United States Department of Labor
Employees' Compensation Appeals Board

DAVID A. SPAIN, Appellant	)	
and	)	
DEPARTMENT OF THE INTERIOR, NATIONAL PARKS SERVICE, CHICKASAW NATIONAL RECREATION AREA, Sulphur, OK, Employer	)	**Docket No. 06-493** **Issued: May 3, 2006**

Appearances:
David A. Spain, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 28, 2005 appellant filed a timely appeal from an August 30, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim and a November 23, 2005 decision, which denied his request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an employment-related injury on June 11, 2005; and (2) whether the Office properly refused his request for a review of the written record. On appeal appellant contends that his request for a review of the written record was timely filed.

FACTUAL HISTORY

On June 16, 2005 appellant, then a 39-year-old park ranger, filed a traumatic injury claim, alleging that on June 11, 2005 he injured his left hand while subduing a combative female prisoner. He did not stop work. By letter dated June 27, 2005, the Office informed appellant of the evidence needed to support his claim. In a decision dated August 30, 2005, the Office found the June 11, 2005 incident occurred as alleged but denied the claim on the grounds that appellant failed to submit any medical evidence to show that he sustained an injury caused by the incident. On an Office form dated September 28, 2005, appellant requested a review of the written record. The record also contains a postmark indicating that this was mailed on October 25, 2005. Appellant also submitted an incident report dated June 11, 2005, a June 13, 2005 x-ray report of the left hand and an emergency room report, also dated June 13, 2005. By decision dated November 23, 2005, the Office denied his request for written record review.

LEGAL PRECEDENT -- ISSUE 1

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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

[4] *Gary J. Watling, supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

evidence which includes a physician's rationalized medical 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.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS -- ISSUE 1

The Office properly found that the June 15, 2005 incident occurred. However, appellant failed to meet his burden of proof to establish that he sustained an injury caused by this incident as he did not submit any medical evidence in support of this claim. As noted, in order to establish his claim that he sustained an employment injury, appellant must submit rationalized medical evidence explaining that his elbow condition was caused by the implicated factors.[8] On June 27, 2005 the Office informed appellant of the evidence needed, which was to include a physician's report explaining how the reported condition was caused by employment factors and he was given approximately 30 days to comply. He submitted nothing in response to this letter. Thus, as appellant has failed to establish a *prima facie* claim he sustained an injury on June 11, 2005. He failed to meet his burden of proof and the Office properly denied his claim on August 30, 2005.

While appellant submitted medical evidence with his request for a review of the written record and with his appeal to the Board, the Board cannot consider this evidence as its review of the record is limited to the evidence of record which was before the Office at the time of its August 30, 2005 merit decision.[9] Appellant, however, retains the right to submit this evidence to the Office with a request for reconsideration.[10]

LEGAL PRECEDENT -- ISSUE 2

A claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

[8] *Leslie C. Moore*, *supra* note 6.

[9] 20 C.F.R. § 501.2(c); *see Robert Henry*, 54 ECAB 776 (2003).

[10] *See* 20 C.F.R. §§ 10.605-10.610; *James A. Castagno*, 53 ECAB 782 (2002).

written record as a matter of right.[11] The Board has held that the Office, in its broad discretionary authority in the administration of the Act, 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.[12] 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.[13]

ANALYSIS -- ISSUE 2

The Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. In an August 23, 2005 decision, the Office found that appellant had not established his claim for compensation. In a letter dated September 28, 2005, but postmarked October 25, 2005, he requested review of the written record. As appellant's request was not made within 30 days of the August 30, 2005 decision he was not entitled to a review as a matter of right. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue in the instant case could be addressed through a reconsideration application.

The postmark contained in the case record indicates that appellant's request for a review of the written record was mailed on October 25, 2005. The Board therefore finds that, as appellant's request for a review of the written recode was postmarked October 25, 2005, more than 30 days after the date of the August 30, 2005 decision, the Office properly determined that he was not entitled to a review of the written record as a matter of right as his request was untimely filed.

The Office also has the discretionary power to grant a request for a written record review when a claimant is not entitled to such as a matter of right. In the November 23, 2005 decision, the Office properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue in this case could be addressed through a reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.[14] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's request for a review of the written record which could be found to be an abuse of discretion. The Office therefore properly denied his request.

[11] *Claudio Vazquez*, 52 ECAB 496 (2001).

[12] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[13] *Claudio Vazquez, supra* note 11.

[14] *Id.; see also Daniel J. Perea*, 42 ECAB 214 (1990).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related injury on June 11, 2005. The Office did not abuse its discretion in denying his request for a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 23 and August 30, 2005 be affirmed.

Issued: May 3, 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