United States Department of Labor
Employees' Compensation Appeals Board

H.W., Appellant	)	
and	)	**Docket No. 09-1244**
	)	**Issued: December 14, 2009**
DEPARTMENT OF LABOR, WOODLAND JOB CORPS CENTER, Laurel, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 19, 2009 appellant filed a timely appeal from the February 23 and April 9, 2009 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury 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 an injury while in the performance of duty on March 24, 2008.

FACTUAL HISTORY

On April 24, 2008 appellant, a 27-year-old ship training apprentice, filed a traumatic injury claim alleging that he sustained injuries (contusions) to his upper and lower extremities when he was hit by a van on March 24, 2008. Appellant missed no time from work.

In a letter dated January 15, 2009, the Office advised appellant that the information submitted was insufficient to establish his claim and allowed 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.

Appellant submitted a March 24, 2008 work release form, signed by Tanya Green, a physician's assistant, who stated that he was able to return to work on March 26, 2008, provided that he refrain from lifting and prolonged standing, and that he perform only desk work; hospital discharge instructions on how to treat chest contusions, and upper and lower extremity contusions; a report of a September 18, 2008 chest x-ray; an April 1, 2008 prescription for physical therapy, signed by Dr. A. Karm Aziz, a treating physician; and a January 21, 2009 authorization for examination and/or treatment.

In a decision dated February 23, 2009, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

On February 25, 2009 appellant requested reconsideration. He noted that he had been involved in a pedestrian hit-and-run accident at Woodland Job Corps Center at approximately 4:30 p.m. on the date in question.

Appellant submitted a March 31, 2008 report from Dr. William K. Wong, a chiropractor, who noted that appellant had been involved in a pedestrian hit-and-run accident on March 24, 2008, when he was hit by a van. He complained of constant, moderate low back and chest wall pain. Examination revealed upper and lower extremities to be equal in strength at 5/5. Appellant found moderate tenderness to palpation in the lumbar paraspinal musculature and quadratus lumborum musculature bilaterally with moderate muscle spasms. Range of motion was mild to moderately decreased with pain. Spinal segmental dysfunction was present at the L2-L5 motor unit. Kemp's test, Adam's test and Minor's sign were positive, reproducing pain in the lumbar spine. Examination of the chest wall revealed tenderness to palpation and trigger point spasm. Dr. Wong diagnosed lumbar sprain/strain; lumbar segmental dysfunction; chest wall contusion; chest pain; and muscle spasms at multiple levels. He indicated he took no radiographs. Dr. Wong opined that appellant's injuries were "directly and solely the result of his involvement in a motor vehicle/pedestrian accident on March 24, 2008."

By decision dated April 9, 2009, the Office denied modification of its February 23, 2009 decision. Noting that Dr. Wong did not qualify as a physician under the Federal Employees' Compensation Act, the Office found that there was no probative medical evidence which provided the diagnosis of a condition causally related to the events of March 24, 2008.

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

[1] 5 U.S.C. § 8102(a).

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]

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 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

[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).

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 March 24, 2008 workplace 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 from a qualified physician establishing that the work-related hit-and-run accident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Dr. Wong, a chiropractor, diagnosed: lumbar sprain/strain; lumbar segmental dysfunction; chest wall contusion; chest pain; and muscle spasms at multiple levels, and opined that appellant's injuries were caused by the March 24, 2008 accident. A chiropractor is considered a physician for purposes of the Act only where he diagnoses subluxation by x-ray.[10] The evidence does not reflect that Dr. Wong diagnosed subluxation on the results of an x-ray. Therefore, his report does not constitute probative medical evidence.

The remaining medical evidence of record consists of a March 24, 2008 work release form; a report of chest x-ray; a prescription for physical therapy; hospital discharge instructions; and an authorization for examination and/or treatment. None of these reports contains a history of injury, a definitive diagnosis or an opinion regarding the cause of appellant's condition. Therefore, they are of limited probative value and are insufficient to establish appellant's claim.[11] The record does not contain an opinion by any qualified physician supporting appellant's contention that his condition was causally related to the March 24, 2008 incident.

Appellant expressed his belief that his contusions resulted from the accepted employment incident. 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.[12] 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 or incidents, is sufficient to establish causal relationship.[13] Causal relationship must be substantiated by reasoned medical

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

[10] 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. 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 and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] *John W. Montoya*, *supra* note 9. *See also A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value).

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

[13] *Id.*

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 his claimed condition was caused or aggravated by his employment, appellant has not met his burden of proof in establishing 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 March 24, 2008.

ORDER

IT IS HEREBY ORDERED THAT the April 9 and February 23, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 14, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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