United States Department of Labor
Employees' Compensation Appeals Board

CRAIG A. GARDNER, Appellant	)	
and	)	**Docket No. 05-196**
	)	**Issued: March 24, 2005**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, St. Paul, MN, Employer	)	

Appearances:
Craig A. Gardner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 25, 2004 appellant filed an appeal from a September 20, 2004 merit decision of the Office of Workers' Compensation Programs, denying his traumatic injury claim. 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 has established that he sustained an injury on March 25, 2004 in the performance of duty.

FACTUAL HISTORY

On August 3, 2004 appellant, then a 59-year-old transportation security screener, filed a traumatic injury claim alleging that he sustained low back and right hip pain on March 25, 2004 caused by repetitive lifting of baggage in the performance of duty.

By letter dated August 10, 2004, the Office requested additional factual and medical information. The Office provided appellant 30 days within which to submit the requested information.

In a statement dated August 19, 2004, appellant related that his back and hip pain occurred due to the "repetitive lifting of heavy bags" and further stated that the day after his injury he "was unable to perform the required work without pain." He noted that he had not missed any work since March 25, 2004, but had a lifting restriction and was under the care of a physician.

By decision dated September 20, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained an injury as alleged. The Office found that appellant had established the claimed work events, but had submitted no medical evidence in support of his claim.

LEGAL PRECEDENT

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 filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.[3]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[5] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[6]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *Delphyne L. Glover*, 51 ECAB 146 (1999).

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[6] *Id.*

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.[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 employee's alleged injury and the employment incident.[8] The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.[9]

ANALYSIS

In this case, appellant attributed his condition to the repetitive lifting of heavy baggage. There is no dispute that he repeatedly lifted baggage on March 25, 2004 as alleged. The issue is thus, whether he sustained a compensable injury as a result of the March 25, 2004 employment incident.

The Board finds that appellant has not established that the March 25, 2004 employment incident resulted in an injury. The question of whether an employment incident caused an injury is generally established by medical evidence.[10] On August 10, 2004 the Office advised appellant of the type of factual and medical evidence required to establish his claim. He did not, however, provide the Office with additional evidence. As appellant did not provide the medical evidence necessary to substantiate his claim, he has not met his burden of proof. The Office, therefore, properly denied his claim for compensation.

On appeal, appellant argues that he submitted the requested evidence subsequent to the Office's September 20, 2004 decision. The Board may not review evidence for the first time on appeal.[11] This decision, however, does not preclude appellant from requesting reconsideration by the Office based on the newly submitted evidence pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on March 25, 2004 in the performance of duty.

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[7] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[8] *Gary J. Watling*, *supra* note 5.

[9] *See John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

[10] *John W. Montoya*, *supra* note 9.

[11] S*ee* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2004 is affirmed.

Issued: March 24, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member