United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
	)	**Docket No. 08-776**
and	)	**Issued: August 26, 2008**
	)	
DEPARTMENT OF THE ARMY,	)	
Picatinny Arsenal, NJ, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 18, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 25, 2007 merit decision which denied his claim for a traumatic injury. He also appealed a December 10, 2007 decision which denied merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues on appeal are: (1) whether appellant has met his burden of proof in establishing that he sustained a right wrist injury on May 4, 2007; and (2) whether the Office properly denied his request for reconsideration.

FACTUAL HISTORY

On May 15, 2007 appellant, then a 47-year-old mechanical engineering technician, filed a traumatic injury claim alleging that on May 4, 2007 he sustained a right wrist injury when he tripped and fell when unloading a truck while in the performance of duty. He did not stop work.

By letter dated May 22, 2007, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant submitted a sick slip prepared by an employing establishment emergency medical technician who noted that appellant fell on his right wrist and was subsequently referred to the local emergency room because no doctor was present in the clinic.

In a decision dated June 25, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by factors of his employment.

On October 30, 2007 appellant requested reconsideration and submitted additional evidence. He submitted employing establishment clinic notes prepared by a medical technician dated May 4, 2007 who treated him for a right wrist injury. Appellant reported falling and landing on his right wrist. The medical technician noted findings upon physical examination of no swelling or bruising. She referred appellant to the emergency room for treatment. On June 13, 2007 appellant was treated at the employing establishment clinic by Dr. James F. Bilello, a Board-certified family practitioner, who indicated that appellant related that he injured his right wrist on May 4, 2007. Appellant reported joint pain localized in the wrist. Dr. Bilello noted findings upon physical examination of mild decrease in range of motion on extension and flexion with no swelling or tenderness. The x-ray of the right wrist revealed no fracture or dislocation. Dr. Bilello noted appellant's accident occurred on industrial premises. He diagnosed wrist sprain and recommended a wrist splint and released appellant to work without restrictions. In an emergency room note dated May 4, 2007, Dr. Hardik C. Soni, an emergency room physician, treated appellant for an injury to the right wrist. He diagnosed right wrist sprain and prescribed Motrin.

In a decision dated December 10, 2007, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

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 which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS -- ISSUE 1

The Office properly found that on May 4, 2007 appellant tripped and fell when unloading a pick-up truck at work as alleged. However, appellant has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factors or that any alleged right wrist injury is causally related to the employment factors or conditions.

On May 22, 2007 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted an individual sick slip prepared by an employing establishment emergency medical technician who noted appellant fell on his right wrist and was subsequently referred to the emergency room to be treated by a physician. However, an emergency medical technician is not a physician under the Act and, consequently, the report of an emergency

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

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

medical technician cannot be considered as medical opinion evidence.[7] As noted above, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. Therefore, this note is insufficient to meet appellant's burden of proof.

The record contains no other medical evidence received prior to the issuance of the Office's June 25, 2007 decision. Because appellant has not submitted a reasoned medical opinion explaining how and why his right wrist sprain is employment related, he has not met his burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[8] Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[9] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,[10] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

[7] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley,* 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

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

[9] 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[11]

ANALYSIS -- ISSUE 2

Appellant's October 30, 2007 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not 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).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted employing establishment clinic notes prepared by a medical technician dated May 4, 2007 who treated him for a right wrist injury sustained in a fall and referred appellant to the emergency room for treatment. However, the underlying issue in the case is medical in nature and documents from a medical technician cannot be considered as medical evidence.[12] Appellant also submitted a June 13, 2007 report from Dr. Bilello who noted that appellant reported sustaining a right wrist injury on industrial premises on May 4, 2007. He diagnosed wrist sprain and released appellant to work without restrictions. However, Dr. Bilello's report, while new, is not relevant because he did not provide his any opinion regarding whether the May 4, 2007 incident caused the diagnosed condition. Likewise, Dr. Soni noted on May 4, 2007 that appellant presented with complaints of a right wrist injury but Dr. Soni did not address whether the May 4, 2007 employment incident caused a diagnosed condition. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."[13] Therefore, the Board finds that the Office properly denied appellant's requests for reconsideration without reviewing the merits of the claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right wrist injury causally related to his May 4, 2007 employment incident and that

[11] 20 C.F.R. § 10.608(b).

[12] As noted above, treatment notes signed by an emergency medical technician are not considered medical evidence as an emergency medical technician is not a physician under the Act; *see supra* note 7.

[13] 20 C.F.R. § 10.606(b).

the Office properly denied appellant's requests for reconsideration without conducting a merit review of the claim.[14]

ORDER

IT IS HEREBY ORDERED THAT the December 10 and June 25, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 26, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[14] Subsequent to the December 10, 2007 Office decision, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).