenger in a fire truck that suddenly stopped short. Dr. Stumpf stated that appellant had no prior history of injury to this area.

On March 7, 2006 Dr. Hindes indicated that x-rays of the lumbar spine showed mild degenerative changes. Noting that appellant had marked limitation in the range of motion in his right hip, he stated that appellant's primary problem was "clearly" degenerative arthritis of the right hip.

In a decision dated May 3, 2006, the Office denied appellant's claim on the grounds that he failed to establish fact of injury, as 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 claimed condition.

On September 13, 2006 appellant, through his representative, requested reconsideration of the Office's May 3, 2006 decision. Counsel contended that there were no inconsistencies in the facts presented; that appellant's version of the facts should stand as there was no strong or persuasive evidence refuting his allegations; that appellant had not been provided with his coworkers' statements; and that the Office had abused its discretion by failing to consider the medical evidence.

On March 19, 2007 the Office provided appellant's representative with comments and witness statements submitted by the employing establishment. The Office allowed counsel 20 days to respond to the comments and statements.

By decision dated May 3, 2007, the Office denied modification of its May 3, 2006 decision finding that appellant had failed to establish that the injury occurred at the time, place and in the manner alleged.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] 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."[3]

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

[1] 5 U.S.C. §§ 8101 *et seq.*

[2] 5 U.S.C. § 8102(a).

[3] 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).

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.[4] 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.[5]

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.[6]

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.[7] 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 the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[8]

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.[9]

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

[5] *Betty J. Smith*, 54 ECAB174 (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).

[6] *See Betty J. Smith*, *supra* note 5.

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

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

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

ANALYSIS

As noted above, the first element of fact of injury requires that appellant submit evidence establishing that an incident occurred at the time, place and in the manner alleged.[10] The Board finds that he has failed to meet his burden of proof to establish that he sustained a traumatic injury to his back on January 30, 2006.

There are inconsistencies in the evidence which cast serious doubt on appellant's claim. In his CA-1 form, appellant claimed that on January 30, 2006 he injured his back while riding in a fire truck. He stated that, while he was "sitting in the rear of the fire apparatus, the driver came to an abrupt and violent stop causing [him] to sprain/strain [his] lower back." Appellant told Dr. Hindes that he was riding in the rear seat of the fire engine when the driver stopped abruptly, causing him to fly forward. He reported to Dr. Williams that he twisted his back while riding on a fire truck. On March 11, 2006 appellant stated that, at the time of the alleged accident the driver was arguing with the shift operator when he "suddenly jammed his foot on the brake pedal, throwing [him] forward on the seat that [he] was in." He stated that he was able to grab onto a fire extinguisher that was mounted in front of him and landed on his knees on the floor of the vehicle, twisting his back in the process. Appellant has given inconsistent versions of the facts surrounding his alleged injury, but has not presented any probative evidence to corroborate any of them, despite the fact that at the time of the alleged incident he was a passenger on a fire truck returning from a call along with a truckload of fellow firefighters.

The evidence from appellant's coworkers and supervisor disputes that the claimed incident occurred as alleged. He was observed limping, bent over and favoring his back at the beginning of his tour on January 30, 2006 before the alleged injury occurred. Mr. Pross stated that appellant's description of the stop as "violent and abrupt" was "untrue" and "exaggerated." He indicated that the stop was hard, "but not hard enough to throw anyone out of their seat or hurt them." Mr. Zuco stated that, "when the vehicle stopped, [he] did [not] move at all." Mr. Volpe stated that he "absolutely would not use the words 'abrupt and/or violent'" to describe the stop. The Board notes that a claimant's relation of an employment incident carries great probative value and will stand unless refuted by strong or persuasive evidence.[11] Appellant's characterization of the circumstances surrounding his claimed injury is contradicted by numerous witness statements, none of which support that he fell out of his seat and/or twisted his back on January 30, 2006. The Board finds that the evidence submitted contains such inconsistencies as to cast doubt on the validity of appellant's claim.[12] Accordingly, the Board finds that appellant has not met his burden of proof in establishing that he experienced an employment-related incident at the time, place and in the manner alleged.[13]

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[10] *See Betty J. Smith, supra* note 5; *see also Tracey P. Spillane, supra* note 5.

[11] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[12] *See S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007).

[13] As appellant did not establish an employment incident alleged to have caused her injury, it is not necessary to consider any medical evidence. *Bonnie A. Contreras*, 57 ECAB ___ (Docket No. 06-167, issued February 7, 2006).

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 January 30, 2006.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 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