United States Department of Labor
Employees' Compensation Appeals Board

IAN H. JUST, Appellant	)	
and	)	**Docket No. 05-80**
	)	**Issued: March 11, 2005**
DEPARTMENT OF HOMELAND SECURITY, SEATAC INTERNATIONAL AIRPORT, Seattle, WA, Employer	)	

Appearances:
Ian H. Just, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 4, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 14, 2004 finding that he was not entitled to continuation of pay for his federal employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant's claim was properly treated as a claim for an occupational disease rather than a traumatic injury occurring on February 20, 2004; and (2) whether appellant is entitled to a claim for continuation of pay for his absence from work from February 24 to April 8, 2004.

FACTUAL HISTORY

On February 24, 2004 appellant, then a 24-year-old transportation screener, filed a notice of traumatic injury alleging that on February 20, 2004 he sustained injury to the muscles that

connect the right shoulder, neck and upper back. Appellant stated, "Discomfort occurred in the neck, shoulder and upper back that gradually became painful resulting in muscle spasms and sharp pain." Appellant stopped work on February 24, 2004.

In a form report dated February 24, 2004, Dr. Leslie A. Becker, a Board-certified family practitioner, listed appellant's history of injury as "lifting bags continuously x 5 days, gradual onset neck pain." He diagnosed cervical strain.

The Office accepted appellant's claim for cervical strain on April 22, 2004. However, the Office noted that based on Dr. Becker's report appellant's claim was considered a claim for an occupational disease and that as such he was not entitled to continuation of pay. The Office recommended that appellant file a claim for compensation for any lost wages. Appellant filed a claim on May 6, 2004 requesting compensation for leave buy back from April 4 to May 1, 2004.[1]

Appellant submitted a report dated May 26, 2004 from Georgie Kelley, a physician's assistant, which described appellant's history of injury as lifting heavy bags repeatedly at the employing establishment.[2] The remainder of the factual and medical evidence does not contain a description of how appellant's injury occurred.

By decision dated June 14, 2004, the Office denied appellant's claim for continuation of pay as the evidence of record established that his injury developed gradually over several days.[3]

LEGAL PRECEDENT -- ISSUE 1

The Office's 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[4] On the other hand, an occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.[5]

[1] The Office has not issued a final decision on this claim and the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

[2] A physician's assistant is not a "physician" for the purposes of the Federal Employees' Compensation Act and this report does not constitute medical evidence. 5 U.S.C. §§ 8101-8193, 8101(2); *John D. Williams*, 37 ECAB 238 (1985).

[3] Following the Office's June 14, 2004 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[4] 20 C.F.R. § 10.5(ee).

[5] 20 C.F.R. § 10.5(q).

ANALYSIS -- ISSUE 1

In the instant case, the Board finds that the Office properly changed appellant's claim for a traumatic injury into a claim for an occupational disease. The only evidence that linked appellant's current condition to his employment duties is the February 24, 2004, report from Dr. Becker, a Board-certified family practitioner, listing appellant's history of injury as "lifting bags continuously x 5 days, gradual onset neck pain" and diagnosing cervical strain. This report in concert with appellant's statement on the claim form that his neck, shoulder and upper back that gradually became painful clearly indicates that appellant's injury was caused by lifting over a period of time that was greater than one day. There is no indication that a specific event occurred that would make this a claim for traumatic injury. Accordingly, the Board finds that the Office properly treated appellant's case as a new occupational disease claim.[6]

LEGAL PRECEDENT -- ISSUE 2

Section 8118 of the Act[7] provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of the title."[8]

Furthermore, the regulations indicate that, for most employees who sustain a traumatic injury, the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days.[9] To be entitled to continuation of pay, a person must have sustained a traumatic injury, as defined by the regulations, which is job related and begin losing time from work due to the traumatic injury within 45 days of the injury; and must file a Form CA-1 within 30 days of the date of injury.[10]

ANALYSIS -- ISSUE 2

In this case, appellant filed his claim on the appropriate form to receive continuation of pay, however, as noted above, his claim was not for a traumatic injury as defined by the regulations, but instead developed over the course of more than one day meeting the definition of an occupational disease. As appellant did not establish that his injury occurred on a single date or work shift, he has not established a traumatic injury and is not entitled to continuation of pay.

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[6] *Denise Moore*, (Docket No. 04-383, issued June 1, 2004).

[7] 5 U.S.C. §§ 8101-8196, 8118.

[8] Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of traumatic injury. 5 U.S.C. §§ 8119(a)(c) and 8122(a)(2).

[9] 20 C.F.R. § 10.200.

[10] 20 C.F.R. § 10.205.

CONCLUSION

Appellant's claim for continuation of pay was properly denied and appellant's case was properly treated as an occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2004 is affirmed.

Issued: March 11, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member