

Ballesteros, a family practitioner, noted that appellant was involved in a motor vehicle accident when his vehicle was rear-ended. He diagnosed a low back spasm and advised appellant to rest at home for a week followed by light-duty work with restrictions. Dr. Ballesteros checked a box “yes” on the form report to indicate that appellant’s condition was caused or aggravated by his automobile accident. Appellant was also referred to a chiropractor for physical therapy.

In a duty status report of March 7, 2006, a chiropractor¹ noted the history of appellant’s motor vehicle accident on March 3, 2006 and diagnosed a strain, sprain, subluxation complex and severe muscle spasm. He opined that appellant was temporarily totally disabled.

In a March 22, 2006 letter, the Office advised appellant that the evidence received was insufficient to establish that he sustained an injury on March 3, 2006. The Office advised appellant to submit a diagnosis of his condition and a comprehensive medical report from his physician, clinic or hospital which described the history of injury, a detailed description of findings, the results of all x-ray and laboratory tests and a rationalized report from a physician diagnosing a condition and supporting a causal relationship between the diagnosed condition and the March 3, 2006 incident. The Office requested that appellant submit additional evidence within 30 days.

In duty status reports of March 8 and 22, 2006, the chiropractor diagnosed vertebral subluxation, neuritis and severe muscle spasm as a result of the motor vehicle accident. He opined that appellant was temporarily totally disabled as a result of his motor vehicle accident.

By decision dated April 26, 2006, the Office denied the claim finding that appellant failed to submit sufficient medical evidence in support of his claim. It found that appellant’s diagnosis was made by a chiropractor, who did not diagnose a spinal subluxation as demonstrated by x-ray.

In a form letter dated June 13, 2006 and postmarked the same day, appellant requested an oral hearing before the Branch of Hearings and Review. Additional reports dated April 24 and 27 and May 5, 2006 from the chiropractor were received.

By decision dated June 23, 2006, the Office denied appellant’s request for an oral hearing on the grounds that it was not timely filed. Appellant was informed that his case had been considered in relation to the issue involved and that the request was further denied for the reason that the issue in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act² 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

¹ The chiropractor’s signature is not discernable from the record.

² 5 U.S.C. §§ 8101-8193.

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 on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.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, generally, is rationalized medical opinion evidence. 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 claimant's diagnosed condition and the implicated employment factors. 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.⁷

ANALYSIS -- ISSUE 1

It is not disputed that appellant was involved in a motor vehicle accident on March 3, 2006 while in the performance of his federal duties. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with this incident. On March 22, 2006 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted a March 3, 2006 form report from Dr. Ballesteros who noted the history of injury and diagnosed a low back spasm. Dr. Ballesteros checked a box "yes" on the form report to indicate that appellant's motor vehicle accident caused or aggravated his diagnosed condition. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.⁸ Dr. Ballesteros did not provide medical reasoning to

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Alberta S. Williamson*, 47 ECAB 569 (1996).

explain the basis of his opinion on causal relationship. As noted above, the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Dr. Ballesteros' report is insufficient to establish appellant's claim.

Appellant also submitted treatment notes from a chiropractor, who noted the history of the injury and diagnosed vertebral subluxation, neuritis and severe muscle spasm as a result of the motor vehicle accident. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that their services are limited to treatment consisting of manual manipulation of the spine to correct subluxations as demonstrated by x-ray to exist.⁹ The Office's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.¹⁰ There is no indication from the record that appellant's chiropractor obtained an x-ray which demonstrated spinal subluxation to support the diagnosis of vertebral subluxation or that his treatment was limited to manual manipulation of the spine. Therefore, appellant's chiropractor is not considered a physician as defined under the Act and his reports are of no probative medical value.

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.¹¹ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.¹² Section 10.615 of the federal regulation implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹³ The Office's regulations provide that the request must be sent within 30 days of the date of the decision, for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.¹⁴

⁹ 5 U.S.C. § 8101(2); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹⁰ 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

¹¹ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² 5 U.S.C. § 8124(b)(1).

¹³ 20 C.F.R. § 10.615.

¹⁴ 20 C.F.R. § 10.616(a).

The Board has held that the Office, in its broad discretionary authority in the administration of the Act,¹⁵ has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹⁷

ANALYSIS -- ISSUE 2

In the present case, appellant's request for a hearing was dated and postmarked June 13, 2006. Section 10.616 of the federal regulation provides: The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.¹⁸ As the postmark date of the request was more than 30 days after issuance of the April 26, 2006 Office decision, appellant's request for a review of the written record was untimely filed.

The Office notified appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. The Office has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.¹⁹ There is no indication that the Office abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.²⁰

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on March 3, 2006. The Board further finds that the Office properly denied his request for a hearing under section 8124 of the Act.

¹⁵ 5 U.S.C. §§ 8101-8193.

¹⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁷ *Teresa M. Valle*, 57 ECAB ____ (Docket No. 06-438, issued April 19, 2006). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

¹⁸ 20 C.F.R. § 10.616.

¹⁹ *Samuel R. Johnson*, 51 ECAB 612 (2000).

²⁰ The Board notes that, following the April 26, 2006 decision, the Office received additional medical evidence. As this evidence was not considered by the Office in its decisions, it is new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the June 23 and April 26, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board