United States Department of Labor
Employees' Compensation Appeals Board

STANLEY YIP, Appellant	)	
and	)	**Docket No. 05-1930**
	)	**Issued: December 13, 2005**
U.S. POSTAL SERVICE, SAN FRANCISCO AIR MAIL CENTER, San Francisco, CA, Employer	)	

Appearances:
Stanley Yip, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 14, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decisions dated May 19 and July 28, 2005 which denied his claim for injury and reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained an inguinal hernia on January 7, 2005, causally related to factors of his federal employment; and (2) whether the Office properly denied appellant's request for further merit review, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 2, 2005 appellant, then a 56-year-old postal clerk, filed an occupational disease claim (Form CA-2) claiming that, after lifting a large volume of express mail on January 7, 2005,

he felt pain between his legs. He described his injury by noting that he "may be experiencing a hernia." Appellant stated that he did not file a Form CA-1 at the time of injury because he was hoping that the pain would go away. He did not stop work. A coworker, Judie R. Figueras, provided a statement noting that she agreed with appellant's claim as he told her he had been feeling pain since January, and that it occurred while he was working with her. On March 9, 2005 a supervisor addressed appellant's activities as a transfer clerk, and indicated that appellant failed to provide any medical documentation of a causal relationship between his pain and his employment factors.

In a March 18, 2005 letter, the Office advised appellant that it was treating his claim as a traumatic injury since he claimed that his condition "occurred within one single work shift/day." It requested clarification of his symptoms, his diagnosed condition, any relationship with employment and why he delayed seeking medical treatment. The Office also requested further information regarding the incident, the diagnosis and supporting medical evidence.

In a March 24, 2005 response, appellant stated that he had filled out a Form CA-1 but was told that it was not the correct form. He submitted a Form CA-2. He claimed that he told his employer of his injury but did not put his claim in writing because he thought the pain would subside. Appellant attributed the cause of his injury to lifting express mail sacks to be weighed and dispatched, noting that the sacks could weigh as much as 70 pounds. He did not immediately seek medical attention because he did not know he had sustained a hernia, and that he assumed that the pain would go away.

In support of his claim, appellant submitted an adult progress note from Dr. Crawford Chung, a Board-certified critical care specialist and pulmonologist, who noted that appellant "has left inguinal on lifting heavy objects. No dribbling. Has weak urine stream." Dr. Chung diagnosed "No [illegible] edema early left inguinal hernia, benign prostatic hypertrophy." He referred appellant to Dr. Russell D. Woo, a general surgeon. On March 24, 2005 Dr. Woo provided a form report indicating that appellant had "slight discomfort left inguinal swelling" and asthma. He diagnosed "left inguinal hernia." Upon examination, Dr. Woo found a "reduc[i]ble left inguinal hernia" with "positive occult blood."

In a decision dated May 19, 2005, the Office denied appellant's claim, finding that the medical evidence did not establish that his hernia condition was causally related to the incident of lifting heavy mail. The Office noted that it had advised appellant of the deficiencies of his claim and that his physicians must explain how the incident caused his condition. The Office noted that the medical evidence did not establish that the claimed hernia condition resulted from the heavy lifting of mail sacks.

On May 28, 2005 appellant requested reconsideration and referred the Office to his treating physician for clarification. He provided his job description and claimed that he had videotapes and photographs of where the injury took place. Appellant contended that the Office misunderstood that the injury occurred just after one night of heavy lifting, and that heavy lifting was part of his daily chores. He referred the Office to photographs of his working area which are not of record. Appellant claimed that he was not initially given a Form CA-1 and that the injury

compensation office was responsible for helping him with workers' compensation but had done nothing to date.

By decision dated July 28, 2005, the Office denied appellant's request for reconsideration. The Office found that the evidence submitted by appellant was irrelevant to the issue of whether the diagnosed inguinal hernia was causally related to the work incident of January 7, 2005.

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.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal 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.[4]

A person who claims benefits under the Act[5] has the burden of establishing the essential elements of his claim. A claimant has the burden of establishing by reliable, probative, and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.[6] As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.[7] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[8] Such a relationship must be

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

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

[5] 5 U.S.C. § 8101 *et seq.*

[6] *Margaret A. Donnelly*, 15 ECAB 40 (1963).

[7] *Daniel R. Hickman*, 34 ECAB 1220 (1983).

[8] *Juanita Rogers*, 34 ECAB 544 (1983).

shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.[9]

ANALYSIS -- ISSUE 1

There is no dispute that appellant was lifting a large volume of mail on January 7, 2005 when he experienced pain between his legs. The issue is whether the diagnosed left inguinal hernia resulted from the lifting incident of January 7, 2005. The Board finds that appellant has failed to submit sufficient medical evidence to establish that the employment incident caused his injury. The medical evidence from Dr. Chung diagnosed early left inguinal hernia and benign prostatic hypertrophy, but did not provide any opinion on the issue of causal relationship. Dr. Chung did not discuss the lifting incident of January 7, 2005. Dr. Woo diagnosed slight discomfort and left inguinal hernia without providing any opinion on causal relation. He diagnosed reducible left inguinal hernia and benign prostatic hypertrophy, positive for occult blood. His reports, however, did not address causation or the relationship of the diagnosed condition to the accepted lifting activities.

Appellant has failed to provide sufficient rationalized medical evidence to relate his diagnosed left inguinal hernia to the lifting of mail sacks on January 7, 2005. For this reason, he has failed to provide medical evidence sufficient to establish his claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[10] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[11] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant submitted a letter which contained contentions concerning the employing establishment's handling of his claim and a transfer clerk

[9] *See Edgar L. Colley*, 34 ECAB 1691 (1983).

[10] 5 U.S.C. § 8128(a) ("[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[11] 20 C.F.R. § 10.606(b)(2).

[12] 20.C.F.R. § 10.608(b). *See also Judy L. Kahn*, 53 ECAB 321 (2002).

job description. He presented no arguments to show that the Office erroneously applied or interpreted a specific point of law, advanced relevant and pertinent argument not previously considered by the Office, or relevant and pertinent new evidence not previously considered by the Office relative to the issue of whether he sustained a left inguinal hernia in the performance of duty on January 7, 2005. His contentions are not relevant to the underlying issue of causal relationship.

CONCLUSION -- ISSUES 1& 2

Appellant failed to submit sufficient rationalized medical evidence addressing causal relationship to establish that he sustained a hernia in the performance of duty on January 7, 2005, as alleged. The Office properly denied his request for further merit review, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 28 and May 19, 2005 are hereby affirmed.

Issued: December 13, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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