United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 07-984**
	)	**Issued: August 9, 2007**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Leadville, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 8, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 8, 2006 denying his traumatic injury claim and the January 26, 2007 nonmerit decision denying his request for reconsideration. Pursuant to 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 sustained a traumatic injury while in the performance of duty on October 3, 2006; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 4, 2006 appellant, a 31-year-old forestry technician, filed a traumatic injury claim alleging that on October 3, 2006 he injured his back as he was hauling tundra and carrying racks in the performance of duty. He did not stop working.

Appellant submitted undated prescriptions and an October 3, 2006 attending physician's report from Dr. Wayne Callen, Board-certified in the field of family medicine, providing a diagnosis of left leg sciatica. The record also contains a report of an October 13, 2006 telephone call, in which Dr. Callen informed the employing establishment that appellant should not work until he was examined by an orthopedist. On October 26, 2006 the Office asked Dr. Callen to provide all medical records related to the diagnosis and treatment of the injury sustained by appellant on October 3, 2006.

In notes dated October 13, 2006, Dr. Callen stated that appellant "worked trail crew doing lifting" and had been experiencing pain in his back and down his leg, which was improving. He characterized appellant's condition as lumbar disc disease. On October 25, 2006 Dr. Callen indicated that appellant's leg and buttock pain continued and diagnosed left leg sciatica. An October 13, 2006 report of an x-ray of the lumbar spine reflected no significant abnormalities of the spine, but showed "questionable abnormality symphysis pubis which could represent artifact."

On November 2, 2006 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 October 3, 2006 injury resulted in the diagnosed condition. The Office informed him that sciatica was not considered a diagnosis, but rather was a symptom characterized by pain.

Appellant submitted a November 6, 2006 Physician's Report of Workers' Compensation Injury from Dr. Scott E. Raub, a Board-certified physiatrist. The report indicated that the date of injury was October 3, 2006 and provided a work-related diagnosis of "LBP(L) [lower back pain (left)] pain (HNP L4-5/L5-6)." In an accompanying request for a magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Raub stated that the purpose of the scan was "to evaluate for L5-S1/L4-5 HNP." In response to an inquiry as to whether the injury was work related, he circled the word, "yes." In a narrative report dated November 6, 2006, Dr. Raub indicated that appellant was injured at work on October 3, 2006 while repeatedly lifting rocks and hauling buckets. He noted the onset of low back pain across the L5 junction and out to the left iliac area. Dr. Raub reported lateral thigh pain, occasional lateral calf pain. He provided an impression of low back pain, with left leg pain and possible left L5 or S1 radicular pain. The record contains an October 19, 2006 report of an x-ray of the pelvis.

By decision dated December 8, 2006, the Office denied appellant's claim, finding that he had failed to establish the fact of injury. The Office accepted that the incident occurred as alleged, but found that appellant had submitted no medical evidence providing a specific diagnosis which could be connected to the established event.

On January 5, 2007 appellant requested reconsideration. He submitted physical therapy notes from J. Graham, a physical therapist, for the period December 1 through 8, 2006, reflecting appellant's pain in his back, hips and left leg.

By decision dated January 26, 2007, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

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 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," consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

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.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] 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] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

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[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).

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

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). 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] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

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

[8] *Florencio D. Flores*, 54 ECAB 250 (2004).

[9] 20 C.F.R. § 10.303(a).

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 -- ISSUE 1

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident occurred as alleged. The issue, therefore, is whether he has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Contemporaneous medical evidence of record includes an October 3, 2006 attending physician's report from Dr. Callen providing a diagnosis of left leg sciatica. In notes dated October 13, 2006, Dr. Callen stated that appellant had been experiencing pain in his back and down his leg, which was improving. On October 25, 2006 he indicated that appellant's leg and buttock pain continued and diagnosed left leg sciatica. Dr. Callen characterized appellant's condition as lumbar disc disease. These documents lack probative value for several reasons. Dr. Callen's characterization of appellant's condition must be considered more a reflection of his symptoms rather than a specific diagnosis.[11] The Board has held that a diagnosis of pain does not constitute a basis for payment of compensation.[12] Nonspecific diagnoses of sciatica and lumbar disc disease, without details describing the nature of these conditions, are insufficient to establish appellant's claim. Moreover, the reports fail to provide an opinion as to the cause of appellant's condition. The Board has long held that medical evidence which does not offer any opinion regarding causal relationship is of limited probative value.[13]

Dr. Raub's reports are also insufficient to establish appellant's claim. On November 6, 2006 he diagnosed low back pain, with left leg pain and "possible" left L5 or S1 radicular pain. As noted above, a diagnosis of pain is considered a symptom rather than a specific diagnosis. Additionally, Dr. Raub's diagnosis was not definitive. He stated that appellant was injured at work on October 3, 2006 while repeatedly lifting rocks and hauling buckets. In response to an

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

[11] *Thomas L. Hogan*, 47 ECAB 323 (1996).

[12] *See Robert Broome*, *supra* note 4. Dorland's defines "sciatica" as a syndrome characterized by pain radiating from the back into the buttock and into the lower extremity. The term is also used to refer to pain anywhere along the course of the sciatic nerve. *See* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (30th ed. 2003).

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

inquiry as to whether the injury was work related, he circled the word, "yes." However, Dr. Raub did not provide detailed results of an examination or explain the nature of the relationship between appellant's condition and the work-related incident. A report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[14] As Dr. Raub's opinion was not rendered to a reasonable medical certainty and was not supported by medical rationale explaining the nature of the relationship between a diagnosed condition and the established incident, it is of diminished probative value.[15]

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and doctor's opinion, with medical reasons, on the cause of his condition. He failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed condition was caused or aggravated by his employment, he has not met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty causally related to factors of employment. The Board, therefore, affirms the Office's December 8, 2006 and January 26, 2007 decisions denying benefits for appellant's claimed back condition.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[16] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> (1) Shows that the Office erroneously applied or interpreted a specific point of law; or
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> (2) Advances a relevant legal argument not previously considered by the Office; or
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> (3) Constitutes relevant and pertinent new evidence not previously considered by the Office.[17]

[14] *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[15] *John W. Montoya*, *supra* note 10.

[16] 5 U.S.C. § 8128(a).

[17] 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[18]

ANALYSIS -- ISSUE 2

Appellant's January 5, 2007 reconsideration request neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. The Board finds that 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).

Appellant also failed to meet the third requirement of constituting relevant and pertinent new evidence. In support of his reconsideration request, he submitted physical therapy notes signed by Mr. Graham, a physical therapist. Pursuant to section 8101(2) of the Act, the term "physician" includes surgeons, podiatrists, dentists, psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice.[19] Lay individuals, such as physical therapists, are not physicians as defined by the Act. Therefore, their opinions do not constitute competent, relevant evidence. The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his January 5, 2007 request for reconsideration.

CONCLUSION

The Board finds that 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 October 3, 2006. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[18] 20 C.F.R. § 10.608(b).

[19] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 1928, issued November 23, 2005).

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2007 and December 8, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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