United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
and	)	**Docket No. 06-1376**
	)	**Issued: January 31, 2007**
DEPARTMENT OF THE NAVY, EARLE NAVAL WEAPONS STATION, Colts Neck, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 June 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 23, 2005 denying his traumatic injury claim and nonmerit decision dated January 30, 2006 denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury on February 16, 2004 causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim.

FACTUAL HISTORY

On February 18, 2004 appellant, a 59-year-old pipefitter, filed a claim for a recurrence of disability alleging that his back pain and numbness in his left leg never stopped following his

accepted August 28, 2000 injury.[1] In an undated narrative, appellant stated that he experienced "terrific pain going down [his] left leg and lower back" on February 16, 2004 while he was driving a 26,000 pound truck; removing and reinstalling manhole covers weighing up to 100 pounds; and pushing and pulling 20 foot lengths of three-inch hose. By letter dated April 22, 2004, the Office informed appellant that his claim was being treated as a traumatic injury claim.

In support of his claim, appellant submitted a report of a March 9, 2004 magnetic resonance imaging (MRI) scan, reflecting disc herniation at the L3-4 and L4-5 levels. He submitted reports from Dr. Lambro Demetriades, a treating physician. In a February 16, 2004 attending physician's report, Dr. Demetriades provided a diagnosis of osteoarthritis throughout the lumbar spine and noted that x-rays revealed degenerative changes. In response to the question as to whether he believed appellant's condition was caused or aggravated by his employment, he placed a checkmark in the "yes" box. In an unsigned narrative report of the same date, Dr. Demetriades noted appellant's complaints of back pain and of tingling and numbness radiating down his left leg. On a February 16, 2004 form entitled "[i]nsurance [c]ompany [q]uick [n]ote," Dr. Demetriades diagnosed lumbar radiculopathy and circled "yes," in response to the question as to whether he believed appellant's condition was related to work. In an unsigned report dated March 15, 2004, he stated that an MRI scan revealed disc herniation at the L3-4 level, causing neural forearm compression. Appellant was restricted from lifting more than 25 pounds. In a March 15, 2004 "[i]nsurance [c]ompany [q]uick [n]ote," Dr. Demetriades provided an illegible diagnosis and specified August 28, 2000 as the date of appellant's work-related injury. His unsigned reports dated April 12 and May 10, 2004 reflected appellant's continuing complaints of back pain and radiculitis. Appellant also submitted reports from Dr. Robert P. Pannullo, a Board-certified physiatrist. An [i]nsurance [c]ompany [q]uick [n]ote dated March 10, 2004 reflected a diagnosis of degenerative disc disease and lumbar radiculopathy. Noting that the date of injury was August 28, 2000, Dr. Pannullo placed a checkmark in the "yes" box, in response to the question as to whether he believed appellant's condition was related to work. In an unsigned report dated March 10, 2004, Dr. Pannullo diagnosed a chronic history of low back and lower extremity pain due to lumbar radiculopathy at L5 and possibly L4.

In an undated statement, maintenance foreman William Waltman stated that appellant returned to light duty following his 2000 injury in the capacity of a "truck driver operator." His duties included removing and reinstalling manhole covers weighing up to 100 pounds; pulling and pushing 20-foot lengths of three-inch hose; and treating septic tanks with chemicals. Appellant also submitted a job description and job summary reflecting the duties of a pipefitter. In a May 17, 2004 letter, the Office asked Dr. Demetriades to provide a diagnosis and an opinion, supported by medical rationale, as to how the work activities alleged by appellant to have occurred on February 16, 2004, caused or aggravated his current condition.

By decision dated June 18, 2004, the Office denied appellant's claim. The Office accepted that on February 16, 2004, appellant pulled/replaced manhole covers weighing up to

[1] Appellant's August 28, 2000 claim for work-related injuries was accepted by the Office for lumbosacral strain and sciatica/left side (File No. 022002685).

100 pounds and pushed/pulled a 20-foot length of three-inch hose, but found that the medical evidence was insufficient to establish that he sustained an injury as a result of these activities.

On June 29, 2004 appellant, through counsel, submitted a request for an oral hearing. In support of his request, appellant submitted additional reports from Dr. Demetriades. In an unsigned report dated June 7, 2004, Dr. Demetriades opined that appellant's current symptoms were related to the "incident that happened in 2000. They have just gotten a little bit worse." A quick note dated August 4, 2004 reflected a diagnosis of low back sprain. In an unsigned report of the same date, Dr. Demetriades noted appellant's complaints of back pain radiating down his leg. In unsigned reports dated September 1, 2004, he stated that appellant had a flare-up of pain when he twisted while moving some objects. On September 7, 2004 Dr. Demetriades reported that appellant injured his back at work in December 2000 and had radicular symptoms going into his leg. Noting an MRI scan confirmed disc herniation, he placed him on light duty with a 25-pound lifting restriction. A September 29, 2004 insurance company quick note reflected a diagnosis of back and leg pain. In an unsigned report of the same date, Dr. Demetriades stated that appellant had a herniated disc in the lumbar spine, with resultant back and leg pain. He opined that he was unable to continue working at his present employment. Unsigned follow-up reports dated October 27, 2004 and January 5, 2005 reflected continued complaints of low back and lower extremity pain. In an unsigned report dated March 9, 2005, Dr. Demetriades opined that appellant's leg and back pain was related to his December 2000 injury and that he had reaggravated the same condition in February 2004.

Appellant submitted reports dated December 17, 2004 and April 1, 2005 from Dr. Pannullo. In his unsigned December 17, 2004 report, Dr. Pannullo provided a diagnosis of lumbar disc disease with lumbosacral radiculitis. He indicated that appellant had experienced pain in his lower back and left lower extremity since his August 28, 2000 employment injury. Dr. Pannullo further stated that appellant had reinjured himself in February 2004. In an April 1, 2005 attending physician's report, he provided a diagnosis of lumbar disc disease with L5 and S1 radiculopathy. Noting that Dr. Pannullo first examined appellant on February 16, 2004 he opined that his February 2004 injury at work represented an aggravation of his 2000 injury. In an insurance company quick note dated April 1, 2005, Dr. Pannullo diagnosed lumbosacral radiculopathy and noted that the date of injury was February 16, 2004. In response to the question as to whether the injury was related to work, Dr. Pannullo placed a checkmark in the "yes" box. In an unsigned narrative report dated April 1, 2005, he stated that appellant had lumbar disc disease, that he had originally injured himself in 2000 and that he had reinjured himself in February 2004.

At the April 6, 2005 hearing, appellant's representative stated that subsequent to the filing of this claim, appellant filed a second claim for a recurrence of disability (File No. 02-2002685) that was accepted by the Office. Accordingly, his claim in the instant case was for lost wages for only a two-week period. The hearing representative left the record open for an additional 30 days for the submission of evidence in support of appellant's claim.

Appellant submitted unsigned reports from Dr. Demetriades, dated November 19 and December 8, 2004, reflecting his continued complaints of pain in his back and left lower extremity. On April 13, 2005 Dr. Demetriades reported that he was awaiting appellant's final epidural. Appellant also submitted a December 7, 2004 operative report of an epidural injection.

In an unsigned report dated May 12, 2005, Dr. Pannullo reiterated his chronic history of low back and left lower extremity pain and diagnosed multilevel radiculopathy involving the L4-5 and possible S1 nerve roots. On June 10, 2005 appellant's representative forwarded a copy of previously submitted medical reports, including Dr. Pannullo's April 1, 2005 unsigned narrative report.

By decision dated June 23, 2005, the Office hearing representative affirmed the denial of appellant's claim on the grounds that the evidence failed to establish that he had sustained an injury as a result of the accepted employment incidents of February 16, 2004.

On October 31, 2005 appellant's representative filed a request for reconsideration. He alleged that the evidence of record, particularly Dr. Pannullo's April 1, 2005 report, established that appellant sustained a reinjury of his lower back on February 16, 2004.

By decision dated January 30, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence and argument presented was irrelevant and immaterial and, thus, insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] 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.[4]

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.[5] 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

[2] 5 U.S.C. §§ 8101-8193.

[3] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *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).

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

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.[6]

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.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant was a federal employee and that he timely filed his claim for compensation benefits. The Office also properly treated his claim as a traumatic injury claim and accepted that the workplace incidents occurred as alleged on February 16, 2004. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incidents caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incidents are causally related to his diagnosed condition. Therefore, appellant has failed to satisfy his burden of proof.

Dr. Demetriades' reports are insufficient to establish appellant's claim. The large majority of his reports are unsigned. As these reports lack proper identification, they cannot be considered as probative medical evidence.[8] In a February 16, 2004 attending physician's report, Dr. Demetriades provided a diagnosis of osteoarthritis throughout the lumbar spine and noted that x-rays revealed degenerative changes. In response to the question as to whether he believed appellant's condition was caused or aggravated by his employment, he placed a checkmark in the "yes" box. On a February 16, 2004 form entitled "[i]nsurance [c]ompany [q]uick [n]ote," Dr. Demetriades diagnosed lumbar radiculopathy and circled "yes," in response to the question as to whether he believed appellant's condition was related to work. These reports fail to establish a causal relationship between a diagnosed condition and the February 16, 2004 employment incidents. Although Dr. Demetriades 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.[9] Moreover, Dr. Demetriades did not opine that the diagnosed condition was specifically related to the events of February 16, 2004, rather than to appellant's prior August 28, 2000 injury. Therefore, these reports are of diminished probative value. On March 15, 2004 Dr. Demetriades specified August 28, 2000 as the date of injury. On September 7, 2004 he reported that appellant injured his back at work in December 2000. Neither of these conflicting reports supports a causal relationship between appellant's back condition and the incidents of

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

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

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

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

February 16, 2004. Dr. Demetriades' August 4, 2004 insurance company quick notes reflected a diagnosis of low back sprain. However, the report offered 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.[10] In a September 29, 2004 insurance company quick note, Dr. Demetriades provided a diagnosis of back and leg 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.[11] Moreover, as the report offered no opinion on the cause of appellant's condition, it lacks probative value. Similarly, Dr. Demetriades' April 13, 2005 report offered no opinion on causal relationship and, therefore, lacks probative value.

Reports by Dr. Pannullo also fail to establish a causal relationship between appellant's diagnosed condition and the events of February 16, 2004. On March 10, 2004 he diagnosed degenerative disc disease and lumbar radiculopathy. Noting that the date of injury was August 28, 2000, Dr. Pannullo placed a checkmark in the "yes" box in response to the question as to whether he believed appellant's condition was related to work. As noted above, such a check is not sufficient to establish a causal relationship.[12] Moreover, Dr. Pannullo did not address the incidents of February 16, 2004 or attempt to connect them to appellant's current condition. Therefore, this report lacks probative value. Unsigned reports dated March 10 and December 17, 2004 and April 1 and May 12, 2005 cannot be considered as probative medical evidence as they lack proper identification.[13] In an insurance company quick note dated April 1, 2005, Dr. Pannullo diagnosed lumbosacral radiculopathy and noted that the date of injury was February 16, 2004. In response to the question as to whether the injury was related to work he placed a checkmark in the "yes" box. Dr. Pannullo's checkmark is insufficient to establish a causal relationship between the diagnosed condition and the events of February 16, 2004. Moreover, Dr. Pannullo has failed to explain how appellant's current condition was physiologically related to the accepted work incident. The Board notes that on March 10, 2004 he stated that the date of injury was August 28, 2000. Dr. Pannullo has provided no explanation, based on a complete factual and medical background, as to why he now believes that appellant's condition was caused by incidents occurring on February 16, 2004. For all of these reasons, his report is of diminished probative value.

Appellant's representative contended that the March 9, 2005 report from Dr. Demetriades and the April 1, 2005 narrative report from Dr. Pannullo established that appellant reinjured his lower back on February 16, 2004. Dr. Demetriades opined that appellant's leg and back pain was related to his December 2000 injury and that he reaggravated the same condition in February 2004. Dr. Pannullo stated that appellant had lumbar disc disease, that he had originally injured himself in 2000 and that he had reinjured himself in February 2004. The Board notes that both of the above-referenced reports were unsigned. For this reason alone, they cannot be

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

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

[12] *See Gary J. Watling*, *supra* note 9.

[13] *Merton J. Sills*, *supra* note 8.

considered as probative medical evidence. Moreover, neither report provides a rationalized explanation as to how appellant's diagnosed condition is causally related to the incidents of February 16, 2004. A cursory opinion without explanation is of diminished probative value.[14]

Appellant expressed his belief that his lower back condition resulted from the February 16, 2004 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.[15] 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.[16] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, his belief that his condition was caused by the work-related injury is not determinative.

It was appellant's 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. As there is no probative, rationalized medical evidence addressing how his claimed back condition was caused or aggravated by the accepted events of February 16, 2004, 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.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[17] the implementing regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains 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 evidence not previously considered by the Office.[18] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[19]

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[14] *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also Willa M. Frazier*, 55 ECAB 379 (2004); *David L. Scott*, 55 ECAB 330 (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).

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

[16] *Id.*

[17] 5 U.S.C. § 8128(a) (providing that [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).

[18] 20 C.F.R. § 10.606(b)(2).

[19] 20 C.F.R. § 10.608(b); *see also Thomas L. Agee*, 56 ECAB ___ (Docket No. 05-335, issued April 19, 2005).

Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[20] Evidence that does not address the particular issue involved does not constitute a basis for reopening a claim.[21]

ANALYSIS -- ISSUE 2

In his October 31, 2005 letter, requesting reconsideration of the June 23, 2005 decision of the Office hearing representative, appellant's representative contended that the evidence was sufficient to establish that appellant suffered a work-related injury on February 16, 2004. However, he did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[22]

With respect to the third requirement under section 10.606(b)(2), appellant did not submit relevant and pertinent new evidence not previously considered by the Office.[23] Noting his concern that the hearing representative may not have received his June 10, 2005 correspondence and accompanying documents, counsel asked the Office to reconsider all of the medical evidence, particularly the April 1, 2005 report from Dr. Pannullo. The record reflects that counsel's June 10, 2005 letter and accompanying documents were received by the Office on June 20, 2005. There is nothing in the record to indicate that these documents were not reviewed by the hearing representative prior to the issuance of the June 23, 2005 decision. Moreover, Dr. Pannullo's April 1, 2005 narrative report was first received by the Office and became a part of the record on April 14, 2005. As the hearing representative indicated that he had thoroughly reviewed the evidence of record, the Board finds that he considered Dr. Pannullo's April 1, 2005 narrative report in rendering his June 23, 2005 decision. Therefore, Dr. Pannullo's report is duplicative of evidence already in the record and, thus, does not constitute a basis for reopening the case.[24] Accordingly, the Board finds that the Office properly denied appellant's request for merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury causally related to the February 16, 2004 employment incident. The Board further finds that the Office properly refused to reopen his claim for merit review.

[20] *See Betty A. Butler*, 56 ECAB ___ (Docket No. 04-2044, issued May 16, 2005).

[21] *Id.*

[22] 20 C.F.R. § 10.606(b)(2).

[23] 20 C.F.R. § 10.608(b)(1) and (2).

[24] *See Betty A. Butler*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2006 and June 23, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 31, 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