United States Department of Labor
Employees' Compensation Appeals Board

NELSON BEE, JR., Appellant	)	
and	)	**Docket No. 05-1187**
	)	**Issued: August 15, 2005**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Farmington, NM, Employer	)	

Appearances:
Nelson Bee, Jr., 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 5, 2005 appellant filed a timely appeal from a February 22, 2005 merit decision of the Office of Workers' Compensation Programs which denied his claim for an injury on September 29, 2003 and an April 19, 2005 decision which denied his request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury on September 29, 2003; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 6, 2003 appellant, then a 32-year-old maintenance worker, filed a traumatic injury claim, alleging that on September 29, 2003 he inhaled dust clouds while spreading the product Benseal on the bottom of a dirt pond in Trail Canyon. He stated that he developed pain

and a sharp scratchy feeling in his chest and was spitting white mucus. Pat Begay, a coworker, reported witnessing appellant inhale dust on September 29, 2003. Appellant did not stop work.[1]

In support of his claim, appellant submitted an October 9, 2003 Office note completed by Jeff Pollock, PAC, and Dr. Frederick Mosley,[2] which provided a history of very minimal exposure to Benseal and a preceding three-week history of chest tightness and discomfort. On examination the chest was clear to auscultation without wheezes, rales or rhonchi and no cough or sputum production were present. Chest x-rays were normal. The report diagnosed "likely lower respiratory infection with possible mild but resolving aggravation from Benseal." Appellant was advised that he could return to full duties. He also submitted an Office Form CA-16 dated October 9, 2003, completed by Mr. Pollock, which reported the same findings and conclusions.

By letter dated January 18, 2005, the Office informed appellant of the evidence needed to support his claim. He did not respond. In a decision dated February 22, 2005, the Office found that the September 29, 2003 incident occurred as alleged but denied the claim because the record did not contain a medical diagnosis related to the accepted exposure. On March 14, 2005 appellant requested reconsideration and resubmitted the October 9, 2003 medical reports. By decision dated April 19, 2005, the Office denied appellant's reconsideration request, finding that the medical evidence was repetitious.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[5] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in

[1] The Board notes that the claim form was not forwarded to the Office by the employing establishment until January 4, 2005.

[2] Dr. Mosley's credentials could not be ascertained.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Gary J. Watling*, 52 ECAB 278 (2001).

[5] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[6]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.[8] 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 causal relationship.[9]

ANALYSIS -- ISSUE 1

The Office accepted that the September 29, 2003 incident occurred. Appellant, however, failed to meet his burden of proof to establish that he sustained an injury caused by this incident. Dr. Mosley noted the history of the Benseal inhalation with a previous three-week history of chest congestion and diagnosed "likely lower respiratory infection with possible mild but resolving aggravation from Benseal." The Board, however, has long held that, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[10] Dr. Mosley couched his report in speculative terms and also provided no rationale for his observation that the dust inhalation possible caused an aggravation of a preexisting respiratory infection. This report does not constitute a reasoned medical opinion explaining how the September 29, 2003 incident caused or contributed to a

[6] *Gary J. Watling, supra* note 4.

[7] *Jacqueline M. Nixon-Steward,* 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler,* 45 ECAB 365 (1994).

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

[10] *Patricia J. Glenn,* 53 ECAB 159 (2001).

medical condition. Appellant thus did not establish the critical element of causal relationship and did not meet his burden of proof.[11]

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[12] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[13] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[14] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[15]

ANALYSIS -- ISSUE 2

In his letter requesting reconsideration, appellant did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[16]

With respect to the third above-noted requirement under section 10.606(b)(2), appellant merely submitted medical evidence previously of record.[17] The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[18] Appellant therefore did not submit relevant and

[11] *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.608(b).

[14] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[15] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[16] 20 C.F.R. § 10.606(b)(2).

[17] The Board also notes that the CA-16 form report cannot be considered competent medical evidence as section 8101(2) of the Act defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[17] A physician's assistant such as Mr. Pollock does not meet the statutory definition of a "physician" under the Act and thus cannot render a medical opinion on the causal relationship between a physical condition and accepted employment factors. *Ricky S. Storms*, 52 ECAB 349 (2001).

[18] *James A. Castagno*, 53 ECAB 782 (2002); *Eugene F. Butler*, 36 ECAB 393 (1984).

pertinent new evidence not previously considered by the Office, and the Office properly denied his reconsideration request.

CONCLUSION

The Board finds that, although appellant sustained an employment incident on September 29, 2003, he did not meet his burden of proof to establish that this incident caused an injury. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 19 and February 22, 2005 be affirmed.

Issued: August 15, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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