United States Department of Labor
Employees' Compensation Appeals Board

KENNETH M. JONES, Appellant	)	
and	)	**Docket No. 04-161**
	)	**Issued: June 14, 2004**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Salem, VA, Employer	)	

Appearances:
Kenneth M. Jones, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 28, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated October 9, 2003. 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 sustained an injury in the performance of duty on August 24, 2003.

FACTUAL HISTORY

On August 24, 2003 appellant, then a 41-year-old certified nursing assistant, filed a traumatic injury claim alleging that on that day he sustained a strain to the right side of his chest and back while repositioning a patient in a chair. The claim was not accompanied by any medical documentation.

By letter dated September 8, 2003, the Office advised appellant that the information he submitted was insufficient to support his claim because it did not establish that he experienced the incident or employment factor alleged to have caused his injury. The Office requested that he submit a detailed report from his attending physician, including a diagnosis of his condition and an explanation if the doctor believed that the condition was caused or aggravated by his injury.

Appellant then submitted an August 24, 2003 employing establishment's report indicating that he was treated on that day for an injury and was provided work restrictions,[1] an unsigned report from the employing establishment's clinic indicating that he was treated on August 24, 2003 for a possible right shoulder muscle strain due to lifting a patient, a sick leave slip, an election of physician form signed by appellant, duty status report placing him on total disability as a result of a right chest wall strain,[2] all dated August 25, 2003 and an August 28, 2003 employing establishment's accident report noting that he sustained a sprain/strain of the right side of his chest, lower back and buttocks on August 24, 2003 while attempting to reposition a patient in a chair in an inpatient sitting room.

In a report dated August 24, 2003, Dr. Michael Scott Herlevic, an emergency room physician Board-certified in internal medicine, stated that appellant related that he was pulling a patient backwards into a Geri chair on that date when he felt a spontaneous ache in his arm and that he noticed more aching approximately five hours later. The physician advised that appellant had normal muscle strength in the upper extremity, full range of motion with resistance at adduction, abduction, flexion and extension of the arm and normal flexion and extension of the back. Dr. Herlevic noted mild point tenderness over the scapular process in the back, but also advised that there was no spinal tenderness or low back pain. He diagnosed appellant with musculoskeletal strain, prescribed medication and advised him to see his personal physician or to return to the emergency room if his pain continued for more than two to three days or if he had trouble with his medication. Appellant was not given working restrictions. In a September 12, 2003 duty status report, a doctor returned him to full duty.[3]

By decision dated October 9, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish fact of injury. The Office explained that, while the evidence of record supported that the claimed event occurred, there was no medical evidence that provided a diagnosis that could be connected to the event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employee's Compensation Act[4] has the burden of establishing the essential elements of his or her claim, including the fact that the

[1] The signature on the form is illegible.

[2] The doctor's signature is illegible.

[3] The doctor's signature is also illegible.

[4] 5 U.S.C. §§ 8101-8193.

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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence to establish that the employment incident caused the personal injury.[6]

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician 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.[8] The Office cannot find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act.

ANALYSIS

In this case, the Office determined that appellant failed to submit sufficient evidence to establish that he sustained an injury as a result of the accepted August 24, 2003 incident at the time, place and in the manner alleged. The Board, however, is not persuaded. In his August 24, 2003 report, Dr. Herlevic related appellant's musculoskeletal condition to the employment incident which occurred earlier that day. He noted that appellant was leaning forward and using his arms to pull a large patient backwards into a Geri chair. Dr. Herlevic diagnosed a musculoskeletal strain, noting some mild point tenderness over the scapular process in the back. The Board finds that the evidence in this case is sufficient to establish that appellant sustained an injury causally related to the August 24, 2003 employment incident. He sought medical treatment on the day of the injury and underwent a medical examination that day which diagnosed a muscle strain. The medical evidence is, therefore, sufficient to establish fact of injury in this case.

[5] *Gabe Brooks*, 51 ECAB 184 (1999).

[6] *Gloria J. McPherson*, 51 ECAB 441 (2000).

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

[8] *Id*.

CONCLUSION

On remand, the Office should further develop the record with regard to the nature and extent of any disability causally related to the injury. After such further development as is necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: June 14, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member