United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 06-1397**
	)	**Issued: September 27, 2006**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, College Park, GA, Employer	)	

Appearances:
R.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
JAMES A. HAYNE, Alternate Judge

JURISDICTION

On June 6, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated June 13, 2005 and May 24, 2006 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 on April 26, 2005 causally related to factors of his federal employment.

FACTUAL HISTORY

On April 29, 2005 appellant, a 44-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that he sustained a ruptured left eardrum while landing in a commercial jet on April 26, 2005. The employing establishment challenged the claim, alleging that appellant had not shown a causal relationship between the injury and a diagnosed condition.

On May 10, 2005 the Office notified appellant that the evidence submitted was insufficient to establish his claim and advised him to provide additional documentation, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

Appellant submitted a duty schedule and request for approved absence dated May 2, 2005. In an April 29, 2005 memorandum to the Office, appellant stated that he ruptured his left eardrum while landing at Newark airport on April 26, 2005. On April 29, 2005 appellant accepted an offer of modified assignment as a civil aviation security specialist.

In responses dated May 13, 2005 to questions posed by the Office, appellant stated that on April 26, 2005, on landing during a mission flight from Atlanta, Georgia to Newark, New Jersey, he experienced severe pain when his left ear did not clear. He indicated that he notified his supervisor. Appellant further stated that he had a mild hearing loss when he returned from active duty in the U.S. Army.

Appellant submitted a May 2, 2005 letter signed by Mary Stallings, a physician's assistant, who stated that appellant was a patient at Eagles Family Practice and was last seen on April 28, 2005 for left rupture TM, hemotymparum and mild dizziness. Appellant was advised to avoid flying and to perform light-duty tasks until further evaluation in three weeks.

By decision dated June 13, 2005, the Office denied appellant's claim on the grounds that the evidence failed to establish that appellant had sustained an injury in the performance of duty. The Office found that the evidence was insufficient to establish that the events occurred as alleged, and that no medical evidence had been submitted establishing that the claimed medical condition was causally related to a work-related incident.

On June 16, 2005 appellant requested an oral hearing.

Appellant submitted a witness statement dated July 15, 2005 from Micah Snyder, a fellow sky marshal, who stated that he accompanied appellant on the April 26, 2005 flight from Atlanta to Newark. Mr. Snyder noticed that appellant repeatedly touched his left ear throughout the flight and seemed to be grimacing a great deal. After the plane landed, appellant told him that his ear was "killing [him]"; and that he felt tremendous pressure in his ear; and that he could hardly hear anything. Appellant indicated that he intended to seek medical attention as soon as possible.

The record contains a copy of the previously submitted May 2, 2005 letter from Ms. Stallings. The letter was countersigned by Dr. Alan Perry, Board-certified in the area of family medicine.

At the February 22, 2006 hearing, appellant reiterated that his left ear had ruptured during the April 26, 2005 flight from Atlanta to Newark. He testified that his hearing had returned to normal by the following day, but that "it happened again" during his flight from Newark on April 27, 2005. Appellant testified that he received medical treatment from Ms. Stallings at Eagles Family Practice on April 28, 2005. He indicated that he saw a specialist on June 19 or 20,

2005, but that the specialist refused to provide a statement regarding his condition. He also testified that the physician's assistant would not provide any additional information. In response to the hearing representative's question as to whether or not appellant "ever saw any doctor at all at Eagles Family Practice," appellant responded, "I don't know." The hearing representative informed appellant that a physician's assistant was not considered to be a physician under the Act, and that he had the burden of providing probative medical evidence from a licensed physician. The hearing representative suggested that appellant either obtain a rationalized report from a different physician or have the May 2, 2005 report countersigned by a licensed physician.

By decision dated May 24, 2006, the hearing representative affirmed the denial of appellant's claim. Finding that appellant had established the fact of injury, the hearing representative concluded that the medical evidence submitted did not establish a causal relationship between the accepted employment incident and appellant's diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of the 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.[1] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[2]

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.[3] 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

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

[2] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[3] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor 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]

ANALYSIS

The hearing representative accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Appellant submitted a May 2, 2005 letter signed by Ms. Stallings, a physician's assistant, who stated that appellant was a patient at Eagles Family Practice and was last seen on April 28, 2005 for left rupture TM, hemotymparum and mild dizziness. She advised appellant to avoid flying and to perform light-duty tasks until further evaluation in three weeks. As physician's assistants do not qualify as "physicians" under the Act, her report lacks probative value.[6] Following the February 22, 2006 hearing, appellant submitted a copy of the May 2, 2005 letter, countersigned by Dr. Perry on February 22, 2006. This report lacks probative value for several reasons. Although the letter was countersigned by a Board-certified physician, there is no indication that Dr. Perry ever examined appellant. In fact, appellant testified at his hearing that he didn't know if he had ever seen a physician at Eagles Family Practice. The report provides a diagnosis, but nothing more. The report does not provide a history of injury. Moreover, the report does not contain an opinion as to the cause of appellant's diagnosed condition. The Board has held that a physician must provide an opinion on whether the employment incident describe caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.[7] Medical evidence that does not offer any opinion on the cause of an employee's condition is of limited probative value.[8] The Board notes that in his May 13, 2005 responses to

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

[5] *Dennis M. Mascarenas,* 49 ECAB 215, 218 (1997).

[6] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

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

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

questions posed by the Office, appellant stated that he had a mild hearing loss when he returned from active duty in the U.S. Army. The May 2, 2005 report that was countersigned by Dr. Perry does not address how appellant's preexisting condition may be related to his current diagnosed condition. The report fails to provide a complete medical history, findings on examination, or rationalized medical opinion as to the cause of appellant's diagnosed condition and, therefore, fails to establish that his present condition is causally related to the accepted work injury.

Appellant expressed his belief that his ear condition resulted from the April 26, 2005 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related injury is not determinative.

There is no medical evidence of record that explains how appellant's condition is physiologically related to the April 26, 2005 employment injury. The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed ear condition was caused or aggravated by his employment, appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a traumatic injury causally related to his employment.

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2006 and June 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 27, 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