United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 07-320**
	)	**Issued: June 22, 2007**
ARCHITECT OF THE CAPITOL, RAYBURN HOUSE OFFICE BUILDING, Washington, DC, 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 November 15 2006 appellant filed a timely appeal from an August 23, 2006 decision of the Office of Workers' Compensation Programs which denied his 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 met his burden of proof to establish that he sustained an employment-related injury on August 10, 2005.

FACTUAL HISTORY

On September 30, 2005 appellant, then a 63-year-old electrician, filed a Form CA-1, traumatic injury claim, alleging that on August 10, 2005 he sustained back pain when pulling cable. In an attached statement, appellant stated that the problem was sharp, intermittent stomach pain which began approximately August 10, 2005 and continued until Friday, August 19, 2005. He reported a hospital diagnosis of muscle strain and that he was given

medication. An undated statement reported that on August 10, 2005 appellant notified Kevin Banks, a supervisor, that he injured himself while pulling wire and that on August 12, 2005 he told Mr. Banks that his stomach hurt. The employing establishment controverted the claim.

In support of his claim, appellant submitted an August 15, 2005 report in which Dr. Nissa Novas, an emergency medicine physician, diagnosed abdominal pain of uncertain cause and provided home care instructions. She advised that appellant could not work on August 15 and 16, 2005. Computerized tomography (CT) scan of the abdomen and pelvis on August 15, 2005 demonstrated diverticula disease of the colon without diverticulitis. On August 19, 2005 Dr. Ranjit S. Risam advised that appellant could not work August 17 through 19, 2005 but could return to his regular duties on August 21, 2005.[1] A September 1, 2001 colonoscopy report advised that the colonic mucosa was normal with no masses or polyps and numerous scattered diverticula and internal hemorrhoids were present. A September 18, 2005 Doctors' Community Hospital report identified Dr. James H. Shero, a Board-certified internist, as the care provider and provided generic medical instructions for abdominal pain and gastritis. CT scan of the chest, abdomen and pelvis on August 25, 2005 demonstrated a left paratracheal mass at the thoracic inlet suggestive of thyroid goiter, mild bilateral hilar lymph nodes, a contracted gallbladder and diverticulosis with possible mild diverticulitis of the distal descending colon. In an October 5, 2005 report, Dr. Mauricio J. Acebey and Dr. Thomas S. Lee, both Board-certified physiatrists, noted a chief complaint of right-sided lower abdominal pain, a past medical history of diverticulitis and a history that appellant was pulling wire at work when he developed a sharp pain in the lower back. Physical examination of the spine and the right lower quadrant of the abdomen revealed tenderness. Straight-leg raising test was negative. A September 7, 2005 magnetic resonance imaging (MRI) scan of the lumbar spine was discussed and the report stated that following the employment incident, appellant had lumbar facet arthropathy and some myofascial pain which was improving. Physical therapy and continuation of appellant's gastrointestinal workup for his abdominal pain were recommended. Abdominal x-ray on October 5, 2005 was read as unremarkable. In a disability slip dated October 12, 2005, Dr. Novas advised that appellant could return to regular duty on October 17, 2005.

An unsigned accident report dated October 19, 2005 stated that appellant strained stomach muscles. No date of injury was listed. An employing establishment injury investigation report dated October 25, 2005 advised that appellant was injured on August 10, 2005 while working on wiring. Safety recommendations were made. The record also contains copies of photographs of the implicated worksite and an article regarding diverticulitis.

By letter dated January 9, 2006, the Office informed appellant of the evidence needed to support his claim. In an undated statement appellant advised that he did not work August 15 through October 14, 2005 except for August 22 through 25, 2005. He submitted reports regarding emergency room treatment dated August 24 and 25, 2005. By report dated August 25, 2006, Dr. Ryan Kramer, Board-certified in emergency medicine, noted that a CT scan revealed diverticulitis. He advised that appellant could not work and provided home care instructions. A telephone follow-up report dated August 27, 2005 advised that a left paratracheal mass was not noted on an initial CT reading. A September 7, 2005 MRI scan of the lumbar spine

[1] Dr. Risam's credentials are unknown.

demonstrated L4-5 facet arthropathy and a right foraminal and lateral disc bulge impinging on the L4 nerve root. An emergency room report dated September 18, 2005 stated that appellant had a four-week history of abdominal pain and diagnosed acute abdominal pain and gastritis.[2]

By decision dated February 24, 2006, the Office found the August 10, 2005 employment incident occurred but denied the claim on the grounds that the medical evidence did not establish that appellant sustained an injury causally related to this incident. On March 21, 2006 appellant requested a telephonic hearing that was held on July 7, 2006. He discussed the employment incident and his medical treatment. The Office hearing representative explained that the issue was medical and that appellant needed to submit a medical report with a firm diagnosis and an opinion that the diagnosed condition was causally related to the August 10, 2005 employment incident. Appellant submitted an abdominal CT scan report dated March 9, 1999 that demonstrated diverticulitis. By report dated August 30, 2005, Dr. Mushtaq A. Shah, a Board-certified internist, advised that appellant was seen for severe right upper and lower quadrant pain and scheduled tests. Esophogastroduodenoscopy (EGD) on September 22, 2005 demonstrated a normal esophagus and gastroesophageal junction with evidence of acute gastritis of the antrum and body of the stomach. The duodenum appeared normal. Disability slips indicated that appellant could not work October 9 through 17, 2005 when he could return to his regular duties.[3] In an undated report, Dr. Robert J. Wagner, a Board-certified osteopath surgeon, noted that appellant was seen for abdominal pain in a dermatomal pattern. He advised that appellant got better after being treated with medication for postherpetic neuralgia or neuropraxia, stating:

> "Now that neuropraxia could be secondary to herpes zoster, could be secondary to a muscle strain ... could be secondary to herniated dis[c]. I am not quite sure what is the cause of all of that; however, it is neurologic in nature. There is nothing intra-abdominal that is causing this pain.... Therefore, I cannot give you a definitive idea as to the nature of his illness. I can just say that it is musculoskeletal/neurologic in its etiology."

By decision dated August 23, 2006, an Office hearing representative affirmed the February 24, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether

[2] The signatures are illegible.

[3] The signature is illegible.

[4] 5 U.S.C. §§ 8101-8193.

the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[5]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[6] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[8] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.[9] 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 causal relationship.[10]

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[11] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that

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

[6] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *Gary J. Watling*, *supra* note 5.

[8] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

[11] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[12]

ANALYSIS

The Office found and the Board agrees that the August 10, 2005 incident occurred. Appellant, however, failed to meet his burden of proof to establish that he sustained an injury caused by this incident. When he filed his claim, appellant stated that he sustained back pain on August 10, 2005 and in an attached statement, alleged that the problem was sharp, intermittent stomach pain. The Board finds that appellant submitted no probative medical evidence to establish that he sustained either a back or stomach condition causally related to the August 10, 2005 employment incident.

Regarding the article submitted on diverticulitis, newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.[13] Furthermore, the objective studies of record including CT scans, x-rays, MRI scans, EGD and colonoscopy and the generic instructions did not provide an opinion regarding the cause of any diagnosed condition and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14]

In the August 15, 2006 emergency room report, the evidence most contemporaneous with the claimed injury, Dr. Novas diagnosed abdominal pain of unknown origin and advised that appellant could not work on August 15 and 16, 2005. While Dr. Risam also advised that appellant could not work on August 17 through 19, 2005, neither physicians stated a reason for the work disability. Likewise, neither Drs. Shah, Kramer, nor Drs. Lee and Acebey provided a cause for either a diagnosed condition or disability.[15] Dr. Wagner advised that appellant's neuropraxia could be secondary to a herpes zoster, a muscle strain or a muscle sprain, stating that he could not be sure of what was the cause. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.[16]

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual

[12] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[13] *Allen C. Hundley*, 53 ECAB 551 (2002).

[14] *Willie M. Miller*, 53 ECAB 697 (2002).

[15] *Id.*

[16] *Kathy A. Kelley*, 55 ECAB 206 (2004).

background of the claimant.[17] Appellant submitted no such evidence in this case and, thus, did not establish the critical element of causal relationship. He, therefore, did not meet his burden of proof to establish that he sustained an injury on August 10, 2005.[18]

CONCLUSION

The Board finds that, while appellant met his burden of proof to establish that he sustained an employment incident on August 10, 2005 he did not meet his burden of proof to establish that he sustained an injury causally related to this incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 23, 2006 be affirmed.

Issued: June 22, 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

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

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