United States Department of Labor
Employees' Compensation Appeals Board

JOHN H. RODE, JR., Appellant	)	
and	)	**Docket No. 04-1923**
	)	**Issued: February 16, 2005**
DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD, Baltimore, MD, Employer	)	

Appearances:
John H. Rode, Jr., 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 30, 2004 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated June 25, 2004, which found that he failed to establish that he sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on March 11, 2004.

FACTUAL HISTORY

On March 17, 2004 appellant, a 56-year-old ship fitting worker, filed a traumatic injury claim alleging that he injured his lower back on March 11, 2004 while "carrying rope and keeping up with lead man rope got hung up on a chuck and pulled me down." The employing establishment controverted the claim stating that appellant never mentioned falling to the health nurse, that he only noted "he jerked the rope" and that when asked if he fell, he replied "No."

His supervisor noted that March 15, 2004 was the first he knew about the incident as that was the date appellant reported it to the safety office.

In a report dated March 17, 2004, Dr. Leonard K. Kassis, a treating physician, diagnosed a lumbar strain. He noted that appellant had back complaints due to an injury sustained on March 11, 2004 when he injured his back when the rope he was carrying "got hung upon a tie on the wing wall and the rope pulled down." Dr. Kassis attributed appellant's lumbar strain to the March 11, 2004 incident. He stated that appellant "was injured by the mechanism described above."

Dr. Kassis noted on March 19, 2004 that appellant had not been working since no light-duty work was available. He reported that appellant sustained a lumbar strain due to a March 11, 2004 employment injury and reviewed the history of the alleged injury as provided by appellant. A physical examination revealed "moderate tenderness of the lower back diffusely," decreased passive and active range of motion and "all directions limited by pain."

In a March 26, 2004 report, Dr. Robert H. Toney, a treating Board-certified family practitioner, diagnosed lumbar strain, noted back surgery 20 years prior and L5-S1 spondylolisthesis. He related that appellant sustained an injury on March 11, 2004 at work when the rope he was carrying "got hung upon a tie on the wing wall and the rope pulled down." Appellant related that "he had l[ower] b[ack] p[ain] initially with b[ack] anterior thigh pain" and that "he relaxed over the weekend with no relief." He reported to work on the following Monday but was unable to function due to lower back pain and back anterior thigh pain.

In an April 1, 2004 report, Dr. Edward Seidel, a treating Board-certified internist, diagnosed a lumbar strain, history of back surgery and L5-S1 spondylolisthesis. He related that appellant sustained an injury on March 11, 2004 at work when the rope he was carrying "got hung upon a tie on the wing wall and the rope pulled down." Appellant stated that "he had requested orthopedic referral at the onset of his injury and this was denied."

By letter dated May 26, 2004, the Office advised appellant that the information he submitted was insufficient to support his claim. The Office requested additional factual and medical evidence. He was requested to provide information as to why he did not seek medical treatment until March 17, 2004. Appellant did not respond to the Office's request.

By decision dated June 25, 2004, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury in the performance of duty. The Office explained that the evidence was insufficient to establish that the March 11, 2004 incident occurred as alleged.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury[1] in the performance of duty, it must first be determined whether a "fact of injury" has been established.

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[1] Office regulations 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. 20 C.F.R. § 10.5(ee).

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. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[2] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[3] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[4] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[5]

The second component is whether the employee has submitted sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a 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 incident. The opinion of the physician must be based on a complete factual and medical background of the claimant,[8] 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.[9]

Neither the fact that a condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relationship.[10]

ANALYSIS

The Office found that appellant failed to submit sufficient evidence to establish that the March 11, 2004 event occurred as alleged. It found that appellant failed to timely seek medical attention for the injury and his description of how the injury occurred on the Form CA-1

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

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[5] *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002).

[6] *Beverly A. Spencer*, 55 ECAB ___ (Docket No. 03-2033, issued May 3, 2004); *Gloria J. McPherson*, 51 ECAB 441 (2000).

[7] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004).

[8] *Steven S. Saleh*, 55 ECAB ___ (Docket No. 03-2232, issued December 12, 2003).

[9] *Kathy A. Kelley*, 55 ECAB ___ (Docket No. 03-1660, issued January 5, 2004).

[10] *Phillip L. Barnes*, *supra* note 7.

conflicted with the evidence of record. The Office requested that appellant provide witness statements, an explanation of why he delayed seeking medical treatment and a further description of the event, which he did not do.

The Board has held that a claimant's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11] Moreover, an injury does not have to be confirmed by witnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action.[12] In the instant case, appellant sought medical attention on the date of injury when he was treated by the employing establishment's health unit nurse. While appellant was not seen by his treating physician until March 17, 2004, the delay in seeking treatment by Dr. Kassis was done within a reasonable amount of time since he was seen by Dr. Kassis six days after the incident occurred. With regards to the filing of his claim and description of the incident, appellant stated that he injured himself on March 11, 2004 when he "was carrying rope and keeping up with lead man rope got hung up on a chuck and pulled me down." His delay in filing a claim is not so great since he filed the claim on March 17, 2004 and the incident occurred on March 11, 2004, some six days later. Although the employing establishment controverted the claim on the grounds that appellant's statement was inconsistent, the Board finds appellant's description of the incident is not inconsistent. Appellant has consistently stated on his claim form, in the history given to Drs. Kassis, Seidel and Toney and to the employing establishment health unit nurse that he injured himself while carrying a rope which "got hung up on a chuck and pulled" him down. Appellant never stated he fell. He did not list any witness to the incident on his CA-1 form as none was necessary given the consistency of his statement, and Dr. Kassis described the March 11, 2004 employment incident as noted by appellant in his reports of March 17 and 19, 2004. In addition, Dr. Seidel, in an April 1, 2004 report, and Dr. Toney, in a March 26, 2004 report, describe the March 11, 2004 incident as stated by appellant. The Board finds that there is no contrary evidence to cast doubt on the occurrence of the incident and that the evidence is sufficient to establish that appellant established an employment incident on March 11, 2004, as alleged.

Since the Office did not address whether the medical evidence established that the March 11, 2004 incident resulted in an injury, the case will be remanded for further development to the Office to determine whether the March 11, 2004 incident resulted in a compensable injury. Thereafter, the Office should issue a *de novo* decision on the issue of whether appellant sustained an injury in the performance of duty on March 11, 2004, as alleged.

CONCLUSION

The Board finds that appellant established that the March 11, 2004 incident occurred at the time, place and in the manner alleged. On remand, following any necessary further development, the Office should issue a *de novo* decision on the issue of whether the March 11, 2004 employment incident resulted in a compensable injury.

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[11] *Thelma Rogers*, 42 ECAB 866, 869-70 (1991).

[12] *See Shirley A. Temple,* 48 ECAB 404, 407 (1997); *Joseph H. Surgener* 42 ECAB 541, 547 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 25, 2004 is modified in part and set aside in part and the case remanded for further proceedings consistent with this opinion.

Issued: February 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member