United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 06-1899**
	)	**Issued: December 11, 2006**
U.S. POSTAL SERVICE, TRAVERSE CITY PROCESSING & DISTRIBUTION CENTER, Traverse City, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2006 appellant filed a timely appeal from the June 21, 2006 decision of the Office of Workers' Compensation Programs denying his claim on the grounds that he failed to establish fact of injury in the performance of duty. On August 2, 2006 the Office issued a nonmerit decision denying appellant's request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(1), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that he sustained a back injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 10, 2006 appellant, a 44-year-old mail processing clerk, filed a traumatic injury claim, Form CA-1, alleging that he experienced a "knot in [his] back" while strapping trays in the dispatch area at 3:45 a.m. on May 3, 2006. The employing establishment controverted the claim on the grounds that it was inconsistent with work records and employee behavior.

On May 15, 2006 the Office requested additional information about the claimed injury. Appellant responded with a personal statement, medical records and administrative records from the employing establishment. Appellant's physical therapy providers, Munson Community Health Center, also submitted records.

Appellant stated that the injury occurred after he had strapped a heavy tray of mail and was turning to throw it into a container. He experienced a sharp pain to the left of his right shoulder blade. After the incident, appellant took three days off to see if the pain would ease on its own, but it did not. He denied ever having a similar disability or symptoms.

Dr. William Smith, a Board-certified family practitioner, first treated appellant on May 10, 2006. He noted that appellant had some tenderness around his right rhomboid muscle. Dr. Smith reported that appellant had experienced the pain for one to two weeks prior to the examination. He diagnosed traumatic rhomboid myositis. By checking a box on a Form CA-16, authorization for examination and/or treatment, Dr. Smith also indicated that the condition was caused or aggravated by appellant's employment activities. No details of the alleged work activities were provided.[1] Appellant was placed on physical therapy.

The records provided by Munson Community Health Center included treatment notes and records prepared by physical therapists from May 11 to 17, 2006. The records provide no listing of appellant's work activities.

On June 21, 2006 the Office denied appellant's claim on the grounds that he had not established that his rhomboid myositis was caused by the May 3, 2006 incident of throwing trays of mail.

[1] The record contains a May 10, 2006 Form CA-16 which purports to authorize treatment by West Front Primary Care. Where an employing agency properly executes a CA-16 form authorizing treatment as a result of an employee's claim of sustaining an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Danita E. Lindsey*, 40 ECAB 450, 452 (1989). This form, however, was not properly executed as none of the boxes authorizing care were checked.

On July 19, 2006 appellant filed a request for reconsideration. He did not submit any medical evidence or argument in support of his request. The Office issued a nonmerit decision on August 2, 2006, finding that appellant's request raised no new evidence or substantive legal questions.[2]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the incident caused a personal injury and, generally, this can be established only by medical evidence.[5]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.[6] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty,[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

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[2] Appellant provided additional medical records to the Office on August 15, 2006. These materials do not fall within the Board's jurisdiction and were not reviewed, as they were not part of the record as of the time of the Office's merit or nonmerit decisions. 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS -- ISSUE 1

The Office accepted that the May 3, 2006 work activity of throwing a tray of mail into a container occurred, as alleged. The issue to be resolved is whether this activity caused appellant's back injury.

The Board finds that appellant has not provided sufficient medical evidence to establish that his back condition is causally related to the May 3, 2006 employment incident. Dr. Smith, a Board-certified family practitioner, diagnosed rhomboid myositis several days after the accepted work incident. He noted that he first treated appellant on May 10, 2006 and obtained a history that appellant had experienced pain for one or two weeks. Appellant must provide evidence of how his work activity on May 3, 2006 caused his diagnosed injury. Dr. Smith's reports make no mention of throwing trays of mail, nor do they explain how the accepted incident caused or contributed to appellant's low back condition. Merely checking a box to indicate that the diagnosed injury is related to employment, as Dr. Smith did, is not sufficient to demonstrate causation; the physician must provide additional explanation or rationale.[10] Without the evidence of a causal relationship, appellant cannot meet his burden of proof.

The evidence provided by the Munson Community Health Center did not address the cause of appellant's injury. The Board has held that physical therapist reports have no probative value on medical questions because therapists are not physicians as defined under the Act.[11] Appellant has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Under the Act, the Office has the discretionary authority to determine whether it will review an award for or against compensation.[12] A claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[13] When an application for review on the merits of a claim does not meet at least one of these requirements, the Office will deny the application for reconsideration without reviewing the merits of the claim.[14]

[10] *Deborah L. Beatty*, 55 ECAB 340 (2003).

[11] *James Robinson*, 53 ECAB 417 (2002); *see also* 5 U.S.C. § 8101(2).

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(2).

[14] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant's July 19, 2006 request for reconsideration was not accompanied by any new medical evidence or legal argument. He did not show that the Office had erroneously applied a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence.[15] Because appellant met none of the requirements for obtaining another merit review, the Office did not abuse its discretion in denying his request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury to his back in the performance of duty causally related to factors of his federal employment and that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 2 and June 21, 2006 are affirmed.

Issued: December 11, 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

[15] Appellant did submit new medical evidence on August 15, 2006, but evidence was not before the Office when it issued its August 2, 2006 nonmerit decision.