United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 06-1273**
	)	**Issued: September 6, 2006**
DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, FORT HALL IRRIGATION PROJECT, Fort Hall, ID, Employer	)	

Appearances:
J.D., 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 May 8, 2006 appellant filed a timely appeal from a December 22, 2005 decision of the Office of Workers' Compensation Programs denying his claim for a recurrence of disability and a March 20, 2006 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim and the March 20, 2006 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that he sustained a recurrence of disability commencing June 1, 2005 causally related to the accepted September 23, 2003 left wrist injuries; and (2) whether the Office properly denied appellant's February 8, 2006 request for reconsideration.

FACTUAL HISTORY

The Office accepted that on September 23, 2003 appellant, then a 55-year-old mechanic, sustained a fractured left carpal bone, left carpal tunnel syndrome and a left ischial fracture when he fell off a crane. Dr. Richard A. Wathne, an attending Board-certified orthopedic surgeon, held appellant off work through January 2, 2004. After January 9, 2004 studies showed left median nerve entrapment, he performed a left carpal tunnel release on April 19, 2004. In a May 18, 2004 chart note, Dr. Wathne opined that appellant could return to work in a light-duty capacity in approximately three weeks. In a July 6, 2004 chart note, he related that appellant was doing well with restricted duty,[1] with some residual wrist pain and swelling and "difficulty performing repetitive activities." Dr. Wathne obtained x-rays showing increased dorsal spurring in the left wrist as compared to October 2003 studies. In a September 7, 2004 examination, he noted a restricted range of left wrist motion and reduced grip strength. Dr. Wathne opined that appellant had reached maximum medical improvement.[2] On January 21, 2005 the Office granted appellant a schedule award for a 20 percent permanent impairment of the left upper extremity.

On September 1, 2005 appellant claimed a recurrence of disability commencing June 1, 2005 while on light duty. He attributed his symptoms, including left wrist swelling and pain, to changing mower blades in June 2005. Appellant did not specify if this occurred at work or at home. He also attributed his symptoms to "heavy lifting or using a hammer" at work. Appellant did not stop work.

In a November 10, 2005 letter, the Office advised appellant of the additional evidence needed to establish his claim. The Office requested that he submit relevant evidence regarding whether he was on light duty at the time of the claimed recurrence of disability and whether that assignment "became more demanding … such that it no longer met the restrictions set" by his physician. It noted that if appellant stopped work due to a worsening of the accepted injuries, he must submit a rationalized narrative report from his physician describing "the objective findings which convinced him [that] [appellant's] condition had worsened and explain" why he could no longer perform the duties he was performing when he stopped work. The Office afforded appellant 30 days in which to submit such evidence. Appellant did not submit any evidence.

By decision dated December 22, 2005, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. It found that the medical evidence "failed to demonstrate how the current disability or condition [was] causally related" to the accepted September 23, 2003 injuries.

In a February 8, 2006 letter, appellant requested reconsideration. He submitted three personal letters. On December 27, 2005 appellant noted that he saw a physician on

[1] The date on which appellant returned to work is not of record.

[2] On November 23, 2004 the Office referred the medical record to an Office medical adviser for a schedule award evaluation using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a December 3, 2004 report, an Office medical adviser reviewed the medical record and concurred with Dr. Wathne that appellant attained maximum medical improvement as of September 7, 2004. He opined that appellant sustained a 20 percent impairment of the left upper extremity due to restricted left wrist motion according to Tables 16-28 and 16-31 of the A.M.A., *Guides*.

December 15, 2005 who referred him to a specialist for a February 7, 2006 appointment. Appellant stated that these doctors would submit additional reports. On March 7, 2006 appellant described increasing numbness in the left thumb and index finger and a lump developing on one side of his wrist. He requested that the Office assist him in obtaining medical treatment. Appellant also stated that he saw a physician who imposed work restrictions. He again requested assistance from the Office in obtaining treatment.

By decision dated March 20, 2006, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review of the claim. The Office found that, as appellant's statements were not medical evidence, they were irrelevant to the critical causal relationship issue in the recurrence claim.[3]

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees' Compensation Act,[4] the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[5] A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.[6] If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.[7]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[8] This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to

[3] Accompanying his appeal request, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to the Office accompanying a valid request for reconsideration.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Prince E. Wallace*, 52 ECAB 357 (2001).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

[7] *Id.*

[8] *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

employment factors and supports that conclusion with sound medical reasoning.[9] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[10]

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.[11] Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.[12]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a fractured left carpal bone, closed fracture of the left ischium and left carpal tunnel syndrome on September 23, 2003. On September 1, 2005 appellant filed a claim for a recurrence of disability commencing June 1, 2005 while on light duty. He attributed his symptoms to the accepted condition, changing mower blades in June 2005, heavy lifting and using a hammer at work. In order to prevail, appellant must demonstrate either a change in the nature and extent of the accepted left wrist injuries or in his light-duty job requirements.[13] In this case, appellant asserts a worsening of the accepted condition beginning on June 1, 2005 such that he was no longer able to perform his light-duty position.

Appellant attributed his recurrence of disability to new work factors or other incidents beginning in June 2005, including changing mower blades, heavy lifting and using a hammer. His assertions indicate that he is claiming a new injury based on these exposures not a recurrence of disability.

The record also reflects a lack of medical opinion evidence addressing his condition beginning on June 1, 2005. The latest medical evidence assessing appellant's condition is Dr. Wathne's September 7, 2004 chart note, which did not address appellant's condition on and after June 1, 2005. Although appellant was advised in the Office's November 10, 2005 letter of the necessity to provide a rationalized report from his physician explaining how the claimed recurrence of disability was due to his employment, appellant did not submit such evidence. The Board finds that as appellant did not submit medical evidence supporting the claimed causal

[9] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[10] *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

[11] *Conard Hightower*, 54 ECAB 796 (2003).

[12] *Albert C. Brown*, *supra* note 8.

[13] *Supra* note 8.

relationship between a period of disability for work beginning June 1, 2005 and the accepted left wrist injuries, he has failed to meet his burden of proof.[14]

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (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.[15] Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

In support of his request for reconsideration, an appellant is not required to submit all evidence which may be necessary to discharge his burden of proof.[17] Appellant need only submit relevant, pertinent evidence not previously considered by the Office.[18] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[19]

ANALYSIS -- ISSUE 2

The Office denied appellant's claim for recurrence of disability on the grounds that he failed to submit sufficient medical evidence to establish a causal relationship between the accepted September 23, 2003 injuries and his condition on and after June 1, 2005. In support of his February 8, 2006 request for reconsideration, appellant submitted letters noting that he sought medical treatment for worsening left wrist symptoms. As a layperson, appellant's opinion or belief of causal relationships is not relevant to the decision.[20] His letters are irrelevant to the underlying medical question and insufficient to warrant a merit review.[21]

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[14] *Ricky S. Storms*, 52 ECAB 349 (2001).

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.608(b).

[17] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[18] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

[19] *Annette Louise*, 54 ECAB 783 (2003).

[20] *Janet L. Terry*, 53 ECAB 570 (2002). *See also James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is of no competent evidence on the issue of causal relationship).

[21] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office, he is not entitled to a review of the merits of his claim. Therefore, the Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing June 1, 2005 as alleged. The Board further finds that the Office properly denied appellant's February 8, 2006 request for a merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 20, 2006 and December 22, 2005 are affirmed.

Issued: September 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