United States Department of Labor
Employees' Compensation Appeals Board

JAMES EVERSOLE, Appellant	)	
and	)	**Docket No. 04-1904**
	)	**Issued: December 14, 2004**
U.S. POSTAL SERVICE, SOUTHSIDE POST OFFICE, Little Rock, AR, Employer	)	

Appearances:
James Eversole, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 26, 2004 appellant filed a timely appeal from the merit decision dated March 18, 2004, denying his claim on the grounds that fact of injury in the performance of duty was not established. He also appealed the June 30, 2004 decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty on February 2, 2004; and (2) whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 3, 2004 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim alleging that on February 2, 2004 he pulled a muscle in the lower right side of his back

while filing documents in the bottom drawer of a file cabinet. The employing establishment controverted the claim.

In support thereof, appellant submitted an activity status report dated February 3, 2004 by Dr. William Warren, who listed his diagnosis as "lumbar pain." In a duty status report of the same date, he indicated that appellant sustained right muscular back pain which occurred when he was bending. Appellant was advised that he could return to work

By letter to appellant dated February 9, 2004, the Office requested that he submit further information. In response, appellant submitted another portion of Dr. Warren's report of February 2, 2004. Dr. Warren indicated that appellant stated that he hurt himself while bending over in a chair filing documents, that the pain was located on the right lumbosacral region, that the pain did not radiate and that his diagnosis was "lumbar pain." Appellant also submitted reports by his physical therapist.

By decision dated March 18, 2004, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury. The Office found that although the evidence indicated that the claimed event occurred, there was no medical evidence that provided a diagnosis which could be connected to the event.

By letter dated March 31, 2004, appellant requested reconsideration.

By decision dated June 30, 2004, the Office denied appellant's claim without reviewing the case on the merits.

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 filed within the applicable time limitation; that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[4]

[1] 5 USC §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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

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.[5]

ANALYSIS -- ISSUE 1

In the instant case, it is not disputed that an employment incident occurred on February 2, 2004 as appellant was filing documents in a file cabinet while in the performance of duty. However, he has failed to establish a medical diagnosis that was associated with that incident. The only medical doctor to submit reports was Dr. Warren. He listed his diagnosis as "lumbar pain" on the right side of his back from filing. However, pain is considered a symptom and not a diagnosis.[6] Furthermore, his description of appellant's pain was based primarily on appellant's complaints and there were no objective findings in the record. There is no other medical evidence in the record. Accordingly, appellant has failed to establish that he sustained an injury causally related to the February 2, 2004 employment incident.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[7] the Office's regulation provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[8]

ANALYSIS -- ISSUE 2

Appellant does not make any argument that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Furthermore, appellant did not submit any new medical evidence. Accordingly, the Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously considered by the Office. The Office properly denied reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for compensation. The Board further finds that the Office properly denied appellant's request for reconsideration.

[5] *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294 issued January 15, 2003).

[6] *Ruth Seuell*, 48 ECAB 188 (1996).

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b)(2)(i-iii).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 30 and March 31, 2004 are hereby affirmed.

Issued: December 14, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member