

**United States Department of Labor
Employees' Compensation Appeals Board**

D.T., Appellant)	
)	
and)	Docket No. 06-1307
)	Issued: September 26, 2006
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, East Orland, ME,)	
Employer)	
)	

Appearances:
D.T., 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
JANES A. HAYNES, Alternate Judge

JURISDICTION

On May 17, 2006 appellant filed a timely appeal from the March 20, 2006 merit decision of the Office of Workers' Compensation Programs, which denied his claim that he sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim. The Board also has jurisdiction to review the Office's April 18, 2006 nonmerit decision denying his request for reconsideration.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on September 28, 2005; and (2) whether the Office properly denied his March 28, 2006 request for reconsideration.

FACTUAL HISTORY

On October 9, 2005 appellant, then a 40-year-old maintenance mechanic, filed a claim alleging that he sustained an injury in the performance of duty on September 28, 2005 when an

oncoming truck crossed the center line, causing him to swerve into a ditch and sideswipe a guardrail. He stated that he banged his left elbow and left knee and strained his neck, back and shoulder. Appellant stopped work that date and received medical attention. He returned to work on October 3, 2005.

On February 7, 2006 the Office informed appellant that there was no diagnosis of any medical condition resulting from the September 28, 2005 incident, nor was there a physician's opinion as to how the incident resulted in a diagnosed condition. The Office gave appellant 30 days to provide additional information to support his claim, including a firm diagnosis of any condition resulting from this incident.

In a decision dated March 20, 2006, the Office denied appellant's claim for compensation. The Office found that the evidence of file supported that the claimed event occurred, but there was no medical evidence providing a diagnosis that could be connected to the event.

On March 28, 2006 appellant requested reconsideration and submitted a March 24, 2006 attending physician's form report from Dr. Brad R. Hudt, a specialist in internal medicine, who reported that he was involved in a motor vehicle accident during work on September 28, 2005 and struck his left shoulder. Noting decreased movement and pain in the left shoulder, he diagnosed left shoulder pain. With an affirmative mark, Dr. Hudt indicated that this condition was caused or aggravated by employment, as the accident occurred while appellant was driving for work purposes.

In a decision dated April 18, 2006, the Office denied a merit review of appellant's claim. The Office explained that there was no dispute and the Office accepted, that he was involved in a motor vehicle accident on September 28, 2005. But no firm diagnosis related to the incident was established. Because Dr. Hudt's March 24, 2006 form report provided no definitive diagnosis of the medical condition responsible for appellant's left should pain and decreased movement, there was no basis for reopening the claim for a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue³ 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

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carlone*, 41 ECAB 354 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ 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

In all cases reported to the Office, a medical report from the attending physician is required and should include, among other things, a diagnosis.⁷

ANALYSIS -- ISSUE 1

The Office accepts that appellant was involved in a motor vehicle accident on September 28, 2005. There is no dispute that he was in the course of his federal employment. Appellant has, therefore, met his burden of proof to establish that he experienced a specific event or incident occurring at the time, place and in the manner alleged. The question that remains is whether the September 28, 2005 incident caused an injury.

On February 7, 2006 the Office sent appellant a development letter granting him 30 days to submit additional evidence, including a diagnosis of any condition resulting from the September 28, 2005 incident. But he did not respond to its request within the time allowed. This left appellant's record with no medical evidence to support that the September 28, 2005 incident caused a particular condition or injury. As part of his burden, he must submit medical evidence establishing a firm diagnosis of the condition for which he seeks compensation benefits.⁸ Because appellant submitted no such evidence, the Board will affirm the Office's March 20, 2006 decision to deny his claim.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁹ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹⁰

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ 20 C.F.R. § 10.330 (1999) (requirements for medical reports).

⁸ *Patricia Bolleter*, 40 ECAB 373 (1988).

⁹ 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.605 (1999).

for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹² A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS -- ISSUE 2

With his timely request for reconsideration, appellant did not attempt to show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office. Instead, he submitted additional evidence, a March 24, 2006 attending physician's form report from his internist, Dr. Hudt. But he offered no diagnosis of appellant's medical condition. "Left shoulder pain" is a complaint, a symptom of unknown or unidentified etiology, not a diagnosis of a specific medical condition or disease. Without an established physical basis for the pain -- such as a contusion, a strain or sprain, an inflammation, a subluxation or dislocation, a fracture, a torn rotator cuff, an nerve impingement, an aggravation of degenerative joint disease or osteoarthritis -- Dr. Hudt's report fails to address the reason the Office denied compensation, the lack of a firm diagnosis. With no firm diagnosis, the evidence submitted to support appellant's request for reconsideration cannot be considered relevant or pertinent under the third standard.

As appellant's March 28, 2006 request for reconsideration does not meet at least one of the standards for obtaining a merit review of his case, the Board will affirm the Office's April 18, 2006 decision denying his request.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on September 28, 2005. The Office accepts that the incident occurred as alleged, but there is no medical evidence establishing a firm diagnosis of the injury or condition for which appellant seeks compensation. The Board also finds that the Office properly denied appellant's request for reconsideration because the medical evidence he submitted still provided no diagnosis of his left shoulder condition.

¹¹ *Id.* § 10.606.

¹² *Id.* § 10.607(a).

¹³ *Id.* § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the April 18 and March 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board