

FACTUAL HISTORY

On January 26, 2005 appellant, then a 53-year-old screener, filed a traumatic injury claim (Form CA-1) alleging that, on January 23, 2005, he was standing at his station when he experienced pain and a loss of stability in his back and lower left leg. Appellant returned to work on January 27, 2005.

In a January 23, 2005 report, Dr. Matthew Quick, a Board-certified family practitioner, diagnosed a left calf leg strain and recommended light duty, physical therapy and follow-up in 10 days.

In a January 29, 2005 report, Dr. Ray Fitzgerald, a Board-certified orthopedic surgeon, noted that appellant presented with left calf pain since January 23, 2005. He indicated that appellant worked as a screener at an airport and stood in one place for about seven hours a day. Appellant related that there were no injuries other than prolonged standing. Dr. Fitzgerald diagnosed a left calf strain.

In reports dated February 2, 2005, Dr. Donald M. Helphrey, a Board-certified family practitioner, diagnosed a calf strain and advised restrictions of limited standing to four hours per day, intermittently. In a February 17, 2005 report, Dr. Helphrey diagnosed a sprain of the knee and leg and recommended restrictions of no more than four hours a day of standing.

In a letter dated April 11, 2005, the Office requested additional factual and medical evidence from appellant and the employing establishment.

In an April 12, 2005 report, Dr. Quick diagnosed a back strain and released appellant to work on April 18, 2005. On April 21, 2005 Dr. Quick indicated that appellant was followed for a left calf strain sustained while working as an airport screener. He noted that appellant “denied a specific inciting injury,” but that appellant had to stand on his leg constantly and it began to bother him on January 23, 2005. Appellant had tenderness in his left calf associated with a strain and was placed on modified duty with a referral to physical therapy. Dr. Quick advised that appellant was released to full unrestricted duties on April 12, 2005.

An April 7, 2005 magnetic resonance imaging (MRI) scan of the lumbar spine was read by Dr. Allison M. Smith, a Board-certified diagnostic radiologist. She determined that there was no spinal stenosis or nerve root impingement.

In an April 20, 2005 statement, appellant described the circumstances surrounding his injury on January 23, 2005. He was “standing at the walk through magnometer on lane 9” when he felt an “enormous amount of pain in his lower left rear calf/left leg.” He alleged that it began as a “tingle” and became “excruciating.” Appellant also indicated that his injury was “all of a sudden, the duration of which [all] of this occurred lasted probably [one to two] minutes.” From January 23 to 29 2005, he experienced weakness in his left calf and left thigh, numbness and throbbing pain.

On April 26, 2005 the Office received an undated addendum from Dr. Quick which diagnosed a back sprain.

In a decision dated May 13, 2005, the Office denied appellant's claim for compensation on the grounds that he did not establish an injury as alleged. The Office found that he stood at work as alleged, but the medical evidence was insufficient to establish an injury.

Appellant requested reconsideration on May 27, 2005.

In a May 26, 2005 report, Dr. Quick explained that appellant was initially seen for complaint of left calf pain, which had developed on January 23, 2005 secondary to prolonged standing on the job as an airport screener. Appellant was seen four additional times for pain which extended into his left lower back. Appellant was diagnosed with lumbar, thigh and calf strains "caused by the prolonged standing and walking inherent to his job." Dr. Quick advised that appellant was released to full duty on April 18, 2005.

In a July 13, 2005 report, Dr. Quick noted current findings of mild tenderness across the lower lumbar area with limited flexion, recommended continued therapy. He advised that appellant was released to regular duty on April 18, 2005.

The Office also received several reports from Dr. Maria Brooks, Board-certified in family medicine. She diagnosed leg cramps and spasms, noted that appellant's prognosis was good and advised that he could perform regular duty. On July 18, 2005 she advised that appellant was disabled from July 16 and 17, 2005 and could return to regular duty on July 20, 2005.

By decision dated August 25, 2005, the Office denied appellant's request for reconsideration on the grounds that he did not submit relevant new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 Act² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained an injury to his left leg while standing in the performance of his duties on January 23, 2005. The Board finds that the claimed incident -- that appellant was standing in the performance of his duties occurred, as alleged, on that date.

However, the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that standing caused a personal injury on January 23, 2005. The medical evidence contains insufficient rationale or explanation of the mechanism of injury regarding the employment incident on January 23, 2005.⁷

In support of his claim appellant submitted several reports from Dr. Quick dated January 23 and April 12, 2005. He also submitted a January 29, 2005 report from Dr. Fitzgerald and reports dated February 2 and 12, 2005 from Dr. Hephrey. However, these reports did not contain adequate opinion addressing the cause of appellant's left calf condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ The physicians provided various diagnoses such as left leg strain, calf strain and sprains of the left knee and leg.

On April 21, 2005 Dr. Quick diagnosed a back strain. He indicated that appellant was followed for a left calf strain sustained while working as an airport screener. Dr. Quick noted that appellant "denied a specific inciting injury," but that appellant had to stand on his leg constantly. He indicated that appellant's leg began to bother him on January 23, 2005 and diagnosed a left calf strain. However, he did not fully address how the standing required in appellant's job would contribute to a left calf strain. Dr. Quick did not provide a full history of any preexisting conditions and did not reconcile the two diagnoses provided. His reports did not adequately address the relationship between appellant's employment and his injury on January 23, 2005. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value.⁹

Because the medical reports submitted by appellant do not address how the January 23, 2005 incident resulted an injury to appellant's lower back or left leg, they are of limited probative value.¹⁰ The evidence submitted is insufficient to establish that the January 23, 2005 employment incident caused or aggravated a specific injury.

⁶ *Id.*

⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Carolyn F. Allen*, 47 ECAB 240 (1995).

¹⁰ See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

The record also contains reports from physical therapists and nurses. 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.¹¹

The Board notes that appellant did not submit any rationalized medical evidence to support that appellant sustained an injury on January 23, 2005. Absent medical evidence explaining how the January 23, 2005 work-related incident caused a specific injury, appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹² the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”¹³

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁴

ANALYSIS -- ISSUE 2

In support of his May 27, 2005 request for reconsideration, appellant submitted several reports from Dr. Maria Brooks, Board-certified in family medicine. However, these reports are not relevant or pertinent as they do address the issue of causal relationship and do not constitute basis for reopening the claim.

Appellant also submitted a May 26, 2005 report, in which Dr. Quick noted that appellant developed calf pain on January 23, 2005 secondary to prolonged standing on the job. He

¹¹ *Jan A. White*, 34 ECAB 515, 518 (1983).

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b).

¹⁴ 20 C.F.R. § 10.608(b).

explained that appellant's lumbar, thigh and calf strains were "caused by the prolonged standing and walking inherent to his job." The Board finds that this report is relevant as Dr. Quick provided an opinion that appellant's lumbar, thigh and calf strains were caused by prolonged walking and standing in his job. In contrast, Dr. Quick, in his April 21, 2005 report, previously considered by the Office, did provide his own opinion on causal relationship but instead related the history of standing as reported by appellant. Consequently, appellant was entitled to a merit review because the information provided was new, relevant and pertinent.

Accordingly, the Board finds that the Office improperly denied appellant's May 27, 2005 request for reconsideration. Upon return of the case record, the Office shall conduct a merit review of appellant's claim and issue an appropriate decision.

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 improperly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2005 decision of the Office of Workers' Compensation Programs is reversed the case remanded for further action consistent with this decision. The May 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 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