United States Department of Labor
Employees' Compensation Appeals Board

B.O., Appellant	)	
and	)	**Docket No. 07-446**
	)	**Issued: April 24, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Jacksonville, AK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 7, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 7, 2006 merit decision denying his claim for a May 19, 2006 injury and the Office's October 19, 2006 nonmerit decision denying his requests for a review of the written record and an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury on May 19, 2006 in the performance of duty; (2) whether the Office properly denied appellant's requests for a review of the written record and an oral hearing.

FACTUAL HISTORY

On May 23, 2006 appellant, then a 56-year-old transportation security screener, filed a traumatic injury claim alleging that he sustained injury to his lower back, left hip and right shoulder on May 19, 2006 due to lifting and carrying bags more than 10 feet from one airline conveyer belt to another. He began working in a light-duty position for the employing establishment.

In a June 7, 2006 letter, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

The record contains a Form CA-16 (authorization for examination and/or treatment) which authorized the Little Rock Air Force Hospital to furnish medical treatment as necessary to treat appellant's claimed May 19, 2006 injury. The first page of the form was signed by Sharon Hampton, appellant's immediate supervisor. The second page of the form was completed by a person with an illegible signature.[1] Under the portion for history of the May 19, 2006 injury, the signer of the second page stated, "Strain in shoulder and back [due to] lifting heavy objects." The signer indicated that the findings were "back/shoulder strain" and that the diagnosis was "muscle strain." A "yes" box was checked to indicate that the diagnosed condition was related to the reported employment incident. The signer indicated that appellant could resume work on March 23, 2006 with "little to no" lifting, bending or twisting.

In a July 7, 2006 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury on May 19, 2006 in the performance of duty. The Office indicated that it could not determine whether a physician signed the Form CA-16.

In a form which was postmarked as sent on August 16, 2006, appellant requested a review of the written record by an Office hearing representative.

Appellant submitted a work restrictions form signed on May 23, 2006 by an individual with an illegible signature. The form listed the date of injury as May 19, 2006, the history of injury as "lifting/carrying heavy bags," and the clinical findings as "back strain." The person who signed the report indicated that the diagnosis was due to the reported injury.[2]

In a report dated June 14, 2006, Dr. Thomas C. Ho, an attending Board-certified internist, stated that appellant "currently suffers from rotator cuff tendinitis … to his right shoulder which apparently started on May 19, 2006 while lifting and carrying heavy luggage at work." Dr. Ho stated that appellant's diagnosis was confirmed by a positive Hawkins' test and positive Neers' abduction test of his right shoulder on physical examination and recommended that he work in a light-duty position. In clinical notes dated between May 23 and July 25, 2006, Dr. Ho and other

[1] The signature did not contain the notation "MD" and the Form CA-16 does not contain any other indication that the person who signed the form was a physician.

[2] The signer of the form did not provide the notation "MD" and indicated that his or her specialty was family practice.

attending physicians indicated that they were treating appellant for a backache, right shoulder strain and rotator cuff tendinitis. A May 23, 2006 note indicated that there was "no inciting event remembered and no trauma." The findings of the August 31, 2006 magnetic resonance imaging testing showed right shoulder tendinitis with intrasubstance tears and a very small tear in the anterior margin of the supraspinatus tendon.

In a letter dated October 5, 2006 and received by the Office on October 10, 2006, appellant indicated that he had elected to have an "informal oral hearing" rather than a review of the written record by an Office hearing representative.

By decision dated October 19, 2006, the Office denied appellant's request for a review of the written record and his request for an oral hearing. The Office found that neither appellant's August 16, 2006 request for a review of the written record nor his October 5, 2006 request for an oral hearing were timely. The Office exercised its discretion by considering the matter in relation to the issue involved and had denied appellant's requests for a review of the written record and oral hearing on the basis that his claim could be addressed through a reconsideration application and the submission of additional evidence showing that he sustained a May 19, 2006 employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The term "injury" as defined by the Act, refers to some physical or

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[8]

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained an injury on May 19, 2006 due to lifting and carrying bags more than 10 feet from one airline conveyer belt to another. The Board finds that appellant has established the occurrence of an employment incident on May 19, 2006 in the form of carrying and lifting bags, but that he has not submitted sufficient medical evidence to establish that he sustained an injury due to that incident.

The record contains a Form CA-16 which authorized the Little Rock Air Force Hospital to furnish medical treatment as necessary to treat appellant's claimed May 19, 2006 injury. The first page of the form was signed by Sharon Hampton, appellant's immediate supervisor. The second page of the form was completed by a person with an illegible signature. It is not possible from the face of the form or from other evidence submitted before the Office's July 7, 2006 decision to determine the identity of the individual who signed the form or to otherwise clearly determine that he or she is a physician within the meaning of the Act. As it is not established that this Form CA-16 was signed by a physician, it does not constitute probative medical evidence.[9]

Even if the report constituted medical evidence, it has little probative value and is insufficient to establish causal relationship between the accepted employment incident and the claimed May 19, 2006 injury. Under the portion for history of the May 19, 2006 injury, the signer of the second page stated, "Strain in shoulder and back [due to] lifting heavy objects." The signer indicated that the findings were "back/shoulder strain" and that the diagnosis was "muscle strain." The fact that a diagnosis was listed in the portion of the form for clinical findings renders it unclear to what extent, if any, a physical examination was performed on appellant. There is no indication whether appellant had any clinical findings, such as spasms or objective tenderness in a specific muscle distribution, that would support a diagnosis of muscle strain. Moreover, the ultimate diagnosis of "muscle strain" is vague as it is unclear which portion of appellant's anatomy sustained the muscle strain. A "yes" box was checked to indicate that the diagnosed condition was related to the reported employment incident. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[10] Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.

Appellant did not submit any other evidence prior to the Office's July 7, 2006 denial of his claim. The Office provided appellant with an opportunity to provide probative medical

[8] *Elaine Pendleton, supra* note 4; 20 C.F.R. § 10.5(a)(14).

[9] *See Merton J. Sills*, 39 ECAB 572, 575 (1988) (finding that a report cannot be considered probative medical evidence if it cannot be determined that it was completed by a physician within the meaning of the Act).

[10] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

evidence showing that he sustained an employment injury on May 19, 2006, but he did not do so within the allotted time. Therefore, the Office properly denied his claim that he sustained an injury on May 19, 2006 due to the accepted employment incident.

Notwithstanding the Board's affirmance of the Office's July 7, 2006 decision denying benefits, the Board finds that appellant is still entitled to reimbursement for payment of expenses incurred for medical treatment for the period May 23, 2006, the date the employing establishment official signed the Form CA-16, to July 7, 2006, the date on which the Office denied the claim and terminated authorization of medical treatment at the Office's expense. By Form CA-16, signed by an employing establishment official on May 23, 2006, treatment was authorized for the Little Rock Air Force Hospital to provide medical care for a period of up to 60 days from that date. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment regardless of the action taken on the claim.[11]

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision. The Office's regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office has provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.[12]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[13] The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny an oral hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.[14]

ANALYSIS -- ISSUE 2

Appellant's August 16, 2006 request for a review of the written record and his October 10, 2006 request for an oral hearing were both made more than 30 days after the date of issuance of the Office's prior decision dated July 7, 2006. Thus, appellant was not entitled to a review of the written record or oral hearing as a matter of right. The Office properly found that

[11] *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.

[12] 20 C.F.R. § 10.616(a); *see Michael J. Welsh*, 40 ECAB 994, 996 (1989).

[13] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[14] *See Welsh, supra* note 12 at 996-97.

appellant was not entitled to a review of the written record or oral hearing as a matter of right because his requests for a review of the written record and an oral hearing were not made within 30 days of the Office's July 7, 2006 decision.

The Office has the discretionary power to grant a review of the written record or oral hearing when a claimant is not entitled to a hearing as a matter of right. The Office, in its October 19, 2006 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's requests for a review of the written record and oral hearing on the basis that his claim could be addressed through a reconsideration application and the submission of additional evidence showing that he sustained a May 19, 2006 employment injury. The Board has held that as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[15] In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's requests for a review of the written record and oral hearing which could be found to be an abuse of discretion.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury on May 19, 2006 in the performance of duty. The Board further finds that the Office properly denied appellant's requests for a review of the written record and an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 19 and July 7, 2006 decisions are affirmed.

Issued: April 24, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[15] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).