United States Department of Labor
Employees' Compensation Appeals Board

PETER ABREU, Appellant	)	
and	)	**Docket No. 05-1654**
	)	**Issued: November 8, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Carolina, PR, Employer	)	

Appearances
Peter Abreu, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On August 5, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 14, 2005 hearing representative denial of his claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue is whether appellant has established that he sustained an injury to his back while in the performance of duty on or before October 26, 2002.

FACTUAL HISTORY

Appellant, a 51-year-old letter carrier, filed a Form CA-2 claim for benefits on November 8, 2002 alleging that he injured his back while lifting a heavy box.[1] He stated that he first became aware that his injury was causally related to employment factors on October 26, 2002; however, he also indicated on the form that he first became aware of the illness on

[1] The Office initially adjudicated the claim as one for traumatic injury.

January 13, 1989. Appellant submitted treatment notes from Dr. Jose A. Rodriguez-Ruiz, a specialist in internal medicine and direct patient care, dated November 2 and 7, 2002, from Dr. Francisco Abreu Feshold, a specialist in direct patient care, dated October 14, 2005, and from Dr. Maritza Arroyo-Muniz, Board-certified in psychiatry and neurology, dated November 6, 2002. Dr. Feshold diagnosed cervical stenosis at C3-4. Dr. Arroyo-Muniz diagnosed a herniated nucleus pulposus at L5-S1.

By letter dated December 10, 2002, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether appellant's claimed condition was causally related to his federal employment. The Office requested that he submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

By decision dated July 31, 2003, the Office denied the claim on the grounds that it was untimely filed. On August 12, 2003 appellant requested an oral hearing, which was held on April 19, 2005.

At the hearing, appellant testified that he initially injured his upper back on January 13, 1989 and filed a Form CA-1 claim for traumatic injury. The claim was adjudicated as File No. A2-0597281. Appellant also testified that he continued to work but continued to lose time due to his back condition. He noted that he had sustained two or three injuries at work between January 13, 1989 and October 26, 2002.

By decision dated June 14, 2005, an Office hearing representative denied appellant's claim. The hearing representative vacated the Office's finding in its July 31, 2003 decision that appellant's claim was untimely. However, he stated that, based on appellant's testimony and the medical records he submitted, it was apparent that he had already filed a Form CA-1 claim for traumatic injury on January 13, 1989 which had already been adjudicated by the Office under File No. A2-0597281. The hearing representative found that as appellant had already filed a claim for this same injury, he could not file another claim for the same injury which the Office had already adjudicated. The hearing representative stated that it appeared that appellant had sustained either occupational injury or perhaps a recurrence on or about October 26, 2002. The hearing representative further noted that appellant had been requested to submit evidence to clarify what he was claiming and medical evidence to document that his current back complaints were employment related. He was granted an additional 30 days following the hearing to submit this additional evidence, however, appellant did not submit any further evidence. The hearing representative affirmed the denial of the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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

[2] 5 U.S.C. § 8101-8193.

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.[3] 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.[4]

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[5]

In this regard, 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.[6]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[7] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

In this case, appellant has alleged that he sustained a back injury in 1989 which was accepted as employment related and two or three other back injuries at work after 1989. He has alleged that as a result of these injuries he has required medical treatment and has sustained continuing wage loss. Given appellant's testimony at the hearing held before the Office hearing representative regarding continuing injuries, the Office hearing representative properly found that this claim was in the posture of an occupational disease claim and was timely filed.

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

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

[5] *Lourdes Harris*, 45 ECAB 545 (1994).

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

[7] *Id.*

Although requested to do so by the Office and the hearing representative, appellant has not, however, clarified the nature of the employment factors he alleges caused his other back injuries following the 1989 incident. Furthermore, he has not submitted rationalized, probative medical evidence to establish that any employment factors after the initial 1989 injury caused a personal injury and resultant disability.

The only medical documents appellant submitted were the treatment notes from Dr. Rodriguez-Ruiz, Dr. Feshold and Dr. Arroyo-Muniz. While these reports contained the diagnoses of cervical stenosis and herniated nucleus pulposus at L5-S1, they did not relate these diagnoses to factors of appellant's employment. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[8] Although the reports submitted by appellant presented diagnoses of his condition, they did not indicate whether these conditions were causally related to his employment on or before October 26, 2002. There is no indication in the record, therefore, that his diagnosed conditions were work related. As appellant failed to provide a rationalized, probative medical opinion relating his claimed back condition to any factors of his employment, the Office properly denied his occupational injury claim for a back injury in the performance of duty.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an occupational back injury in the performance of duty on or before October 26, 2002.[9]

[8] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[9] On appeal, appellant has submitted new evidence. However, the Board cannot consider new evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 501(c).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 8, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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