

Office issued within one year of the date of the appeal.¹ By decision dated August 22, 2005, the Board reversed an October 21, 2004 decision denying appellant's claim. The case was remanded to the Office to review the medical evidence and the issuance of a *de novo* decision.² The factual history of the case, as provided in the Board's prior decision, is incorporated herein by reference.

On remand, the Office reviewed reports from Dr. Richard W. Schafer, an osteopath, dated September 9 to 18, 2002. Dr. Schafer advised that appellant was treated for migraine headaches and was off work. On October 30, 2002 he noted a history of the August 30, 2002 incident and advised that appellant was examined on September 23 and October 29, 2002. Dr. Schafer noted that appellant did not seek treatment or turn in a report for an August 30, 2002 injury as he was also being treated for a prior workers' compensation work injury and believed that his injuries would be covered under that claim. In reports dated November 5, 2002 and December 5, 2003, he advised that appellant continued to have left shoulder, left arm, left hand, left knee and left leg pain as a result of the August 30, 2002 incident and was unable to work. On March 5, 2003 Dr. Schafer reported that appellant had a great deal of pain in the left shoulder, left arm, left hand, left knee and left leg. He stated that appellant has been unable to work for several months due to pain, which intensified after a job-related accident and a later motor vehicle accident.

In a November 6, 2002 report, Dr. Laurence H. Altshuler, a Board-certified internist, advised that appellant was injured in an on-the-job accident on August 30, 2002, when lifting a wooden garage door. He opined that appellant was totally disabled as a result of several injuries from the accident.

In a November 11, 2003 report, Dr. Wallace Heller, a psychiatrist, noted that appellant had been under his care since October 18, 2002. When first evaluated, appellant complained of pain and limited functioning, which he attributed to workplace injuries. Dr. Heller diagnosed a panic disorder with agoraphobia and a depressive disorder not otherwise specified. He stated that, although appellant claimed to have pain and limitations in strength and mobility due to the workplace injuries, it was beyond his scope of expertise to evaluate those complaints. There was no evidence to suggest that appellant was malingering or had a factitious disorder. Dr. Heller opined that there was enough wrong with him (preexisting physical illness, results of workplace injuries, ongoing emotional illness) that he was totally disabled.

By decision dated December 27, 2005, the Office found that the August 30, 2002 incident occurred. It denied the claim on the grounds that the medical evidence did not establish that appellant's claimed conditions were caused by the August 30, 2002 incident.

On June 5, 2006 appellant, through his attorney, requested reconsideration of the Office's December 27, 2005 decision. Counsel argued that appellant established that he was in the performance of duty at the time of his injury and the medical reports logically establish a causal connection between his claim of ongoing injury and the accepted incident.

In an October 12, 2005 report, Dr. Schafer advised that appellant was first seen on September 23, 2002 for injuries to his left shoulder, lower back and left knee on

¹ Docket No. 04-1352 (issued September 24, 2004).

² Docket No. 05-500 (issued August 22, 2005).

August 30, 2002. At that time, appellant had severe left arm pain that radiated to the shoulder blade, elbow and to the top of the left hand. He had left lower paraspinal lumbar pain with muscle spasms. Appellant's left knee had hyperextended during the accident and was very weak and could not support his weight. Dr. Schafer stated that appellant was not able to return to work since the accident. Appellant was put on pain medication and referred to a neurologist, an orthopedic surgeon, and a psychiatrist due to severe anxiety following the accident.

In a March 16, 2006 report, Dr. Schafer noted that he reviewed appellant's chart and that reiterated that he remained totally disabled. He stated that appellant continued to have severe pain in his left arm, left knee and lower paraspinal lumbar area and required daily pain medicine.

By decision dated August 22, 2006, the Office denied modification of its December 27, 2005 decision.

On March 2, 2007 appellant, through his attorney, requested reconsideration.

In a November 5, 2006 report, Dr. Schafer noted the history of injury and provided physical findings for appellant's left arm and left leg. He diagnosed left arm pain and left leg pain, possible rotator cuff tear, peripheral neuropathy, back pain and left knee effusion with possible tear of the meniscus. Dr. Schafer opined that these conditions were due to the claimed injury as appellant was on duty and during the normal pursuit of duty. He opined that appellant was totally disabled due to his work-related injuries. Chart notes dated November 3, 2006 and February 28, 2007 were also submitted.

By decision dated May 4, 2007, the Office denied modification of its August 22, 2006 decision.

On appeal, counsel contends that the medical evidence of record supports appellant's claim of injury on August 30, 2002.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

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.⁵ To determine whether an employee sustained a traumatic injury in the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

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

performance of duty, the Office must determine whether fact of injury is established. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.⁶ The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁷ As part of this burden, the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.⁸ 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.⁹

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

The Office accepted that appellant was in the performance of duty on August 30, 2002 when he lifted a garage door. The Board finds, however, that the medical evidence is not sufficient to establish that his left arm, left knee and lower back conditions are causally related to the August 30, 2002 incident.

Appellant submitted reports from Dr. Schafer dated September 9, 2002 through February 28, 2007. Dr. Schafer first treated appellant on September 23, 2002 for the August 30, 2002 incident. He diagnosed injury to his left shoulder, lower back and left knee. Dr. Schafer reported that appellant experienced pain in the left shoulder, left arm, left hand, left knee and left leg as a result of the accident and was not able to return to work. He advised that appellant was put on pain medication and referred to a neurologist, an orthopedic surgeon and a psychiatrist for treatment. On his November 5, 2006 Dr. Schafer subsequently diagnosed left arm pain and left

⁶ *Charles B. Ward*, 38 ECAB 667 (1987).

⁷ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁸ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁹ *Gary J. Watling*, *supra* note 4.

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

leg pain, possible rotator cuff tear, peripheral neuropathy, back pain and left knee effusion with possible tear of the meniscus. He opined that these conditions were due to the claimed injury as appellant was on duty and during the normal pursuit of duty. The Board finds that Dr. Schafer did not adequately explain how lifting a garage door on August 30, 2002 would cause or contribute to the various diagnosed conditions. He does not explain the causal relationship between the specific employment duties appellant performed on that date to the development of the diagnosed conditions.¹³ Dr. Schafer did not explain the pathophysiological processes by which lifting a garage door. He noted, but did not explain, any reference to a prior workers' compensation claim or addresses how the accepted injury would contribute to any preexisting injury. Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence from Dr. Altshuler and Dr. Heller is insufficient to establish the claim. The physicians did not provide any rationalized medical opinion addressing the causal relationship between appellant's employment duties on August 30, 2002 and his diagnosed conditions. Neither Dr. Altshuler nor Dr. Heller provided a specific diagnosis for appellant's pain or description of workplace "injuries." They did not address the causal relationship between appellant's conditions to the factor of lifting a garage door on April 30, 2002 or how it caused or contributed to appellant's condition.¹⁴ Dr. Heller noted that, while appellant claimed to have pain and limitations in strength and mobility due to workplace injuries, it was beyond his scope of expertise to evaluate those complaints. The evidence is not sufficient to meet appellant's burden of proof.

As noted, to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. This is comprised of two elements, whether the incident occurred in the performance of duty as alleged and, second, whether the medical evidence establishes a causal relationship between the employment incident and the alleged disability or condition for which compensation is claimed.¹⁵ Although appellant established that an incident occurred in the performance of duty on April 30, 2002, he has not established through probative medical evidence that the incident caused an injury.¹⁶

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by

¹³ *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).

¹⁴ *Id.*

¹⁵ See *supra* notes 6, 7 and 8.

¹⁶ Appellant also asserts on appeal that the Office "violated due process in taking and withholding of these property interests." The Board has found that a claimant has a property interest in not having his or her benefits terminated. *Maggie L. Moore*, 43 ECAB 818 (1992); see also *Lan Thi Do*, 46 ECAB 366 (1994). However, in the claim before the Board on appeal, appellant has not been awarded any benefits by the Office and thus has no such property interest. In any event, the federal courts retain jurisdiction over the final decision of the Director where there is a charge of a violation of a clear statutory mandate or where there is a constitutional claim. *Robert F. Stone*, 57 ECAB ____ (Docket No. 04-1451, issued December 22, 2005).

rationalized medical opinion evidence.¹⁷ Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed any left arm, left hand, left leg, left knee or back condition in the performance of duty on August 30, 2002.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2007 and August 22, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 29, 2008
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

¹⁷ See *Dennis M. Mascarenas*, *supra* note 12.