United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 09-53**
	)	**Issued: April 14, 2009**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, TENNESEE VALLEY HCS-MURFREESBORO, Murfreesboro, TN, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 6, 2008 appellant timely appealed the August 1, 2008 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. He also appealed the Office's September 18, 2008 nonmerit decision, denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and the nonmerit decision.

ISSUES

The issues are: (1) whether appellant established that he sustained a traumatic injury in the performance of duty on June 17, 2008; and (2) whether the Office properly denied his request for reconsideration.

FACTUAL HISTORY

On June 18, 2008 appellant, a 60-year-old electrical worker, filed a traumatic injury claim for a twisted left knee. He attributed his injury to a June 17, 2008 event when he stepped off a ladder at work.

The Office notified appellant by letter dated June 26, 2008, that the evidence received was insufficient to support his claim.

Appellant submitted a June 18, 2008 medical report of Dr. Jeffery M. Huggett, a Board-certified radiologist, who noted that although "[a] recent sprain [was] possible[,] such a sprain [was] less likely as none of the expected marrow changes for an anterior cruciate ligament mechanism injury [were] demonstrated." Further, Dr. Huggett found no evidence supporting a meniscal tear. He diagnosed appellant with: tri-compartmental osteoarthritis and chondromalacia with cartilage loss, greatest over the lateral facet patella; and small knee joint effusion.

Appellant submitted an unsigned physician election form dated June 17, 2008. He also submitted a series of medical treatment reports signed by Linda Laughlin, a nurse practitioner. These reports covered the periods between February 24 and July 1, 2008.

On July 7, 2008 appellant submitted a Form CA-16 dated June 23, 2008. However, there is no evidence in the record establishing that the authorized physician provided treatment or a medical report following treatment.

By decision dated August 1, 2008, the Office denied appellant's traumatic injury claim because the medical evidence failed to establish that he sustained an injury in the performance of duty as defined by the Federal Employees' Compensation Act.

Appellant requested reconsideration. With his request, he submitted additional treatment reports singed by Ms. Laughlin. Appellant also submitted duplicate copies of the medical reports previously submitted.

By decision dated September 18, 2008, the Office denied appellant's request for reconsideration because the evidence submitted was insufficient to warrant merit review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the 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, 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

[1] 5 U.S.C. §§ 8101-8193.

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]

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.[4] 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 alleged condition 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.[5]

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.[6] 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.[7]

ANALYSIS -- ISSUE 1

Appellant has submitted insufficient medical evidence to establish that he sustained an injury in the performance of duty on June 17, 2008.

The only substantively probative relevant medical evidence in this case was Dr. Huggett's report. While appellant submitted several treatment reports signed by Ms. Laughlin, NP, as a matter of law, Ms. Laughlin is not a physician for purposes of the Act and, therefore, her opinions and findings do not constitute medical opinion evidence. Healthcare

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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

[5] *Id.*

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

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001). *See Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations did not constitute evidence of a sufficiently substantial nature).

providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act.[8] Thus, Ms. Laughlin's opinions and reports do not constitute rationalized medical opinions and have no medical weight or probative value.

The Board finds that Dr. Huggett's report is of limited probative value because it merely reports findings upon examination and lacks any rationalized opinion concerning the causal relationship between appellant's alleged condition, twisted knee, and employment factors or an employment-related incident.[9] Dr. Huggett diagnosed tri-compartmental osteoarthritis, chondromalacia and small knee joint effusion however he offered no medical opinion regarding the cause of these chronic conditions. Medical reports that do not contain rationale on causation are generally insufficient to meet an employee's burden of proof.[10] The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference or presumption that there is a causal relationship between the two.[11] Neither the fact that the condition became apparent during a period of federal employment nor the belief that the condition was caused or aggravated by an employment incident or factor(s) is sufficient to establish causal relationship.[12] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.[13]

Moreover, in his report, Dr. Huggett notes that a "recent sprain is possible but felt unlikely…." As a matter of law such terms as "possible," "could," "may," or "might be" indicate that the report is equivocal, speculative or conjectural and, therefore, is of limited probative value.[14]

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 physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit sufficient medical documentation in response to the Office's request. As the medical evidence explaining how appellant's employment duties caused or aggravated a knee or other diagnosed condition, he has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

[8] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

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

[10] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[11] *Joe T. Williams*, 414 ECAB 518, 521 (1993).

[12] *Id.*

[13] *See Edgar G. Maiscott*, *supra* note 7.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[15] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advanced a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[16] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[17]

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on August 8, 2008. In support of his request, he submitted medical treatment reports signed by Ms. Laughlin as well as duplicate copies of evidence previously submitted.

The treatment reports signed by Ms. Laughlin are of no probative value because nurses are not considered physicians for purposes of the Act and, therefore, are not competent to render a medical opinion.[18] Furthermore, appellant submitted duplicate copies of Dr. Huggett's June 18, 2008 report and other documentation, which was already of record and was previously reviewed by the Office. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.[19] The Board, therefore, finds that these reports are insufficient to warrant reopening appellant's claim for further merit review.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.[20]

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[15] 5 U.S.C. §§ 8101-8193, § 8128(a).

[16] 20 C.F.R. § 10.606(b)(2).

[17] *Id*. at § 10.608(b). *See Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements the Office will deny the application for review without reviewing the merits of the claim).

[18] *David P. Sawchuk*, 57 ECAB 316 (2006).

[19] *M.E.*, 58 ECAB ___ (Docket No. 07-1189, issued September 20, 2007); *Patricia G. Aike*n, 57 ECAB 441 (2006).

[20] *See* 20 C.F.R. § 10.608(b); *K.H.*, 59 ECAB ___ (Docket No. 07-2265, issued April 28, 2008); *Richard Yadron*, 57 ECAB 207 (2005).

CONCLUSION

The Board finds the Office properly concluded that appellant has not established that he sustained an injury in the performance of duty on June 18, 2008. The Board also finds the Office properly denied appellant's August 8, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the September 18 and August 1, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 14, 2009
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