United States Department of Labor
Employees' Compensation Appeals Board

AARON E. HAILES, Appellant	)	
and	)	**Docket No. 04-2290**
	)	**Issued: March 14, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Dunwoody, GA, Employer	)	

Appearances:
Aaron E. Hailes, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 17, 2004, finding that he did not sustain an injury as alleged. The record also contains an Office decision dated August 13, 2004 denying his request for reconsideration, pursuant to 5 U.S.C. § 8128(a). Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on April 3, 2004; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 20, 2004 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging that he was walking up and down several flights of stairs after a route adjustment and aggravated a preexisting back condition sustained in the military. He first

became aware of the injury and its relation to his work on April 3, 2004. Appellant stopped work on April 3, 2004. The employing establishment controverted the claim.

Appellant submitted an undated discharge instruction sheet from the medical center that referred him for a right upper pulmonary consultation, an April 5, 2004 outpatient log report for the acute child care unit, an April 8, 2004 note indicating he was seen on that day for diagnostic testing, and a copy of his salary information.

In letters dated April 30, 2004, the Office requested additional factual and medical evidence from appellant and the employing establishment.

Appellant submitted information concerning instructions on taking various medications including an enzyme inhibitor, a calcium channel blocker and a proton pump inhibitor. In a certification of visit dated April 27, 2004, a person whose signature is illegible noted that appellant was treated for hypertension and low back pain on that day and was placed on total disability from April 6 to 28, 2004.

In a May 11, 2004 report, a supervisor stated that appellant carried mail on a new adjusted route for the first time on April 3, 2004 with no reported injury. He then returned to work on April 29, 2004 and again carried mail on the adjusted route. At the end of the workday, appellant cleaned out his locker and reported to his new bid station. The supervisor noted that appellant did not file an accident report and only requested sick leave for April 6 to 28, 2004 with no reference to a work-related injury.

An April 28, 2004 note from a registered nurse indicated that appellant was under a doctor's care and was unable to work from April 6 to 28, 2004.

By decision dated June 17, 2004, the Office denied the claim finding that appellant failed to submit sufficient factual evidence to establish that the employment incident occurred as alleged. The Office also found that appellant failed to submit the necessary medical evidence in support of his claim.

Appellant requested reconsideration of the Office's June 17, 2004 decision on June 28, 2004. In a separate statement dated June 28, 2004, appellant alleged that, on November 6, 2001, he injured his right knee, ankle, foot, hand and aggravated his back. He alleged that this was not included in the papers he submitted and that this was the reason he was requesting reconsideration.

The Office received a duplicate of the April 28, 2004 nurse's note, an unsigned laboratory report, an outpatient appointment slip, certificate of visit noting an appointment on November 7, 2001.

In a letter dated April 6, 2004, sent to his congressional representative, appellant questioned the new workload distribution for postal carriers in his post office, as he was the last or among the last of the carriers to return from his route on April 3, 2004. He indicated a concern for wear and tear on his back inasmuch as he had a prior back injury sustained during the Vietnam War.

By decision dated August 13, 2004, the Office denied appellant's request for reconsideration finding that he failed to submit either new and relevant evidence or legal contentions not previously considered.

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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[4]

ANALYSIS -- ISSUE 1

Appellant alleged that his preexisting back condition was aggravated while walking up and down several flights of stairs after a route adjustment. The Office denied the claim finding that he did not establish that the claimed events occurred as alleged and because the medical evidence did not relate his back condition to the claimed events. The Board finds, however, that there is no evidence refuting that the claimed employment factor -- walking up and down stairs at

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Id.*

work -- occurred. Consequently, the Board finds that appellant has established that he walked up and down stairs at work. However, appellant has submitted insufficient medical evidence to establish that his back condition was caused or aggravated by walking up and down steps at work or by other factors of his federal employment.

Although the medical records indicate that appellant was treated for hypertension and back pain on April 27, 2004 and unable to work from April 6 to 28, 2004, there is no medical opinion from a physician explaining how factors of appellant's employment, such as walking up and down stairs, caused or contributed to his back condition or aggravated his preexisting back condition. It also is not clear if any of the medical records were submitted by a physician.[5] The record contains no rationalized medical opinion explaining the cause of appellant's low back pain and the role of his preexisting back condition in his current condition. The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish his claim in a letter dated April 30, 2004. Appellant also provided several disability slips, however, he did not submit a medical report from his physician that explained how specific duties of his federal employment caused or aggravated his diagnosed condition.

The record also contains a nurse's note. Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[6]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's preexisting military back condition was caused or aggravated by factors of his employment, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.

[5] *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[6] *Jan A. White,* 34 ECAB 515, 518 (1983).

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[8] *Id.*

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[9] the Office's regulations provide that a claimant's application for reconsideration must be submitted in writing and set forth arguments or contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[10] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.[11] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[12]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on June 28, 2004 and submitted evidence which included an unsigned laboratory report, an outpatient appointment slip, and a certificate of visit noting an appointment on November 7, 2001. The Board notes this evidence is not relevant to the issue in the present case regarding an occupational disease arising on or about April 3, 2004.

Appellant also submitted a copy of an April 6, 2004 letter to his congressional representatives addressing concerns regarding the new workload distribution for postal carriers and that he was concerned regarding the wear and tear of his back because of his prior back injury. However, he did not provide information relevant to any employment factors that he alleged caused or aggravated his previous back condition on April 3, 2004.

The Office also received a note from a nurse indicating appellant was under a doctor's care and unable to work from April 6 to 28, 2004. The Board notes that this evidence is not new as it was previously received and considered by the Office.

As appellant did not submit evidence or argument showing that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office and did not submit relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his reconsideration request.

[9] 5 U.S.C. § 8128(a). Under section 8128(a) of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

[10] 20 C.F.R. §§ 10.609(a) and 10.606(b).

[11] 20 C.F.R. § 10.607(a).

[12] 20 C.F.R. § 10.608(b).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board further finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 13 and June 17, 2004 are affirmed.

Issued: March 14, 2005
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member