United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 08-972**
	)	**Issued: September 9, 2008**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Providence, RI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 19, 2008 appellant filed a timely appeal from an August 24, 2007 merit decision of the Office of Workers' Compensation Programs' denying his traumatic injury claim and a January 18, 2008 merit decision of an Office hearing representative affirming the denial of his claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back injury while in the performance of duty on April 28, 2007.

FACTUAL HISTORY

On May 6, 2007 appellant, a 39-year-old deportation officer, filed a traumatic injury claim alleging that he injured his back on a deportation flight to Jamaica on April 28, 2007. He

stated that, as a result of sitting immobilized for long periods of time, he sustained an aggravation of a herniated disc and dislocation of his sacrum and hip.

Appellant submitted largely illegible notes for the period April 30 through May 21, 2007 from Dr. Peter J. Schwartz, a chiropractor. He also submitted a patient history dated April 30, 2007 and a Workmen's Compensation questionnaire in which he stated that he sustained a back injury on April 28, 2007 after sitting for three to four hours on a plane.

On June 5, 2007 the Office advised appellant that the information submitted was insufficient to establish his claim and provided him 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition. On July 10, 2007 the Office informed appellant that a chiropractor is considered a physician under the Federal Employees' Compensation Act only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Noting that his chiropractor submitted a report, which did not diagnose subluxation of the spine, the Office stated that he was not a physician under the Act and that his report had no probative medical value. The Office advised appellant to submit any x-ray reports, which might support a diagnosis of subluxation. Alternatively, appellant was advised to submit a medical report from a physician which contained a diagnosis and a rationalized opinion as to the cause of his condition.

Appellant submitted notes from Dr. Schwartz for the period April 30 to July 3, 2007. The notes were illegible.

By decision dated August 24, 2007, the Office denied appellant's claim. Accepting that the claimed event occurred as alleged, it found that the medical evidence did not contain a diagnosis that could be connected to the accepted event and, therefore, was insufficient to establish that appellant had sustained an injury under the Act on April 28, 2007.

On August 28, 2007 appellant, through his representative, requested a telephonic hearing. At the November 26, 2007 hearing, appellant's representative stated that he had not been treated by any doctor other than his chiropractor, Dr. Schwartz. He also acknowledged that Dr. Schwartz had not diagnosed a subluxation pursuant to an x-ray. The hearing representative informed appellant's representative that the evidence of record was insufficient to establish that appellant had sustained a diagnosed condition as a result of the April 28, 2007 incident, but noted that the record would remain open for an additional 30 days for the submission of additional medical evidence.

In a December 14, 2007 memorandum, appellant provided details regarding his travel schedule on April 28, 2007. He stated that the first leg of the trip from Boston to Kingston, with a stop in Miami, took a total of four-and-a-half hours. On the return flight, appellant was forced to sit in an exit row, where he was immobilized in a sitting position for three hours.

By decision dated January 18, 2008, the hearing representative affirmed the August 24, 2007 decision, finding that the evidence did not establish that a medical condition was diagnosed in connection with the accepted April 28, 2007 work incident.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] 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 a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

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[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Robert Broome*, 55 ECAB 339 (2004).

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Id.*

[8] 20 C.F.R. § 10.303(a).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[9]

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the April 28, 2007 employment incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Evidence submitted by appellant consists of notes and reports from his chiropractor, Dr. Schwartz. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act.[10] A chiropractor is not considered a physician under the Act unless his reports contain a diagnosis of a spinal subluxation, as demonstrated by x-ray.[11] Dr. Schwartz' notes and reports do not contain such a diagnosis. Therefore, the Board finds that he is not a physician, as defined by the Act[12] and his reports are of no probative medical value.

Appellant expressed his belief that his back condition resulted from the April 28, 2007 employment incident. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors

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

[10] 5 U.S.C. § 8101(2) provides that the term 'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

[11] *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[12] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

or incidents, is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed back condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on April 28, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 18, 2008 and August 24, 2007 are affirmed.

Issued: September 9, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[14] *Id.*