United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 08-2516**
	)	**Issued: May 5, 2009**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Renton, WA, 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 September 24, 2008 appellant, through counsel, filed a timely appeal from a July 22, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on May 1, 2008.

FACTUAL HISTORY

On May 20, 2008 appellant, a 46-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) for a lower back and left and right hip injury. He attributed his condition to cleaning up old towers/dishes at ARST 9 Salt Lake City Airport on May 1, 2008. Appellant surmised that he must have lifted/twisted incorrectly.

Appellant submitted no medical evidence in support of his claim and by letter dated June 9, 2008 the Office notified him that the evidence of record was insufficient.

Responding to this letter, appellant submitted a medical report (Form CA-20) dated May 14, 2008 signed by a physician whose signature is illegible. This physician asserts that appellant was totally disabled from work. Similarly, appellant submitted a May 6, 2008 medical note excusing him from work May 6 through 30, 2008. This note was signed but the signature was illegible.

By letter dated June 30, 2008, Dr. Thomas J. McGivney, a Board-certified orthopedic surgeon, reported that appellant had an interbody fusion L5-S1 and a solid fusion L5-S1, 11 years ago. He recommended that appellant undergo a magnetic resonance imaging scan.

By decision dated July 22, 2008, the Office denied appellant's claim because the evidence submitted was insufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] 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 related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

Section 10.5(ee) of Office regulations defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that

[1] Appellant submitted additional medical evidence following the Office's July 22, 2008 decision. This evidence was not considered by the Office and the Board cannot consider new evidence for the first time on appeal**.** 20 C.F.R. § 501.2(c). *See also Esther B. Sjostedt*, 9 ECAB 100 (1956).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[7] 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.[8] 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 causal relationship.[9]

ANALYSIS

The record supports that appellant was lifting at work on May 1, 2008. Appellant alleged that this caused a back and hip injury. The Board finds that he has not submitted medical evidence establishing that the May 1, 2008 employment incident caused or aggravated a diagnosed medical condition.

The only relevant medical evidence of record consists of a CA-20 form signed by an unidentifiable physician and the June 30, 2008 medical note signed by Dr. McGivney. Neither the CA-20 form nor Dr. McGivney's reported findings upon examination proffered a diagnosis of appellant's current condition. Further, this medical evidence is of little probative value as neither physician identified the work activities appellant performed on May 1, 2008 nor proffered a rationalized opinion concerning the causal connection between any diagnosed condition and appellant's May 1, 2008 employment activities. The Board has consistently held that medical reports lacking a rationale on causal relationship have little probative value.[10]

As there is no probative rationalized medical evidence addressing whether appellant had a diagnosed condition which was caused or aggravated by his employment activity on May 1,

[5] *Gary J. Watling*, *supra* note 3.

[6] *M.W.*, 57 ECAB 710 (2006).

[7] *D.D.*, 57 ECAB 734 (2006).

[8] *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

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

[10] *Mary E. Marshall*, 56 ECAB 420 (2005).

2008,[11] he 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 an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2008 is affirmed.

Issued: May 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 Edgar G. Maiscott,* 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).