United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 09-901**
	)	**Issued: November 13, 2009**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Boston, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 23, 2009 appellant filed a timely appeal from a July 21, 2008 decision of the Office of Workers' Compensation Programs that denied his claim and a January 21, 2009 decision that denied 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 met his burden of proof to establish that he sustained an employment-related back injury on May 25, 2004; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a). On appeal appellant contends that his claim should be accepted.

FACTUAL HISTORY

On June 1, 2004 appellant, then a 46-year-old law enforcement officer, field office director, filed a Form CA-1, traumatic injury claim, with his employing establishment, alleging

that on May 25, 2004 he pulled a muscle in his left lower back with pain radiating into the groin and left leg while lifting a plastic crate filled with files. John Lawyer, a witness, advised that on May 25, 2004 appellant reported to him that he strained his lower back. In an attached statement dated June 5, 2008, appellant asserted that he completed the claim form and forwarded it to employing establishment headquarters where it was lost. He noted that he used 168 hours of leave due to the injury. In support of his claim, appellant submitted emergency department notes dated May 29, 2004 with illegible signatures that reported a history that three weeks previously appellant had scrotal and left testicular pain that had resolved and on the prior Tuesday had left leg pain with lifting. Physical examination demonstrated normal testicles, normal left thigh, normal reflexes, and no leg or vertebral tenderness. Left groin pain was diagnosed, and medication was prescribed. A June 12, 2004 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated annular bulges and facet hypertrophy at L4-5 and L5-S1 which caused narrowing of the exit foramen bilaterally. On June 21, 2004 Dr. John B. Sledge, III, a Board-certified orthopedic surgeon, advised that appellant could return to work on June 22, 2004. Appellant filed a schedule award claim on June 6, 2008.

By letter dated June 19, 2008, the Office informed appellant of the evidence needed to support his claim, and in a separate letter also dated June 19, 2008, informed him that, as his claim had not been adjudicated or accepted, the Office would not take action on the schedule award claim.

Appellant submitted a June 9, 2004 treatment note in which Dr. Sledge noted that appellant had a two to three week history of left groin and leg pain and now had numbness in the proximal anterior thigh. Physical examination demonstrated no tenderness to palpation. Straight leg raising was negative. An MRI scan was recommended. On June 21, 2004 Dr. Sledge diagnosed left anterior thigh pain, numbness and weakness unrelated to disc herniation, L4-5 and L5-S1 mild foraminal stenosis, and spondylosis of the lumbar spine without lower back pain. On July 28, 2004 he reported that, after nearly one month of rest, appellant's leg pain had gone but that he had a bit of right low back pain. Dr. Sledge provided physical examination findings, noted his review of the MRI scan films, and recommended physical therapy. In an October 13, 2004 treatment note, he advised that appellant was seen in follow-up and noted an almost complete resolution of his symptoms with no leg pain, numbness or tingling and occasional achiness and stiffness in his low back in the morning. Dr. Sledge recommended home exercise.

By decision dated July 21, 2008, the Office found that May 25, 2004 employment lifting incident occurred but denied the claim on the grounds that the medical evidence was insufficient to establish that appellant sustained an employment injury. In a separate July 21, 2008 letter, appellant was notified that, as his claim was denied, he was not entitled to a schedule award. On October 10, 2008 he requested reconsideration. In a nonmerit decision dated January 21, 2009, the Office denied his reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2]

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.[3] 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 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.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] 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.[6] 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.[7]

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[4] *Gary J. Watling*, *supra* note 2.

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

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

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

ANALYSIS -- ISSUE 1

The Board finds that the May 25, 2004 lifting incident occurred in the performance of duty. The medical evidence of record, however, is insufficient to establish that appellant sustained an injury or medical condition caused by this incident. The May 29, 2004 emergency room report contains illegible signatures, and the Board has held that medical reports lacking proper identification cannot be considered as probative evidence in support of a claim.[8] None of Dr. Sledge's reports provided a cause of the diagnosed condition, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] Likewise, the MRI scan studies did not include an opinion regarding the cause of any diagnosed condition.[10]

To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[11] 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 support with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[12] Appellant did not do so in this case and thus did not establish the critical element of causal relationship.[13]

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[14] Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[15] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new

[8] *D.D.*, 57 ECAB 734 (2006).

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

[10] *Id*.

[11] *Gary J. Watling, supra* note 2.

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

[13] *Jacqueline M. Nixon-Steward*, *supra* note 5.

[14] 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.608(a).

evidence not previously considered by the Office.[16] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[17]

ANALYSIS -- ISSUE 2

In his October 20, 2008 request for reconsideration, appellant merely checked on an Office form that he requested reconsideration. He therefore 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).[18] With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence. As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his reconsideration request.[19]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury causally related to the May 25, 2004 employment incident and 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).

[16] *Id.* at § 10.608(b)(1) and (2).

[17] *Id.* at § 10.608(b).

[18] *Id.* at § 10.606(b)(2).

[19] *Supra* note 16; *see Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 21, 2009 and July 21, 2008 be affirmed.

Issued: November 13, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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