United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 07-881**
	)	**Issued: August 1, 2007**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Longmont, CO, Employer	)	

Appearances:
Appellant, 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 February 12, 2007 appellant filed a timely appeal from the March 7, May 24 and September 14, 2006 merit decisions of the Office of Workers' Compensation Programs, which denied her claim for compensation. 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 January 22, 2007 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on January 15, 2006; and (2) whether the Office properly denied her December 26, 2006 request for reconsideration.

FACTUAL HISTORY

On January 15, 2006 appellant, then a 36-year-old air traffic control specialist, filed a claim alleging that she sustained an injury in the performance of duty that day: "Exposed elec.

on [display monitor] shocked me as I moved it into view." A witness wrote the following: "I witnessed [appellant] trying to move the sector 21 scope by placing her hand on the lower left side of the scope. I heard a 'pop' and observed the left side of the scope go blank."

Appellant stopped work on January 19, 2006 and sought medical treatment. A January 19, 2006 treatment note from a Dr. Reginald Guy related the history of the incident and appellant's complaints: "This patient complains of being shocked when moving a video screen display at work on the 15th of this month. The patient has experienced intermittent chest pain lasting up to two minutes over the past three days, perhaps associated with some shortness of breath." Dr. Guy described normal objective findings and diagnosed noncardiac chest pain. He advised that appellant used over-the-counter antacids for her discomfort and released her to resume work that night with no restrictions.

In a decision dated March 7, 2006, the Office denied appellant's claim for compensation. The Office found that the claimed event occurred, but there was no medical evidence providing a diagnosis connected to the event. The Office explained that findings of pain or discomfort alone did not satisfy the medical aspect of appellant's case.

On March 16, 2006 Dr. Guy reported as follows:

> "Please be advised that I did see [appellant] on January 15, [sic] 2006 after she sustained an accidental electric shock while manipulating a monitor at the Air Traffic Controller Station in Longmont. The patient complained of chest pain. EKG [electrocardiogram] and cardiac enzymes were unremarkable. I discussed this case with the cardiologist at Longmont Clinic who suggested she may be experiencing chest wall pain from muscle spasms secondary to the electrical shock. I must agree with his opinion as the patient has entirely recovered from this injury. She persistently had normal electrocardiograms subsequent to this accident and has been pain-free for several weeks."

Appellant requested reconsideration.

In a decision dated May 24, 2006, the Office reviewed the merits of appellant's case and denied modification of its prior decision. The Office explained that the evidence established the reported work event on January 15, 2006, and that the factual basis of appellant's claim was satisfied, but she needed to submit a detailed medical report with a clear and concise diagnosis rendered by a qualified physician.

Appellant requested reconsideration and submitted a June 1, 2006 report from a Dr. Marie E. Bush, who related appellant's history and the normal findings made on examination. Dr. Bush diagnosed noncardiac chest pain/musculoskeletal chest pain. She noted that one of their cardiologists, a Dr. Stathis, concurred that the etiology of the chest pain was not cardiac but musculoskeletal in origin and directly related to the electrical shock that appellant received at work. Dr. Bush described appellant's subsequent medical care.

In a decision dated September 14, 2006, the Office reviewed the merits of appellant's case and denied modification of its prior decision. The Office noted that the only diagnosis

related to her claimed injury was that of pain with symptoms of shortness of breath, which did not satisfy the need for a stated medical condition.

On December 26, 2006 appellant again requested reconsideration. She stated that the attending physician changed the diagnosis code. Appellant submitted several copies of Dr. Bush's June 1, 2006 report and stated that Dr. Bush felt that her letter clearly stated that the pain was "musculoskeletal in origin and was directly related to the electrical shock that [appellant] received while at work."

In a decision dated January 22, 2007, the Office denied appellant's request. The Office found that the medical evidence received since the September 14, 2006 merit decision was repetitious and did not warrant a reopening of appellant's case.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, 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. She must also establish that such event, incident or exposure caused an injury.[2]

A person who claims benefits for a work-related injury has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.[3] Causal relationship is a medical issue[4] 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 of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] 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.[7]

---

[1] 5 U.S.C. § 8102(a).

[2] *See generally Abe E. Scott*, 45 ECAB 164 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

[3] *E.g., Patricia Bolleter*, 40 ECAB 373 (1988).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

ANALYSIS -- ISSUE 1

The Office accepted that the January 15, 2006 incident occurred as alleged. Appellant has met her burden to submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The only question that remains is whether this incident caused a specific injury.

The diagnosis of noncardiac chest pain identifies no particular medical condition or disease, no underlying pathology. It merely rules out a cardiac etiology.[8] It is the equivalent of a physician reporting, "I do not know what is causing her pain, but it is not a cardiac problem." The Office cannot pay compensation for an unnamed medical condition. Dr. Guy's advice to use over-the-counter antacids for the discomfort suggests that he believed appellant's chest pain might be a symptom of heartburn.

Dr. Guy later reported that he agreed with the cardiologist at the clinic, who suggested that appellant might have been experiencing chest wall pain from muscle spasms secondary to the electrical shock. This is a speculative hypothesis. Although the opinion of a physician does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.[9] Further, muscle spasm, like pain, remains but a symptom of an underlying and as yet unidentified medical condition or disease.

Dr. Bush diagnosed noncardiac chest pain/musculoskeletal chest pain, again based on the cardiologist's opinion that the etiology of the chest pain was not cardiac but musculoskeletal in origin and directly related to the electrical shock appellant received at work. Although this narrows the focus of a possible injury, Dr. Bush still identified no particular musculoskeletal condition or disease. Appellant might have sustained an injury in the performance of duty, but her physicians appear too uncertain about what physiological damage the electricity caused, if any, to offer a differential diagnosis of that injury. For this reason, she has not met her burden of proof to establish entitlement to benefits under the Act.[10] The Board will affirm the Office decisions denying her claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. 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."[11]

---

[8] Compare *Thomas R. Horsfall*, 48 ECAB 180 (1996) (where the physician diagnosed noncardiac chest pain caused by costochondritis, or an inflammatory reaction in the costochondral junction).

[9] *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

[10] Any opinion that the electric shock caused a diagnosed medical condition or disease must be supported by sound medical reasoning.

[11] 20 C.F.R. § 10.605 (1999).

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[12]

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 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.[13]

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.[14]

ANALYSIS -- ISSUE 2

Appellant's December 26, 2006 request for reconsideration meets none of the standards for obtaining a merit review of her case. The Office received copies of Dr. Bush's June 1, 2006 report, but this was not new evidence. Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[15] Appellant stated that the attending physician changed the diagnosis code, but she submitted no evidence to support her assertion.[16] The Board will affirm the Office's decision denying appellant's request for reconsideration. Appellant is not entitled to a reopening of her case.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on January 15, 2006. The record contains no diagnosis of a specific medical condition or disease. The Board also finds that the Office properly denied appellant's request for reconsideration.

[12] *Id*. at § 10.607(a).

[13] *Id*. at § 10.606.

[14] *Id*. at § 10.608.

[15] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[16] Appellant submitted to the Board half a dozen health insurance claim forms with a corrected diagnosis code (the old code "whited out" and overwritten with a new code, with no indication who made the changes). The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). As this evidence was not before the Office, the Board has no jurisdiction to review it.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2007 and the September 14, May 24 and March 7, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 1, 2007
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