United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 07-2003**
	)	**Issued: March 17, 2008**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, WILDLAND FIRE CHEMICAL SYSTEMS, Missoula, MT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 12, 2007 denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on October 26, 2006.

FACTUAL HISTORY

On November 13, 2006 appellant, then a 55-year-old physical science technician, filed a traumatic injury claim alleging that he injured his right hip on October 26, 2006 when he picked up a trash container filled with broken glass. Appellant did not stop work. He submitted a May 8, 2007 statement from his supervisor and a partial copy of an Agency Provided Medical Care Authorization and Medical Report dated November 6, 2006. A diagnosis of hip

strain/sprain was provided under "Part B Attending Physician's Report." However, the form was incomplete and not signed or dated by a physician.

By letter dated May 29, 2007, the Office advised appellant that the evidence was insufficient to establish his claim. It stated that a physician's opinion on causal relationship had not been submitted and that it was unable to determine whether or not the provider who diagnosed a hip strain/sprain on the employing establishment form was a qualified physician. The Office informed appellant of the evidence needed to support his claim and requested that he submit additional medical evidence within 30 days.

Appellant submitted a June 5, 2007 statement. He noted that his right hip joint immediately hurt after he lifted and dumped a heavy trash can filled with broken glass into the dumpster. Appellant did not immediately seek medical attention as he thought the pain would go away. After the pain persisted for six weeks, he made an appointment with Dr. Fred Tai, his personal physician. Appellant stated that Dr. Tai refused to examine him upon learning that he was there for a workers' compensation injury. Dr. Tai referred him to Dr. Robert J. Vincent, a Board-certified internist specializing in occupational medicine. Appellant stated that Dr. Vincent advised him to return to full duty, but to ask for assistance in lifting unusually heavy large objects in the future.

In a November 7, 2006 medical report, Dr. Vincent noted appellant's history of injury and set forth findings on examination. He found that appellant exhibited no symptoms and his examination was normal. Dr. Vincent advised that appellant could try some anti-inflammatories if he had any recurrent symptoms, but anticipated that this would gradually resolve with time. He diagnosed a history of right hip pain, probably a musculoligamentous strain/sprain, and released appellant to full duty with no restrictions.

By decision dated July 12, 2007, the Office denied the claim. It found that the October 26, 2006 lifting incident occurred. However, there was insufficient medical evidence to establish that the October 26, 2006 lifting incident at work caused an injury.

LEGAL PRECEDENT

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 timely filed within the applicable time limitation period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

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 is whether the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Generally, this can be established only by medical evidence.[5] The employee must also submit probative medical evidence to establish that the employment incident caused a personal injury.[6]

The medical evidence required to establish a causal relationship is usually rationalized medical evidence. 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.[7]

ANALYSIS

Appellant alleged that on October 26, 2006 he injured his right hip when he lifted a trash container filled with broken glass. The Office accepted that the claimed incident occurred. The issue is whether appellant submitted sufficient medical evidence to establish that this incident caused a right hip injury.

The Board finds that the medical evidence is insufficient to establish that the October 26, 2006 incident caused an injury. In a November 7, 2006 report, Dr. Vincent diagnosed a history of right hip pain and probable musculoligamentous strain/sprain. While he listed a history of the October 26, 2006 lifting incident at work, his report is of limited probative value.[8] Dr. Vincent noted that appellant's examination was normal and that appellant did not exhibit any symptoms. The physician noted a good range of motion of both hips, stating the right hip was within "normal limits." Based on the absence of any findings on examination, that support a right hip injury, Dr. Vincent's diagnosis of a probable muscle strain is speculative.[9]

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[6] *Id*. For a definition of the term traumatic injury, see 20 C.F.R. § 10.5(ee).

[7] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007).

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

[9] *Deborah L. Beatty*, 54 ECAB 340 (2003).

Appellant also submitted a November 6, 2006 employing establishment form, which indicated a diagnosis of a hip strain. However, there is no evidence that this report was prepared by a physician.[10]

In the absence of a medical report providing a diagnosed condition and a reasoned opinion by a physician, appellant did not meet his burden of proof. The medical reports submitted do not contain a firm diagnosis or a reasoned opinion from a physician regarding the cause of appellant's condition. The evidence is insufficient to establish that he sustained an employment injury on October 26, 2006.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on October 26, 2006.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[10] An unsigned medical report is of no probative value. *See Merton J. Sills*, 39 ECAB 572 (1988).