United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 06-1423**
	)	**Issued: September 28, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Roosevelt, WA, Employer	)	

Appearances:
A.C., 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. HAYNES, Alternate Judge

JURISDICTION

On May 15, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 9, 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 March 20, 2006 causally related to factors of his federal employment.

FACTUAL HISTORY

On March 26, 2006 appellant, a 64-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to his lower left back, left hip and left leg on March 20, 2006, while attempting to avoid falling from his office chair.

In March 25, 2006 discharge instructions from St. Mary Medical Center, Dr. S. Robin VonHaven, a treating physician, provided a diagnosis of "back pain." In an unsigned report dated March 8, 2006, Dr. L. Lynn Morrill, a Board-certified osteopath specializing in family practice, provided an impression of chronic obstructive pulmonary disease.

On April 6, 2006 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 report containing a specific diagnosis and an opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

Appellant submitted a March 25, 2006 duty status report from Dr. VonHaven. In the section of the form designated for a description of the injury and the parts of the body affected, Dr. VonHaven indicated, "Chair tipped -- left lower back -- left leg -- back left hip -- all parts." Clinical findings included "subjective pain with no neurological deficit." In the section entitled "diagnosis due to injury," she noted "acute versus chronic lumbar strain."

A March 25, 2006 report of an x-ray of the lumbar spine contained an impression of degenerative lumbar spondylosis with instability and superior end plate infraction at L5, acute versus chronic.

In an April 3, 2006 physician's initial report, Dr. VonHaven provided a diagnosis of "radicular back pain" and indicated that appellant had "B/L/DTR at patella." She described the history of injury as reported by appellant, indicating that he had pulled his lower back, left hip and left leg while attempting to avoid a fall when his chair tipped. Dr. VonHaven noted that appellant had undergone a previous lumbar laminectomy and stated that his condition had been "ongoing since his previous surgery and not new." In response to a question as to whether the diagnosed condition was caused by the alleged injury on a more probable than not basis, Dr. VonHaven placed a checkmark in the "yes" box.

In an unsigned report dated April 13, 2006, Dr. Patricia Van Slyke, a Board-certified family practitioner, provided an assessment of low back pain with a long-standing history of chronic problems and ataxia progressive. Appellant told Dr. Van Slyke that he had injured his back at work on March 20, 2006 as he attempted to avoid falling out of his chair. He indicated that his symptoms had resolved after one week, but that they had resurfaced a week prior to his April 13, 2006 visit with Dr. Van Slyke, after he began doing exercises for lower back pain. Dr. Van Slyke noted appellant's past surgical history of cervical fusion, lumbar laminectomy and PTCA. On examination, he found no vertebral point tenderness, crepitus or step off. Dr. Van Slyke noted full forward flexion and extension without pain. Pain was elicited on the left with contralateral flexion. Dr. Van Slyke found negative straight leg raise bilaterally.

Appellant submitted an April 28, 2006 urgent care form from Dr. Robert G. Waring, a treating physician, who recommended modified duty due to back sprain. Restrictions included a lifting limit of 25 pounds. The record includes an April 13, 2006 heat computerized tomography scan report and an April 13, 2006 report of a magnetic resonance imaging (MRI) scan of the lumbar spine.

By decision dated May 9, 2006, the Office denied appellant's claim on the grounds that the evidence failed to establish that he had sustained an injury in the performance of duty. The Office found that the medical evidence submitted was insufficient to establish that the claimed medical condition was causally related to the accepted work-related incident.[1]

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.[2] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, 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 and that such event, incident or exposure caused an 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] 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.[5]

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[1] The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its May 9, 2006 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). *See also Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may request reconsideration before the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) and ask that this evidence be considered.

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

[3] *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).

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

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

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.[6]

ANALYSIS

The Office 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 is causally related to appellant's diagnosed condition. Therefore, appellant has failed to satisfy his burden of proof.

Dr. VonHaven's reports fail to provide sufficient support to establish appellant's claim. His March 25, 2006 discharge instructions provided a diagnosis of "back pain." The Board has long held that pain is a symptom, not a diagnosed condition, and that pain without objective physical or diagnostic findings to support a condition causing the pain is not compensable under the Act.[7] Moreover, the report offers no opinion on the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] In his March 25, 2006 duty status report, Dr. VonHaven provided clinical findings of "subjective pain with no neurological deficit." In the section entitled "diagnosis due to injury," Dr. VonHaven noted "acute versus chronic lumbar strain." However, his report offers no findings on examination, no medical background and no rationale explaining the nature of the relationship between appellant's diagnosed condition and the accepted employment injury. Dr. VonHaven's cursory opinion without explanation is of diminished probative value.[9] In his April 3, 2006 physician's initial report, Dr. VonHaven provided a diagnosis of "radicular back pain" and indicated that appellant had "B/L/DTR at patella." He noted that appellant had undergone a previous lumbar laminectomy and stated that his condition had been "ongoing since his previous surgery and not new." In response to a question as to whether the diagnosed condition was caused by the alleged injury on a more probable than not basis, he placed a checkmark in the "yes" box. Dr. VonHaven's report fails to establish a causal relationship between a diagnosed condition and the March 20, 2006 employment incident. First, he has not provided a definite compensable diagnosis. As noted above, his diagnosis of radicular back pain is not compensable under the Act. Additionally, it is unclear whether Dr. VonHaven's assessment of "B/L/DTR at patella" is

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

[7] *See John L. Clark*, 32 ECAB 1618 (1981).

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

[9] *See Brenda L. DuBuque*, 55 ECAB ___ (Docket No. 03-2246, issued January 6, 2004); *see also David L. Scott*, 55 ECAB ___ (Docket No. 03-1822, issued February 20, 2004); *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

intended to be a diagnosis relating to appellant's March 26, 2006 claim. Although Dr. VonHaven used a checkmark to indicate a belief that the injury caused appellant's current condition, he failed to explain how or why. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[10] Moreover, noting that appellant had undergone a previous lumbar laminectomy, he stated that his condition had been "ongoing since his previous surgery and not new," creating an internal inconsistency in his report. He has failed to explain how appellant's current condition was physiologically related to the March 20, 2006 work incident. For all of these reasons, this report lacks probative value.

The remaining medical evidence of record is insufficient to establish appellant's claim. Dr. Van Slyke's April 13, 2006 report lacks probative value in that it is unsigned, does not provide a compensable diagnosis and does not contain an opinion on causal relationship. Dr. Morrill's March 8, 2006 report lacks probative value on two counts. First, it lacks proper identification in that it is unsigned. Therefore, it cannot be considered as probative medical evidence.[11] Moreover, Dr. Morrill's diagnosis of chronic obstructive pulmonary disease is not relevant to appellant's alleged low back injury. Dr. Waring's April 28, 2006 urgent care report lacks any opinion on causal relationship and is, therefore, of diminished probative value.[12]

Appellant expressed his belief that his lower back condition resulted from the March 20, 2006 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.[13] 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.[14] 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.

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 back condition was caused or aggravated by his employment, appellant has not met his burden of proof in establishing that he

[10] *See Gary J. Watling*, 52 ECAB 278 (2001).

[11] *Merton J. Sills*, 39 ECAB 572 (1988)

[12] *See Michael E. Smith, supra* note 8.

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

[14] *Id.*

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 the March 20, 2006 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 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