United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 09-155**
	)	**Issued: August 5, 2009**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, 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 20, 2008 appellant filed a timely appeal from the August 12, 2008 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on May 28, 2008. He believes that he should be covered by compensation for time off from work and medical costs because this shoulder injury is just a reinjury of a prior accepted injury under another case file number.

FACTUAL HISTORY

On June 4, 2008 appellant, a 43-year-old heavy mobile equipment mechanic leader, filed a traumatic injury claim (Form CA-1) for injury to his left shoulder and neck. He attributed his injury to a May 28, 2008 incident when he slipped while getting out of an M9ACE armored combat earthmover. Appellant alleged that, after slipping, he caught himself, thereby preventing

a fall. He also has an accepted condition for left shoulder rotator cuff sprain[1] for which he received medical treatment. This condition arose from an injury occurring on May 21, 2002.

Appellant submitted a May 30, 2008 clinic pass signed by a person whose signature is illegible. This individual recommended appellant see a private physician, be referred to the compensation office and provided a list of work restrictions. Appellant also submitted a May 30, 2008 medical report signed by Dr. Ting J. Tai, Board-certified in occupational medicine. Dr. Tai reported that appellant complained of constant shoulder and neck pain that arose when he slipped while getting out of a tank.

In a June 4, 2008 medical report, Dr. P. Lauren Savage, a Board-certified orthopedic surgeon, reported that a magnetic resonance imaging (MRI) scan revealed a partial rotator cuff tendon tear and acromioclavicular joint impingement of the rotator cuff. He diagnosed appellant with complete tear of the rotator cuff tendon, rotator cuff tendinitis and subacromial bursitis. Dr. Savage stated that appellant was not fit for work and recommended, as treatment, an open acromioplasty mumford and partial distal clavicle resection. In a separate June 4, 2008 medical note, he asserted that appellant could not return to work.

By request dated June 6, 2008, Dr. Savage requested authorization for the following surgical procedure: open acromioplasty mumford and partial distal clavicle resection. In a medical note also dated June 6, 2008, he excused appellant from work, due to a complete left shoulder rotator cuff tear and noted that surgery was pending approval.

Appellant submitted a June 9, 2008 medical authorization form (CA-16).[2]

By letter dated June 12, 2008, the Office notified appellant that his claim had originally been received as a simple, uncontroverted case which resulted in minimal or no time loss. It also noted that the merits of appellant's claim had not been formerly considered. The Office reported that it had received a request on June 10, 2008 from appellant's physician for authorization to perform a surgical procedure to partially remove appellant's collar and shoulder bones. It notified appellant that this request could not be authorized as the evidence of record was not sufficient such that it could accept his claim.

In a subsequent medical note dated June 23, 2008, Dr. Savage reported that appellant could return to work, provided he was assigned to sedentary, light duty with the following restrictions: no lifting, no using of ladders and no overhead work. In a separate medical report dated June 23, 2008, he observed, upon examination, tenderness to palpation of appellant's cervical spine and radicular pain that radiated into both arms. Dr. Savage also observed generalized tenderness in appellant's shoulder upon palpation. He reported that an MRI scan conducted May 29, 2008 showed an acromioclavicular degenerative joint disease, mild tendinitis and impingement syndrome. Dr. Savage diagnosed appellant with rotator cuff tendinitis,

[1] OWCP File No. xxxxxx998.

[2] The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The Form CA-16 issued to appellant did not authorize examination or treatment and was missing its second page and, therefore, was not properly executed.

subacromial bursitis, cervical disc degeneration and cervicalgia. He recommended physical therapy. The record reflects that the Office authorized 32 units of physical therapy.

In a medical report dated June 23, 2008, a physician, whose name is illegible, reported findings following an MRI scan of appellant's cervical spine. The physician reported finding severe bilateral, C6-7, severe right and moderate left C4-5 and moderate right C3-4 foraminal stenosis. The physician also reported finding mild spinal stenosis at C3 through C7.

Appellant submitted medical records from Cunningham Pathology concerning a July 24, 2008 appointment for an undefined and unidentified procedure related to cervical degenerative joint disorder. In a separate medical note dated July 24, 2008, C. Gilbert, a registered nurse, asserted that appellant could not drive or operate machinery for 24 hours after the procedure. Appellant filed a compensation claim (Form CA-7) for the period July 24 through 25, 2008. The record reflects that he claimed 17 hours leave without pay for this period.

By decision dated August 12, 2008, the Office denied appellant's compensation claim because the medical evidence of record did not demonstrate that the claimed medical condition was related to the established work-related event.[3]

LEGAL PRECEDENT -- ISSUE 1

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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 evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

A person who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.[6] 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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment

[3] The Board notes that appellant submitted additional evidence, consisting of medical notes and reports. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.) As these medical reports and notes were not part of the record considered by the Office, the Board may not consider them for the first time on appeal.

[4] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[5] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[6] *See Roy L. Humphrey*, 57 ECAB 238 (2005); s*ee Naomi A. Lilly*, 10 ECAB 560, 574 (1959).

factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

ANALYSIS -- ISSUE 1

Appellant has a prior accepted claim for rotator cuff sprain. He filed a traumatic injury claim for an alleged May 28, 2008 injury to his left shoulder and neck. The Office has accepted that on May 28, 2008 appellant slipped and caught himself from falling while exiting an earth mover but found appellant had not met his burden to prove that the accepted incident was causally related to his current medical concerns. It is appellant's burden to produce substantive, probative and relevant evidence establishing that he sustained an injury and that the injury was causally related to his accepted employment-related incident. The Board finds that the evidence of record is insufficient to satisfy appellant's burden of proof and, therefore, the Office properly denied his traumatic injury claim.

The medical evidence of record consisted of medical reports and notes from Drs. Savage and Tai.[8] Dr. Tai's medical report is of no probative value because it did not present findings upon examination, a thorough review of appellant's medical history or an opinion concerning a causal relationship between a diagnosed condition and appellant's accepted employment-related incident. At best, he merely reiterated appellant's allegations concerning how he was allegedly injured combined with a diagnosis of pain. However, pain is merely a symptom, not a recognized medical diagnosis, and is therefore not compensable.[9] Moreover, appellant's self-diagnosed symptoms are not sufficiently substantive evidence for purposes of the Act.[10] Therefore, Dr. Tai's medical report is of no probative value and is insufficient to satisfy appellant's burden.

The medical reports from Dr. Savage are of limited probative value. None of Dr. Savage's medical reports presented a review of appellant's medical history or, for that matter, ever mentioned the previously accepted rotator cuff sprain condition. Moreover, they lack a medical opinion concerning the causal relationship between a diagnosed condition and the

[7] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] The medical evidence of record also contained a June 23, 2008 medical report from a physician whose name was illegible. The illegibility of the physician's name aside, this report is of limited probative value as it too did not present findings upon examination, a thorough review of appellant's medical history, any semblance of diagnosis or an opinion concerning a causal relationship between a diagnosed condition and appellant's accepted condition, factors of his federal employment or an employment-related incident. *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[9] *See C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

[10] *See Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

employment-related incident.[11] At no time did Dr. Savage opine that a causal relationship existed between appellant's diagnosed condition and his employment-related incident. Thus none of Dr. Savage's medical reports are sufficiently rationalized to be of any probative value and, therefore, are insufficient to satisfy appellant's burden of proof.

Appellant has the burden of establishing, by the weight of the reliable, probative and substantial evidence, that his condition was causally related to factors of his employment. The Office advised appellant of the importance of submitting such competent evidence. As there is no probative evidence of record establishing that appellant's condition is causally related to his federal employment, appellant has established that he sustained an injury in the performance of duty and the Office properly denied his traumatic injury claim.

Appellant's reference to the prior injury is not enough to prove causal relationship. This incident was an intervening event and, to warrant compensation as a work-related incident, must be established on its own with its own medical evidence establishing a causal relationship between the May 2008 incident and the current medical conditions.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on May 28, 2008.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 5, 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

[11] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also, Jimmie H. Duckett*, *supra* note 8; *Franklin D. Haislah*, *supra* note 8.