United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 08-839**
	)	**Issued: October 15, 2008**
DEPARTMENT OF VETERANS AFFAIRS, FARGO VETERANS ADMINISTRATION MEDICAL CENTER, Fargo, ND, 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 January 28, 2008 appellant filed a timely appeal from a December 13, 2007 decision of the Office of Workers' Compensation Programs that denied her request for a review of the written record. Appellant also requested review of an August 30, 2007 decision of the Office that denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on July 11, 2007; and (2) whether the Office properly denied appellant's request for a review of the written record as untimely filed.

FACTUAL HISTORY

On July 13, 2007 appellant, then a 36-year-old practical nurse, filed a traumatic injury claim alleging that she sustained an injury on July 11, 2007, when her back snapped while she

was lifting a patient to change his pants. She stated that the incident caused lumbago. Appellant did not stop work.

By correspondence dated July 19, 2007, the Office requested additional information concerning appellant's claim.

On July 11, 2007 Dr. John Mickelson, an osteopath, diagnosed lumbago. In a follow-up note on July 12, 2007, Dr. John G. Beauclair, a Board-certified family practitioner, stated that appellant was able to work with restrictions against repetitive lifting, pushing or pulling greater than eight pounds, bending more than 10 times in an hour, squatting or kneeling. On July 14, 2007 he recommended chiropractic treatment. In a July 16, 2007 note, Dr. Beauclair stated that appellant could work with restrictions against repetitive lifting, pushing or pulling greater than 10 pounds. On July 20, 2007 Dr. Robert M. Martino, a Board-certified family practitioner, diagnosed lumbar strain and advised that appellant was able to work with restrictions against repetitive lifting, pushing or pulling greater than 10 pounds. In an August 3, 2007 note, Dr. Beauclair diagnosed lumbar strain and revised appellant's restrictions to lifting, pushing or pulling loads in excess of 20 pounds. On August 13, 2007 he determined that appellant was capable of performing regular-duty work and recommended that she continue chiropractic treatment.

By decision dated August 30, 2007, the Office denied appellant's traumatic injury claim on the grounds that the medical evidence did not support a causal relationship between her diagnosed condition and the July 11, 2007 incident.

On November 1, 2007 appellant requested a review of the written record. She submitted additional evidence.

By decision dated December 13, 2007, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. It noted that the matter could be equally well addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

The medical evidence required to establish causal relationship generally is rationalized medical opinion 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.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors or event identified by the claimant.[9]

ANALYSIS -- ISSUE 1

The Board notes that appellant lifted a patient at work on July 11, 2007. Although she has established that this incident occurred as alleged, she has not met her burden of proof in establishing a causal relationship between the employment incident and her diagnosed lumbago or lumbar strain.[10]

Appellant submitted treatment notes from Dr. Beauclair, Dr. Martino and Dr. Mickelson. However, the physicians did not address causation or describe, with detailed rationale, the relationship between appellant's diagnosed condition and the July 11, 2007 employment incident. Dr. Beauclair diagnosed lumbago and lumbar strain and described appellant's work restrictions. Dr. Martino diagnosed lumbar strain and discussed appellant's work restrictions. In a July 11, 2007 note, Dr. Mickelson diagnosed lumbago but did not provide any further discussion of appellant's condition. The Board has held that a medical report that does not

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.*

[6] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

[10] On appeal and in support of her November 1, 2007 hearing request, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

contain an opinion on causal relationship is of no probative value on that issue.[11] As the physicians of record did not address causal relationship between the July 11, 2007 lifting incident and appellant's medical condition, their reports are insufficient to establish that she sustained an injury due to the incident. The physicians did not explain the reasons why lifting the patient would cause or contribute to a lumbar strain or other low back diagnosis. Accordingly, the Board finds that appellant has not met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on July 11, 2007.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.[12] Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[13] The Office's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[14]

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,[15] has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[16] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.[17]

ANALYSIS -- ISSUE 2

The Office issued its decision denying appellant's claim on August 30, 2007. Appellant requested a review of the written record on November 1, 2007. As her request for a review of

[11] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] 5 U.S.C. § 8124(b)(1).

[13] 20 C.F.R. § 10.615.

[14] 20 C.F.R. § 10.616(a).

[15] 5 U.S.C. §§ 8101-8193.

[16] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[17] *Teresa M. Valle*, 57 ECAB 542 (2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

the written record was filed more than 30 days after the August 30, 2007 decision, the Board finds that the Office properly found that the request was untimely.

Although the Office determined that appellant's request was untimely, it nevertheless exercised its discretion by further considering her request for a review of the written record. It determined that appellant could equally well pursue her claim by submission of a request for reconsideration along with new evidence. Accordingly, the Board finds that the Office also properly exercised its discretion in denying appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on July 11, 2007 and that the Office properly denied her request for a review of the written record as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the December 13 and August 30, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 15, 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