United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 07-1090**
	)	**Issued: September 7, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Red Bank, NJ, 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 March 12, 2007 appellant filed a timely appeal from a November 8, 2006 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim and a February 14, 2007 nonmerit decision 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 and over the February 14, 2007 nonmerit decision.

ISSUES

The issues are: (1) whether appellant has established that he sustained an injury on April 8, 2006 in the performance of duty; and (2) whether the Office properly denied his request for merit review of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On April 10, 2006 appellant, then a 59-year-old letter carrier, filed a claim for a traumatic injury occurring on April 8, 2006 when he "bent over to pick up mail out of [his] vehicle and felt

pain in [his] back." He stopped work on April 8, 2006. The employing establishment did not controvert the claim.

An authorization for medical attention form dated April 10, 2005, signed by either a physician or a nurse, indicated that appellant was unable to return to work for seven days.[1] An authorization for medical attention form dated April 17, 2006 listed the nature of the injury as back pain and indicated with a checkmark "yes" that the condition was job related. It was found that appellant was able to resume employment. The record also contains a duty status report completed by the employing establishment; however, the physician's portion of the form is blank.

By letter dated September 19, 2006, the Office requested that appellant submit additional medical information, in particular a detailed medical report from his attending physician addressing the relationship of any diagnosed condition and his employment. The Office allotted him 30 days to provide the requested information.

In a decision dated November 8, 2006, the Office denied appellant's claim on the grounds that he failed to establish an injury on April 8, 2006 as alleged. The Office stated, "the factual evidence is sufficient to establish that you have a back injury; however[,] there is no medical evidence received to establish that your condition was sustained as a result of bending over to pick up mail out of [your] vehicle on April 8, 2006." The Office noted that form reports specified only back pain and were not signed by a physician.

On January 12, 2007 appellant requested reconsideration. He submitted a January 8, 2007 duty status report from a physician. Neither the name of the physician nor the diagnosis on the form is legible. The physician checked "yes" that the history of injury provided by appellant corresponded to the described employment activity on the form of a back injury sustained when he bent over to pick up mail while out of his vehicle.

In a decision dated February 14, 2007, the Office denied appellant's request for merit review of his claim under section 8128. The Office found that as he did not specify the basis for his reconsideration request it would not review the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 filed within the applicable time limitation; that an injury was sustained while 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.[3] These are the essential

[1] The signature is not legible.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Anthony P. Silva*, 55 ECAB 179 (2003).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

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.[5] 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.[6] 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]

ANALYSIS -- ISSUE 1

Appellant filed a claim alleging that he experienced back pain on April 8, 2006 when he bent over to pick up mail outside his vehicle. He stopped work on that date and sought medical treatment on April 10, 2006. The employing establishment did not controvert the claim and there are no inconsistencies sufficient to cast doubt that the April 8, 2006 employment incident occurred as alleged.[8] This issue is thus whether appellant sustained a compensable injury as a result of the April 8, 2006 employment incident.

The Board finds that appellant has not established that the April 8, 2006 employment incident resulted in an injury. The question of whether an employment incident caused an injury is generally established by medical evidence.[9] Appellant submitted a form report from the employing establishment which indicated that he was authorized to receive medical attention and noted that he experienced back pain. It is unclear whether the form reports were signed by a physician or a nurse. The Board notes that a nurse is not a "physician" under the Act and thus cannot render a medical opinion.[10] The form reports do not contain any diagnosis or findings on examination and thus are of little probative value.[11] The record also contains a duty status report (Form CA-17) completed by the employing establishment; however, the physician's portion of the form is blank. Consequently, the Form CA-17 does not constitute medical evidence.

[4] *See Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Delphyne L. Glover*, 51 ECAB 146 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] *Id.*

[8] *See Betty J. Smith*, 54 ECAB 174 (2002) (an employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim).

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

[10] *Vincent Holmes*, 53 ECAB 468 (2002).

[11] *See Gewin C. Hawkins*, 52 ECAB 242 (2001).

On September 19, 2006 the Office advised appellant of the type of medical evidence required to establish his claim. He did not, however, respond to the Office's request for additional evidence within the allotted time. As appellant did not provide the medical evidence necessary to substantiate his claim, he has not met his burden of proof. The Office, therefore, properly denied his claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[12] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[15]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[16] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[17] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[18]

ANALYSIS -- ISSUE 2

By decision dated November 8, 2006, the Office determined that appellant did not establish an injury to his back on April 8, 2006 due to bending over to pick up mail at work. On January 12, 2007 he checked on the form accompanying his appeal rights that he desired reconsideration. With his request for reconsideration, appellant submitted a duty status report dated January 8, 2007. The form report does not constitute relevant and pertinent new evidence

[12] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

[13] 20 C.F.R. § 10.606(b)(2).

[14] 20 C.F.R. § 10.607(a).

[15] 20 C.F.R. § 10.608(b).

[16] *Arlesa Gibbs*, 53 ECAB 204 (2001); *James E. Norris*, 52 ECAB 93 (2000).

[17] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[18] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

as the diagnosis is illegible. Evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[19]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As he did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on April 8, 2006 in the performance of duty. The Board further finds that the Office properly denied his request for merit review of his claim under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 14, 2007 and November 8, 2006 are affirmed.

Issued: September 7, 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

[19] *See Ronald A. Eldridge*, *supra* note 17.