

**United States Department of Labor
Employees' Compensation Appeals Board**

M.R., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
EMERGENCY PREPAREDNESS &
RESPONSE, Alexandria, VA, Employer**)

**Docket No. 07-687
Issued: June 15, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated October 10, 2006 finding that he had not established an injury on June 2, 2006 causally related to his federal employment. Pursuant to 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 has met his burden of proof in establishing that he sustained an inguinal hernia in the performance of duty.

FACTUAL HISTORY

On June 5, 2006 appellant, then a 61-year-old program specialist mapping, filed a traumatic injury claim alleging that on June 2, 2006 "he picked up a box of maps and felt something give in the groin area right side." He also indicated that he pushed a box with the inside of his foot and felt something pop.

Dr. Timothy K. Bowers, Jr., a Board-certified surgeon, indicated that appellant was totally disabled beginning on June 14, 2006. He stated that appellant would undergo surgery on June 20, 2006. Dr. Bowers performed a laparoscopic repair of a right inguinal hernia to treat a recurrent right inguinal hernia on June 20, 2006.

In a letter dated August 28, 2006, the Office informed appellant that additional information was required to establish that he sustained an injury in the performance of duty.¹ The Office requested a detailed medical report explaining how appellant's employment incidents resulted in the diagnosed condition. The Office allowed appellant 30 days to submit the requested information. He did not respond.

By decision dated October 10, 2006, the Office denied appellant's claim finding that he failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition of recurrent inguinal hernia and the employment incidents on June 2, 2006.²

LEGAL PRECEDENT

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.³ This medical opinion must be based upon a complete factual and medical background with an accurate history of appellant's employment injury. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

ANALYSIS

Appellant filed a claim for an inguinal hernia and surgical repair as a result of his accepted employment incident on June 2, 2006. The Office accepted that the employment incidents occurred as alleged, but denied appellant's claim finding that he failed to submit sufficient medical evidence to establish a causal relationship between his diagnosed condition

¹ The Office's August 28, 2006 letter stated that appellant had submitted a report dated November 4, 2004 from Dr. Stephen Wills. This report is not contained in the record. On appeal appellant asserts that he did not submit this report. Therefore, the Board will find that the Office inadvertently included this statement in the August 28, 2006 letter and that this inclusion was harmless error.

² Following the Office's October 10, 2006 decision, appellant submitted additional new evidence with his appeal to the Board. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

³ *Steven S. Saleh*, 55 ECAB 169, 172 (2003).

⁴ *James Mack*, 43 ECAB 321, 328-29 (1991).

and resulting surgery and his accepted employment incidents. The only medical evidence in the record consists of reports from Dr. Bowers, a Board-certified surgeon, dated June 14 and 20, 2006. Dr. Bowers indicated that appellant was totally disabled and performed a laparoscopic repair of a right inguinal hernia. He did not mention appellant's history of employment injury on June 2, 2006 and did not offer any medical opinion regarding the relationship between appellant's employment and his diagnosed conditions. Dr. Bowers did not provide medical opinion addressing the causal relationship between appellant's employment incidents on June 2, 2006 and his diagnosed right inguinal hernia. His reports are not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his employment incidents. The Office properly denied appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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