United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 06-1391**
	)	**Issued: January 8, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Fort Wayne, IN, Employer	)	

Appearances:
David C. Van Gilder, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2006 appellant filed a timely appeal from the October 24, 2005 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim and a February 21, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury while in the performance of duty on December 26, 2004; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 26, 2004 appellant, a 26-year-old aviation security screener, filed a traumatic injury claim alleging that on that date she reinjured her lower back when she moved

a stack of bins, File No. 09-20550594.[1] She stated that, at the time of the injury, her lower back started hurting, her foot went numb, and pain radiated up and down her leg and into her left foot. Roger D. Kriner, Jr. stated that appellant approached him on December 26, 2004 after injuring her back while moving bins. Appellant was limping and obviously in a great deal of pain. In an undated statement, she indicated that, following her return to work on February 7, 2004, her original injury was exacerbated on December 26, 2004.

In support of her claim, appellant submitted a medical note dated October 29, 2004 from Dr. Jeffrey Walker, Board-certified in the field of family medicine. He found that appellant would be unable to work until she was evaluated by her physician on January 4, 2005. Appellant submitted numerous reports from Dr. Thomas Lazoff, a Board-certified physiatrist. On February 22, 2004 Dr. Lazoff described a history of low back pain due to an April 4, 2003 work-related injury, and provided diagnoses of degenerative disc disease and annular tear at L5-S1. He stated that appellant's back condition was exacerbated when she experienced a second work-related injury on December 4, 2003. On March 8, 2005 Dr. Lazoff diagnosed discogenic low body pain and recommended that appellant be restricted from prolonged standing; climbing ladders; squatting; kneeling; bending; twisting; stretching; or lifting, pushing or pulling more than five pounds. On June 5, 2005 Dr. Lazoff opined that appellant's degenerative disc was causing most of her symptomology. He stated that he had examined appellant on January 4, 2005, when he provided work restrictions and opined that the restrictions imposed were directly related to her December 4, 2003 employment injury. In an August 15, 2005 attending physician's report, Dr. Lazoff provided diagnoses of discogenic LBP and S1 radiculopathy. He stated that appellant reinjured her back at work on December 4, 2003.

On August 18, 2005 appellant filed an occupational disease claim alleging that she reinjured her back in December 2004. Appellant indicated that she had filed a traumatic injury claim on December 26, 2004, but was "recently" informed that she was required to file a CA-2 form.

On August 31, 2005 the Office requested additional information relating to her occupational disease claim. The Office provided appellant 30 days to submit evidence which demonstrated that the claimed condition was related to factors of employment over a period of time. In another letter dated August 31, 2005, the Office informed appellant that the information submitted was insufficient to establish her traumatic injury claim. The Office advised appellant that she had 30 days to submit additional information, including a detailed account of her alleged injury and a physician's report, with a diagnosis and an opinion as to the cause of the diagnosed condition.

A September 2, 2005 memorandum to the file reflected the Office's decision to develop appellant's December 26, 2004 claim as a traumatic injury claim.

[1] Appellant has two previously filed work-related claims. Her April 4, 2003 traumatic injury, File No. 09-2032626 was accepted for lumbar strain. Her December 4, 2003 claim, File No.09-2041221, was initially denied, but later accepted for temporary aggravation of preexisting lumbar degenerative disc disease, following a July 26, 2005 decision of a hearing representative. On April 3, 2006 appellant's claims were consolidated under File No. 09-2041221.

By letter dated September 19, 2005, the Office again informed appellant that the evidence submitted was insufficient to establish her claim. It stated that appellant had not provided evidence that she actually experienced an employment incident on December 26, 2004, nor had she submitted a medical report containing a diagnosis and a well-reasoned opinion explaining how the diagnosed condition was related to the December 26, 2004 incident. The Office provided appellant 30 days to submit the required information.

Appellant submitted time and attendance reports for December 25 and 26, 2004; September 7 and 15, 2005; and October 9 and 18, 2005. She also submitted CA-7 forms for September 4 through October 15, 2005.

In a letter dated October 14, 2005, appellant's attorney asked the Office to provide her additional time to obtain necessary medical records in support of her claim. He asked that the file remain open until November 21, 2005. Counsel stated that appellant's original injury occurred on December 4, 2003, not in 2004. He noted that appellant's back problems worsened in 2004, but were related to the December 4, 2003 injury.

By decision dated October 24, 2005, the Office denied appellant's claim. The Office found that the evidence submitted was insufficient to establish that appellant had sustained an injury on December 26, 2004. The Office concluded that the evidence supported that the claimed incident occurred, but found that there was no medical evidence of record that provided a diagnosis that was causally related to the accepted incident.

In a letter dated November 17, 2005, counsel argued that the Office had inaccurately reclassified appellant's CA-2 claim, for a recurrence of her December 2003 injury, as a new injury. He reiterated that there was no new injury, and that the medical records showed that appellant's worsening back problems were related to her December 4, 2003 employment injury.

On December 22, 2005 counsel submitted a request for reconsideration. In a February 3, 2006 letter, the Office informed appellant that she was required to submit a statement authorizing her representation by counsel in her December 26, 2004 claim. On February 7, 2006 appellant submitted a notarized statement authorizing her representation by counsel.

By decision dated February 21, 2006, the Office denied appellant's request for reconsideration finding that the evidence submitted in support of the request did not warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the

[2] 5 U.S.C. §§ 8101-8193.

performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her 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.[5] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

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.[7] An award of compensation may not be based on appellant's belief of causal relationship.[8] 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.[9] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

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[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB 339 (2004).

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). 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).

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

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

[9] *Id*.

[10] 20 C.F.R. § 10.303(a).

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.[11]

ANALYSIS -- ISSUE 1

The Office properly developed appellant's claim as a traumatic injury claim, in that she alleged that she reinjured her lower back when she moved a stack of bins on December 26, 2004.[12] The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace incident occurred as alleged. The issue, therefore, is whether she 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 December 28, 2004 work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

The medical evidence of record consists of several reports predating the December 26, 2004 incident, including an October 29, 2004 report from Dr. Walker and reports from Dr. Lazoff. Dr. Walker's note stated that appellant would be unable to work until she was evaluated by Dr. Lazoff on January 4, 2005. In that this note predates the accepted December 26, 2004 injury, it is not relevant to the issue of causal relationship. Therefore, it lacks probative value. For the same reason, Dr. Lazoff's February 22, 2004 report lacks probative value. On March 8, 2005 Dr. Lazoff diagnosed discogenic low back pain and recommended that appellant be restricted from prolonged standing; climbing ladders; squatting; kneeling; bending; twisting; stretching; or lifting, pushing or pulling more than five pounds. However, he did not address the December 26, 2004 incident or provide an opinion on the cause of appellant's low back condition. The Board has long held that 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.[13] On June 5, 2005 Dr. Lazoff opined that appellant's degenerative disc disease was causing most of her symptomology. He examined appellant on January 4, 2005, when he provided work restrictions, and opined that the restrictions were directly related to her December 4, 2003 employment injury. This report neither addresses nor provides support for appellant's claim that her condition was caused or aggravated by the December 26, 2004 incident and, therefore, lacks probative value. In an August 15, 2005 attending physician's report, Dr. Lazoff provided diagnoses of discogenic LBP and S1 radiculopathy and stated that appellant reinjured her back at work on December 4, 2003. He did

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

[12] *See* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2006) (Occupational disease or Illness and Traumatic injury defined).

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

not address or explain how appellant's current condition was caused by the December 26, 2004 work incident. Therefore, this report also lacks probative value.

In this case, there is no medical evidence of record establishing a causal relationship between appellant's low back condition and the accepted December 26, 2004 work-related incident, nor does the evidence address how any preexisting low back condition was caused or aggravated by the accepted incident. The Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.[14] To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[15] Appellant failed to submit such evidence and, therefore, failed to satisfy her burden of proof.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury while in the performance of duty on December 26, 2004.

LEGAL PRECEDENT -- ISSUE 2

The Act[16] 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 may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[17]

The application for reconsideration 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.[18]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/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.[19] Where

[14] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[15] *Robert Broome*, *supra* note 5.

[16] 5 U.S.C. §§ 8101 *et seq.*

[17] 20 C.F.R. § 10.605.

[18] 20 C.F.R. § 10.606.

[19] *Donna L. Shahin*, 55 ECAB 192 (2003).

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.[20]

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant 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. Appellant's representative contended that the Office inaccurately adjudicated her claim for a recurrence of her December 2003 injury, as a new injury. He reiterated that there was no new injury, and that the medical records showed that appellant's worsening back problems were related to her December 4, 2003 employment injury. Counsel's argument is both inaccurate and irrelevant to the issue before the Office. The record reflects that the Office chose to develop appellant's claim as a traumatic injury claim, rather than an occupational disease claim, based on her representation that she was injured while moving bins on December 26, 2004. The representative incorrectly referred to the occupational disease claim (Form CA-2) filed by appellant, as a claim for a recurrence of disability (Form CA-2a). Moreover, in its October 24, 2005 decision, the Office found that the evidence supported that the claimed event occurred, but found that there was no medical evidence of record that provided a diagnosis that was causally related to the accepted event. Ultimately the argument made by counsel as to the nature of appellant's claim, adjudication is not relevant to the issue before the Office on reconsideration, which is medical in nature. The Office accepted that the December 26, 2004 incident occurred; however, counsel contends that appellant did not experience a traumatic incident on December 26, 2004. The Board finds that appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[21]

With respect to the third requirement under section 10.606(b)(2), appellant did not submit any relevant and pertinent new evidence not previously considered by the Office.[22] In fact, appellant presented no additional evidence or information, other than a letter from his representative, which was discussed above. Accordingly, the Board finds that the Office properly denied appellant's request for merit review.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on December 26, 2004.

[20] 20 C.F.R. § 10.608.

[21] 20 C.F.R. § 10.606(b)(2).

[22] 20 C.F.R. § 10.608(b)(1) and (2).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 21, 2006 and October 24, 2005 are affirmed.

Issued: January 8, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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