United States Department of Labor
Employees' Compensation Appeals Board

ROY T. HOUSTON, Appellant	)	
and	)	
DEPARTEMENT OF VETERANS AFFAIRS, JEFFERSON BARRACKS VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO, Employer	)	**Docket No. 04-1703** **Issued: December 29, 2004**

Appearances:
Roy T. Houston, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 25, 2004 appellant timely filed an appeal from a May 11, 2004 decision by the Office of Workers' Compensation Programs which found that appellant had not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that his strangulated hernia occurred in the performance of duty.

FACTUAL HISTORY

On September 11, 2003 appellant, then a 50-year-old housekeeper aide, filed a claim for a recurrence of disability beginning May 20, 2003 causally related to an April 3, 1995 employment injury. He submitted an April 23, 2003 report from Dr. George Ro, a radiologist,

who indicated that he examined appellant on April 20, 2003 and related that appellant was lifting a bag of laundry the day before, weighing approximately 80 pounds when he felt a pop in his groin. Appellant stated that the hernia increased in size overnight and was currently causing severe pain which prevented him from working. Dr. Ro noted that appellant had a history of ventral hernia repair five to six years previously with a colon polyectomy in 2001. He diagnosed an incarcerated right paramedian incisional hernia. Dr. Ro commented that appellant was not obstructed. He noted that there was a risk for strangulation but concluded that appellant did not currently have that problem.

In a December 3, 2003 report, Dr. David J. Meiners, a Board-certified surgeon, indicated that he was called to examine appellant in an emergency room. He noted that appellant had either an incarcerated or strangulated ventral hernia. Dr. Meiners commented that appellant had a previous ventral hernia repair. He stated that appellant had the recurrent ventral hernia for some time. Dr. Meiners reported that appellant had no significant pain until the morning of December 2, 2003 when he came to the emergency room due to severe pain. He diagnosed a recurrent strangulated ventral hernia and performed a repair of the hernia with mesh and extensive adhesiolysis.

Appellant was advised by an official with the Employee Health Department of the employing establishment that his claim would be reclassified as a traumatic injury claim because he had identified a specific mechanism of injury on a given shift. In a March 31, 2004 letter, the Office informed appellant that the evidence of record was insufficient to support his claim because the evidence was not sufficient to support that he provided timely notification of his employment injury or that he was injured while performing any duty of his employment. The Office also stated that appellant had failed to submit a physician's opinion on how his injury resulted in the diagnosed condition. The Office instructed appellant to explain how the injury occurred and why he delayed in filing a claim. The Office noted the discrepancy between appellant's claim of a May 20, 2003 recurrence of disability and Dr. Ro's report which suggested that the injury occurred on April 19, 2003. The Office asked appellant to explain the discrepancy. Appellant was given 30 days to submit the information requested by the Office.

In a May 11, 2004 decision, the Office indicated that appellant had not responded to the March 31, 2004 letter. It noted that appellant had called on May 11, 2004 to state that he had not received the March 31, 2004 letter. The Office stated that it sent a copy of the March 31, 2004 letter to appellant. The Office denied appellant's claim for compensation on the grounds that he had not met the requirements for establishing that he sustained an injury as defined by the Federal Employees' Compensation Act.

LEGAL PRECEDENT

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the

employment incident caused a personal injury.[1] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[2] A claimant seeking benefits under the Act[3] has the burden of establishing by reliable, probative, and substantial evidence that any disability for work or specific condition for which compensation in claimed is causally related to the employment injury.[4] To establish causal relationship between a condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5] Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.[6]

ANALYSIS

Although appellant filed a claim for a recurrence of disability due to his accepted 1995 hernia condition, the employing establishment and the Office reclassified the claim as a traumatic injury claim based upon the report of Dr. Ro who stated in an April 20, 2003 report that appellant had experienced groin pain after lifting an 80-pound bag of laundry the day before.[7] Appellant was asked by the Office to explain how his injury occurred on April 19, 2003. Appellant did not respond to the Office's request. He has not established that he was injured at the time, place or in the manner alleged because he has never provided a written statement describing the manner of injury.

Appellant also did not submit the required medical evidence. The reports of Dr. Ro and Dr. Meiners only discussed the diagnosis and treatment of appellant's hernia. Neither physician gave a reasoned medical opinion on whether appellant's injury was related to his employment. Appellant did not submit any additional medical evidence that contained such a medical opinion.

CONCLUSION

Appellant has failed to meet his burden of proof that he sustained an injury in the performance of duty that resulted in a strangulated hernia.

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[1] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[2] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *See Frazier V. Nichol*, 37 ECAB 528 (1986).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

[6] 20 C.F.R. § 10.115(e).

[7] Appellant's claim for recurrence of disability remains unadjudicated.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated May 11, 2004, is affirmed.

Issued: December 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member