United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 07-1269**
	)	**Issued: September 14, 2007**
DEPARTMENT OF DEFENSE, Fort Bragg, NC, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 11, 2007 appellant filed a timely appeal of a January 3, 2007 merit decision of the Office of Workers' Compensation Programs, finding that he did not sustain an injury in the performance of duty on May 16, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on May 16, 2006.

FACTUAL HISTORY

On May 17, 2006 appellant, then a 63-year-old custodial worker, filed a traumatic injury claim alleging that on May 16, 2006 he experienced neck and back pain and numbness in his right hand and fingers as a result of moving a buffer. He stopped work on May 16, 2006.

By letter dated February 2, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the medical evidence he needed to submit.

Appellant submitted discharge instructions signed by Cathy Jones, a licensed practical nurse, on August 4, 2006. An October 18, 2006 medical report of Dr. Kim-Eng Koo, a Board-certified neurosurgeon, found that appellant sustained large herniated discs of the cervical spine with cord compression and os odontoideum. Dr. Koo stated that appellant was status post cervical spine surgery with fusion. The physician released him to light-duty work with restriction. In an August 6, 2006 prescription, Dr. Koo stated that appellant could not work until his next evaluation on October 6, 2006.

By decision dated January 3, 2007, the Office denied appellant's claim. The evidence of record was found insufficient to establish that he sustained an injury causally related to the accepted May 16, 2006 employment incident.[1]

LEGAL PRECEDENT

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

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[5] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.[6]

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[1] On January 15, 2007 appellant requested an oral hearing before an Office hearing representative regarding the Office's January 3, 2007 decision and he submitted additional evidence. However, the case record does not contain a final decision of a hearing representative. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[6] *Linda S. Jackson*, 49 ECAB 486 (1998).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The record supports that on May 16, 2006 appellant moved a buffer at work. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incident caused any employment injury.

The discharge instructions of Ms. Jones, a licensed practical nurse, are of no probative value as a nurse is not a "physician" as defined under the Act.[10]

Dr. Koo's October 18, 2006 report found that appellant had large herniated discs of the cervical spine with cord compression and an os odontoideum. It was noted that he was status post cervical spine surgery with fusion. Dr. Koo released appellant to light-duty work with restriction. The physician did not provide any medical rationale explaining how or why appellant's cervical conditions and resultant surgery were causally related to the May 16, 2006 employment incident. Dr. Koo did not provide a history of the accepted incident or explain how it would be competent to cause or contribute to the diagnosed cervical condition. The Board finds that Dr. Koo's report is not sufficient to establish that appellant's cervical spine conditions and surgery were caused or contributed to by the May 16, 2006 employment incident.

Dr. Koo's August 6, 2006 prescription found that appellant was totally disabled for work until his next evaluation on October 6, 2006. However, the physician did not provide a diagnosis causally related to the May 16, 2006 employment incident. Moreover, Dr. Koo did not attribute appellant's disability to the accepted employment incident. The Board finds that this evidence is insufficient to establish appellant's claim.

Appellant did not submit any additional medical evidence addressing causal relationship. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained any neck, back and right hand or finger injuries in the performance of duty on May 16, 2006. He failed to meet his burden of proof.

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Charles E. Evans*, 48 ECAB 692 (1997).

[10] *See* 5 U.S.C. § 8101(2); *Thomas Lee Cox*, 54 ECAB 509 (2003); *Janet L. Terry*, 53 ECAB 570 (2002).

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the May 16, 2006 employment incident, he has failed to meet his burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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