United States Department of Labor
Employees' Compensation Appeals Board

JIMMIE D. VANOVER, Appellant	)	
and	)	**Docket No. 06-639**
	)	**Issued: May 15, 2006**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

Appearances:
Jimmie D. Vanover, 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 January 24, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 28, 2005 denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on August 5, 2005.

FACTUAL HISTORY

On August 8, 2005 appellant, a 41-year-old router, filed a traumatic injury claim alleging that he injured his right shoulder, back and right knee on August 5, 2005. In an attached statement, appellant alleged that his injuries were sustained when he was attacked by William Bric outside of building 409.

On August 16, 2005 the Office received an August 5, 2005 disability note signed for a Dr. Veluz by Ray Woodward, RN, an August 5, 2005 emergency room report by Mr. Woodward and an August 8, 2005 report signed by another nurse.[1] The August 5, 2005 disability slip and August 8, 2005 report stated that appellant was not to use his right arm. Mr. Woodward noted in the August 5, 2005 emergency room report that appellant was seen for a right shoulder injury.

In a letter dated August 18, 2005, the Office informed appellant that the evidence of record was insufficient to support his claim and advised him as to the factual and medical evidence required. Appellant was given 30 days to submit the requested information. No response was received.

By decision dated September 28, 2005, the Office denied appellant's claim. The Office accepted that the incident occurred as alleged, but found that the record contained no medical evidence diagnosing a condition.[2]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[4] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[5]

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[1] The signature is illegible.

[2] The Board notes that the record on appeal contains evidence that the Office received after it issued the September 28, 2005 decision. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c); *George A. Rodriguez*, 57 ECAB ___ (Docket No. 05-490, issued November 18, 2005). Therefore, the Board is precluded from reviewing this evidence. Appellant may resubmit this evidence and any legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a); 20 C.F.R. § 10.606(b).

[3] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Paul Foster*, 56 ECAB ___ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[6]

ANALYSIS

In the instant case, the Office found that appellant experienced the August 5, 2005 employment incident. However, it denied the claim because of his failure to submit medical evidence diagnosing a condition arising from the August 5, 2005 employment incident. In order to satisfy his burden of proof, appellant must submit a physician's rationalized medical opinion on the issue of whether a medical condition was caused by the August 5, 2004 employment incident. Appellant failed to submit such evidence

The Board finds that appellant did not submit medical evidence showing that he sustained right shoulder, back and right knee conditions due to the accepted employment incident. In support of his claim, appellant submitted an August 5, 2005 disability note signed by a Dr. Veluz by Mr. Woodward, an August 5, 2005 emergency room report by Mr. Woodward and an August 8, 2005 report by a second nurse. However, a nurse is not a "physician" within the definition of the Act and cannot render a medical opinion on the causal relationship between a given physical condition and an accepted employment incident.[7] Absent any signature from Dr. Veluz adopting the materials submitted by Mr. Woodward, there is no medical evidence to support that the accepted incident caused an injury. Appellant has failed to establish a *prima facie* claim for compensation. There must be medical opinion of a physician supporting causal relationship supported by affirmative evidence, explained by medical rationale and based upon a complete and accurate medical and factual background.[8]

As appellant has not submitted any medical evidence to support that he sustained a right shoulder, back and right leg injury on August 5, 2005, he has not met his burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on August 5, 2005.

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

[7] 5 U.S.C. § 8101(2) of the Act provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. Registered nurses, licensed practical nurses and physicians' assistants are not "physicians" as defined under the Act. *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

[8] *Roy L. Humphrey*, *supra* note 7; *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2005 is affirmed.

Issued: May 15, 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