United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 09-516**
	)	**Issued: September 8, 2009**
DEPARTMENT OF THE AIR FORCE, McCHORD AIR FORCE BASE, McChord, WA, 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 December 15, 2008 appellant filed a timely appeal from an October 8, 2008 merit decision of the Office of Workers' Compensation Programs. 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 sustained an injury in the performance of duty on March 6, 2008 causally related to his federal employment.

FACTUAL HISTORY

On July 11, 2008 appellant filed a traumatic injury claim (Form CA-1) for pain in his lower back and wrist. He also alleged that his toes were numb. Appellant attributed his injuries to a March 6, 2008 incident when he slipped on a wet floor and fell, landing on his back.

Appellant submitted a report, dated June 10, 2008 singed by Dr. Keith C. Tang, Board-certified in family medicine, who reported April 18, 2008 as the date of injury. Dr. Tang

diagnosed tenderness in the lower back and released appellant to modified duty for the period June 10 through 13, 2008, with restrictions that prohibited activities requiring him to squat/kneel or crawl. He also prescribed restrictions concerning the number of hours appellant could engage in activities requiring him to bend/stoop as well as sit.

In a note, dated September 10, 2008, appellant noted that he filled out his Form CA-1 on March 6, 2008 but did not immediately seek medical attention. He reported that at first his injury did not seem all that bad as the pain would come and go. Later appellant discovered the pain got worse, whereupon he sought medical attention.

By decision dated October 8, 2008, the Office denied appellant's claim because the evidence of record was insufficient to demonstrate that the claimed injury was related to the established work-related incident.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

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

[1] On appeal, appellant submitted additional evidence. 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 this evidence was not part of the record when the Office issued its prior decision, the Board may not consider it for the first time as part of appellant's appeal.

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *G.T., supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

incident at the time, place and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[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 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 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.

ANALYSIS

Appellant alleged that he sustained injuries in the performance of duty on March 6, 2008. He identified a March 6, 2008 incident when he slipped and fell on a wet floor. The Office accepted that the incident occurred as alleged. An employee 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 the accepted employment incident.[9] The Board finds the medical evidence of record insufficient to satisfy appellant's burden and therefore the Office properly denied his traumatic injury claim. Although Dr. Tang reported tenderness upon examination of his back, he offered no diagnosis of appellant's condition.

It is appellant's burden to establish causal relationship between a diagnosed condition and the accepted employment incident or factor. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The relevant evidence of record consisted of a report signed by Dr. Tang, whose report is of diminished probative value as it lacks an opinion on the causal relationship between appellant's alleged injuries and the accepted employment-related incident.[10] Further, his report stated that the date of injury was April 18, 2008, not March 6, 2008 as alleged by appellant. Medical opinion based on an incomplete or inaccurate factual history is of diminished probative value.[11] For these reasons, the Board finds Dr. Tang's report to be of diminished probative value and insufficient to satisfy appellant's burden of proof.

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

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

[9] *See Roy L. Humphrey*, 57 ECAB 238 (2005); *see Naomi A. Lilly*, *see supra* note 6 at 560, 574.

[10] *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).

[11] *M.W.*, 57 ECAB 710 (2006); *Beverly R. Jones*, 55 ECAB 411 (2004).

The Office properly denied appellant's claim, as he submitted insufficient medical evidence to establish a causal relationship between the March 6, 2008 incident and his alleged injuries.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on March 6, 2008 causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 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