United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 06-1290**
	)	**Issued: September 21, 2006**
PEACE CORPS, Washington, DC, Employer	)	

Appearances:
M.S., 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

JURISDICTION

On May 10, 2006 appellant filed a timely appeal of a March 2, 2006 decision from the Office of Workers' Compensation Programs denying his claim for compensation. 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 has established that an injury occurred in the performance of duty on January 26, 2005.

FACTUAL HISTORY

On February 28, 2005 appellant, a 41-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2005 he sustained an injury to his neck, shoulder and back when he attempted to open a stuck drawer on a file cabinet for a coworker. A witness, Sheran K. Jackson, who was also a coworker of appellant, confirmed the facts as presented on the claim form.

The employing establishment controverted appellant's claim and asserted in an undated document that appellant was not injured while working. The employing establishment

contended that appellant did not inform it about his injury and that appellant continued working without incident until appellant sent his supervisor an email on February 7, 2005 claiming that he had been admitted to the emergency room because of a severe injury and requesting 45 days continuation of pay starting February 15, 2005.[1] No documentation for the emergency room visit was ever provided. In addition, the employing establishment asserted that, if appellant was seriously injured, he would not have made an appointment with a physician three weeks after the injury on February 15, 2005. Finally, employees at the employing establishment observed appellant on February 15 and 16, 2005 and were unable to detect any signs of injury.

On March 7, 2005 the Office requested that appellant fill out a questionnaire and provide supporting evidence concerning his claim within 30 days of the letter. On March 30, 2005 appellant provided information to support his claim. In his response to the questionnaire, appellant reiterated that he attempted to open a file drawer at the request of a coworker and injured his shoulder, neck and upper back. Appellant stated that he contacted his health care provider and scheduled an appointment. However, before the appointment, appellant alleged that he went to the George Washington University Emergency Room on February 6, 2005 because of intense pain in his back. At the emergency room, he stated that he was examined by a Dr. Ali Mohammadi.

Along with the questionnaire, appellant submitted two disability slips, one from Dr. Warren Yu, a Board-certified orthopedic surgeon, and one from Dr. Robert I. Keimowitz, a Board-certified internist, as well as a letter from Dr. Keimowitz. The first disability slip, dated February 15, 2005, was from Dr. Yu who stated that he examined appellant on that day for neck, shoulder and back pain and recommended that appellant not work for the period February 15 to March 1, 2005. The second disability slip was from Dr. Keimowitz and was dated February 23, 2005. He did not state the nature of appellant's treatment, but recommended that appellant be excused from work for the period March 2 to April 3, 2005.

In his March 9, 2005 letter, Dr. Keimowitz stated that he, along with Dr. Yu, were treating appellant for back pain. Dr. Keimowitz saw appellant on February 23 and March 9, 2005 and was told by appellant about his "work-related accident." According to Dr. Keimowitz, Dr. Yu had placed appellant on a muscle relaxant and referred appellant to physical therapy. Dr. Keimowitz concurred with Dr. Yu's approach and supplemented Dr. Yu's treatment with anti-inflammatory medicine.

The Office, by decision dated April 18, 2005, denied appellant's claim for compensation. The Office found that the medical evidence was not sufficient to establish that an injury occurred because there was no "specific diagnosis" related to the claimed January 26, 2005 employment incident.

Appellant requested a hearing before an Office hearing representative on a form dated April 24, 2005. His request was postmarked May 11, 2005. The request was received by the Branch of Hearings and Review on May 17, 2005.

[1] Appellant was on a seven-day suspension from February 7 to 15, 2005 due to disciplinary action by the employing establishment.

After the hearing was set, appellant requested that the hearing be rescheduled because he began a new job the day before the hearing. By letter dated January 10, 2006, appellant's request to reschedule the hearing was denied by the Office because it was unable to schedule the hearing on the same hearing docket and appellant's reason for the postponement was not sufficient under section 10.622 of the regulations governing postponement of hearings.[2] A review of the written record was allowed and appellant was able to submit additional information or evidence that he wished to be considered. Appellant resubmitted the March 9, 2005 letter from Dr. Keimowitz along with a cover letter on January 23, 2006.

By decision dated March 2, 2006, the Office hearing representative reaffirmed the Office's April 18, 2005 decision finding that appellant failed to demonstrate a relationship between a claimed medical condition and his employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of a 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[6]

[2] *See* 20 C.F.R. § 10.622.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Shirley A. Temple*, 48 ECAB 404 (1997).

[6] *Michael E. Smith*, *supra* note 4.

ANALYSIS

There is no dispute that on January 26, 2005 while in his capacity as a human resource specialist, appellant attempted to open a desk drawer for a coworker. Thus the only issue to be addressed is whether appellant sustained neck, back and shoulder injuries as alleged.

Whether the employment incident caused a personal injury generally can be established only by medical evidence. While appellant has provided three pieces of medical evidence in support of his claim, none of the documents provide a diagnosis, describe an underlying condition causing the pain, or attempt to demonstrate how the occurrence of the reported pain related to appellants work. Two of the documents state that appellant was being treated for pain and the third document recommended that appellant be excused from work, but did not supply any justification for the recommendation.

Appellant provided a disability slip from Dr. Yu dated February 15, 2005. The slip stated that Dr. Yu treated appellant for neck, shoulder and back pain that day and that appellant should not work from February 15 to March 1, 2005. Dr. Yu did not mention a work-related injury and did not offer a diagnosis or an underlying cause for appellant's condition.

Appellant provided a letter dated March 9, 2005 from Dr. Keimowitz who wrote that appellant had seen Dr. Yu for back pain and that Dr. Yu had prescribed medication for that pain and placed appellant in physical therapy. Dr. Keimowitz concurred with this treatment and agreed that appellant was experiencing back pain. He also stated that appellant had mentioned "his work-related accident," but did not elaborate. Dr. Keimowitz did not offer a diagnosis or an opinion on the underlying cause of appellant's pain.

Appellant provided a note from Dr. Keimowitz, dated February 23, 2005, requesting that appellant be excused from work from March 2 to April 3, 2005. No further information was provided with this note.

Because these medical documents submitted by appellant do not mention neck and shoulder pain, do not present a diagnosis or describe an underlying condition causing appellant's pain, or address how the January 26, 2005 incident caused his back pain, these reports are of limited probative value and are insufficient to establish that the January 26, 2005 incident caused the injuries described in appellant's claim.[7]

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of his duty on January 26, 2005.

[7] *See generally Roma A. Mortenson-Kindschi*, 57 ECAB ___ (Docket No. 05-977, issued February 10, 2006); *Ellen L. Noble*, 55 ECAB ___ (Docket No. 03-1157, issued May 7, 2004).

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 21, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board