United States Department of Labor
Employees' Compensation Appeals Board

JAN S. STASIUK, M.D., Appellant	)	
and	)	
DEPARTMENT OF THE ARMY, INSTALLATION SAFETY OFFICE, Fort Lee, VA, Employer	)	**Docket No. 05-1644** **Issued: April 17, 2006**

Appearances:
Jan S. Stasiuk, pro se
Miriam D. Ozur, Esq., for the Director

Oral Argument March 15, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2005 appellant filed a timely appeal of a May 31, 2005 merit decision of the Office of Workers' Compensation Programs which denied his claim for compensation. The Board has jurisdiction to review the merits of the case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on March 2, 2005, as alleged.

FACTUAL HISTORY

On March 3, 2005 appellant, then a 68-year-old medical officer, filed a traumatic injury claim alleging that on that date he tripped on a computer cord and fell, sustaining neck pain, headache, dizziness, lower back pain and swelling to the left side of his face. He submitted a March 27, 2005 medical report by Dr. Kim C. Clements, a Board-certified family practitioner,

who indicated that appellant was first seen at the clinic on March 4, 2005 for low back pain and neck pain occurring after an accident at work on March 2, 2005. She noted that, prior to this time, appellant had no problem with back pain. Dr. Clements stated that the bone scan on March 16, 2005 showed no evidence of metastatsis and a computed tomography scan favored an acute fracture with no evidence of healing occurring. In an attending physician's report dated April 7, 2005, she indicated that appellant had a spinal compression fracture at T12. Dr. Clements checked the box indicating that she believed that this condition was caused or aggravated by his employment activity, but did not offer any further explanation. In a note of the same date, she indicated that appellant was unable to return to work.

In response, the employing establishment submitted a report dated March 3, 2005 from Dr. Donald A. Swetter, Board-certified in public health and employed at the employing establishment's clinic. He noted that appellant fell when his leg became entangled in a computer cord at work. Dr. Swetter noted a normal examination, essential hypertension benign and diabetes mellitus Type II, under control. He also noted that appellant had a neck sprain, with pain and mild spasm, especially on the right. On March 4, 2005 he was again evaluated by Dr. Swetter, who indicated that he had a neck sprain and back sprain and was referred to the physician of his choice.

X-rays taken at the employing establishment on March 3, 2005 were interpreted by Dr. Arthur B. Buckner, a Board-certified internist, as showing a normal cervical spine with no post-traumatic change identified. The x-ray report of the lumbosacral spine was interpreted as showing age-indeterminant anterior compression fracture deformity at T12 and disc space narrowing at T12-L1; chronic appearing degenerative disc disease changes at lumbosacral junction and end plate spondylosis changes of the mid and lower vertebral bodies.

In a letter dated April 15, 2005, the acting deputy commander stated that the employing establishment was controverting continuation of pay and questioned appellant's inability to perform light duty.

By letter to appellant dated April 29, 2005, the Office requested that he submit further information in support of his claim. In response, he submitted a medical report dated May 9, 2005 from Dr. Paul P. DiMartino, a Board-certified orthopedic surgeon, who noted that appellant had no history of back pain prior to March 2, 2005 when he fell at work. He noted that testing subsequent to the accident indicated that appellant had an acute T12 compression fracture and that this fracture was consistent with the accident that occurred at work on March 2, 2005. Dr. DiMartino recommended conservative care.

In a May 9, 2005 medical report, Dr. Clements indicated that she had been appellant's primary care physician prior to the accident and that he had no prior history of back problems. She concluded, "It is reasonable to conclude that in a person with no previous history of back pain and only developing back pain after a fall at work with an acute T12 compression fracture demonstrated that the fall is the most likely cause of the fracture." Dr. Clements noted that appellant's cervical sprain was no longer causing him discomfort. In a medical note dated May 12, 2005, she indicated that his return to full duty was "indeterminate."

By decision dated May 31, 2005, the Office denied appellant's claim on the grounds that he had not met the requirements for establishing that he sustained an injury as defined under the Act.

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 has sustained a traumatic injury in the performance of duty, "fact of injury" must first be established.[4] 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.[5] Second, the employee must submit 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 is usually rationalized medical evidence.[7] Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on whether there is a relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[8]

An award of compensation may not be based on appellant's belief on a relationship. Neither the mere fact that a disease or condition manifested itself during a period of employment,

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *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] *Neal C. Evins*, 48 ECAB 242 (1996).

[5] *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

[6] 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (defining traumatic injury).

[7] *Michael E. Smith*, *supra* note 3.

[8] *John W. Montoya*, 54 ECAB 306 (2003).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

The Board finds that appellant did not establish that he sustained an injury in the performance of duty on March 2, 2005, as alleged. The record establishes that the work-related incident occurred as alleged. However, appellant has not established that a medical condition resulted from the incident. Both Dr. Clements and Dr. Swetter, in reaching their conclusions that appellant's injury was work related, indicated that he had no prior problem with his back. However, the mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors.[10] Although Dr. Clements indicated in her April 7, 2005 report that appellant's spinal compression fracture at T12 was caused by his employment, she did not provide adequate explanation as to how the accepted incident caused the fracture. Similarly, the conclusion in Dr. Clements' May 9, 2005 report that it was "reasonable to conclude" that an individual with no prior back pain and an acute T12 depression fracture following a fall that "the fall is the most likely cause of the fracture" without more as to why, is of diminished probative value.

Dr. DiMartino did not explain in his May 9, 2005 medical report how the T12 fracture found on x-ray was consistent with the March 20, 2005 employment injury, except to say that appellant had no prior back pain. As the Board has held that the fact that he was asymptomatic before an injury without rationalized medical opinion is insufficient to establish a claim for compensation.[11]

Accordingly, appellant did not submit medical evidence sufficient to establish that he sustained an injury causally related to the accepted incident of March 2, 2005. In order to be rationalized medical evidence, 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.[12] There is no physician's opinion in the record that contains a comprehensive history of the incident and appellant's medical history accompanied by a rationalized medical opinion linking his employment and the injury. Accordingly, the Office properly denied his claim.

The Board notes that, at oral argument in this case, appellant moved to remove various items from the files. These items included the report of the March 3, 2005 examination by Dr. Buckner, Dr. Swetter's note dated March 3, 2005 indicating that appellant was released

[9] *Id*.

[10] *Michael E. Smith*, 50 ECAB 313, 317 (1999); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[11] *See Michael S. Mina*, 57 ECAB ___ (Docket No. 05-1763, issued February 7, 2006); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[12] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

without limitations, an April 15, 2005 controversion of continuation of pay by the employing establishment and a May 16, 2005 memorandum by Major Edward E. Yackel. Appellant contested the truthfulness of these documents. The Board rejects his motion. When the employing establishment has reason to disagree with any element of appellant's claim, it may file a statement and supporting documents.[13] Furthermore, the employing establishment is responsible for submitting to the Office all relevant and probative factual and medical evidence in its possession.[14] The Office will then weigh all of the evidence. Accordingly, as there was no violation of any regulation or procedure the Board concludes that appellant's motion be and hereby is denied.[15]

CONCLUSION

The Office properly determined that appellant did not establish that he sustained an injury in the performance of duty on March 2, 2005, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 31, 2005 is affirmed.

Issued: April 17, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[13] 20 C.F.R. §10.117.

[14] 20 C.F.R. §10.118.

[15] After oral argument before the Board, appellant submitted a "Request to Not Take Under Consideration the Issue Related to Competence of the March 2, 2005 Fall Accident to Cause Compression Fracture of T12." This request is also denied. As stated *supra*, appellant has the burden to establish all elements of his claim. This includes submission of medical evidence that establishes that the employment incident caused a personal injury. *Elaine Pendleton, supra* note 2.