United States Department of Labor
Employees' Compensation Appeals Board

O.M., Appellant	)	
and	)	**Docket No. 09-2141**
	)	**Issued: April 20, 2010**
DEPARTMENT OF THE ARMY,	)	
HUNTER ARMY AIRFIELD, GA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 20, 2009 appellant filed a timely appeal from the May 4, 2009 merit decision of the Office of Workers' Compensation Programs and a nonmerit decision dated June 24, 2009. Pursuant to 20 C.F.R. §§ 501.2 and 501.3(e), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on November 30, 2008 as alleged; and (2) whether the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely.

FACTUAL HISTORY

On March 13, 2009 appellant, then a 55-year-old automotive mechanic, filed a traumatic injury claim alleging on November 30, 2008 he fell off a Humvee onto a table while in the performance of duty in Afghanistan. Appellant landed on his left upper hip and back. A witness

supported that appellant fell from a Humvee, which was parked, on a lift. The Office requested additional factual and medical evidence from appellant in a letter dated March 17, 2009.

In a March 23, 2009 medical report, Dr. Theodore Trevor Redman, a physician at the employing establishment clinic, noted that appellant presented for the second time since redeployment for left low back and buttock pain. He obtained a history that appellant fell on November 30, 2008 while deployed in Afghanistan. Appellant was standing on the hood of a Humvee and fell approximately five feet, landing on a table. He was seen that day by a medic and diagnosed with a back sprain. Appellant noted mild continued back pain. On examination, Dr. Redman found that appellant's back did not demonstrate muscle spasms of wasting. He noted mild left sacroiliac joint pain. Dr. Redman diagnosed a back strain of the sacroiliac region.

In a narrative statement, appellant stated that he was unable to file his claim sooner as the injury occurred at an outstation while he was deployed in Afghanistan. He had no contact with a direct supervisor as his supervisor was in transition to a new duty station and a replacement had not arrived. Appellant described the employment incident, reiterating that he was working on a Humvee that was secured on a lift and elevated. He attempted to step from the vehicle to a work table, but miscalculated the distance and fell landing on his left hip. Appellant noted the fall was approximately five feet.

By decision dated May 4, 2009, the Office denied appellant's claim finding that he failed to submit sufficient medical evidence. The decision made passing reference to the fact that appellant was on temporary duty and that it had received a March 23, 2009 report from Dr. Redman. Regarding the medical report, the Office noted that Dr. Redman provided a diagnosis of back strain. The decision states:

> "However, it is indicated on this report that you presented for the second time for lower left back pain, without explanation of what exactly happened on this date that brought you back into the doctor regarding your lower back. Because of this, it appears that you may have broken the 'chain of causation' regarding the first claimed lower back injury, meaning that you may have incurred a new injury which was the reason that you seen [sic] Dr. Redman for your back on March 23, 2009."

Appellant requested a review of the written record on June 4, 2009. The envelope reflects that appellant postmarked the request on June 4, 2009.

In a decision dated June 24, 2009, the Branch of Hearings and Review denied appellant's request for a review of the written record as untimely. The Branch of Hearings and Review found that the issue in the case could equally well be addressed by requesting reconsideration and submitting additional new evidence.

LEGAL PRECEDENT -- ISSUE 1

The Office's regulations define 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to

time and place of occurrence and member or function of the body affected.[1] In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[2]

Federal employees abroad are not covered around the clock under all situations. Federal employees abroad who are in travel status or on a special mission are covered for activities reasonably incidental to their employment. Federal employees who are abroad may also be covered under other doctrines of workers' compensation law such as the zone of special danger, the bunkhouse rule, the proximity rule, the positional risk doctrine or the rescuers doctrine.[3] The Board has recognized the rule that the Federal Employees' Compensation Act covers an employee 24 hours a day when he or she is on travel status or on a temporary-duty assignment or special mission and engaged in activities essential or reasonably incidental to such duties.[4]

ANALYSIS -- ISSUE 1

The Office accepted that appellant fell from a Humvee on November 30, 2008 while in the performance of duty. On that day, appellant was located at a remote outstation in Afghanistan in the performance of his duties as an automotive mechanic. He was working on a tactical vehicle that was secured on a lift and elevated when he attempted to step from the Humvee to a nearby table. Appellant fell, landing on his left hip and back. The facts of this appeal reveal that he was on a special mission to provide automotive support to the government's efforts in Afghanistan. The claims examiner failed to address this aspect of the claim, the fact that on November 30, 2008 appellant was at a site removed from regular or routine medical care, contact with his supervisors and did not return to the United States until sometime later.

The Office found that the medical evidence submitted was not sufficient to meet appellant's burden of proof. In denying appellant's claim, the May 4, 2009 decision cited to *Robert M. Sanford*,[5] for the proposition that the mere concurrence on a condition with a period of employment does not raise an inference of causal relationship. In that case, the Board found that the employee, a VISTA volunteer, did not meet his burden of proof to establish that his perianal fistula was causally related to his employment. The Board noted in the facts of *Sanford* that the

[1] 20 C.F.R. § 10.5(ee).

[2] *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

[3] *See* FECA Bulletin No. 03-07, issued May 12, 2003. The Bulletin was incorporated into the Office's Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *War Hazards*, Chapter 4.300 (September 1994).

[4] *See Lawrence J. Kolodzi*, 44 ECAB 818 (1993). *See also James Rogy, Jr.*, Docket No. 05-1247 (issued December 8, 2005).

[5] 27 ECAB 115 (1975).

Office obtained appellant's records from VISTA while developing the claim. Unlike the facts in *Sanford*, the Office made no attempt in this case to secure appellant's medical records from the military or to request clarification from Dr. Redman. Notwithstanding appellant's burden of proof to establish his claim, the Office has a duty to assist in the development of the record particularly when the information is more readily obtained by the Office and with another governmental agency or department.[6]

The May 4, 2009 decision made reference to the fact that appellant was on temporary duty and that the Office had received the March 23, 2009 report from Dr. Redman. The decision found that the report established that appellant presented for the second time for lower left back pain, "without explanation of what exactly happened on this date that brought you back into the doctor regarding your lower back. Because of this, it appears that you may have broken the 'chain of causation' regarding the first claimed lower back injury, meaning that you may have incurred a new injury which was the reason that you seen [sic] Dr. Redman for your back on March 23, 2009." In this regard, the claims examiner has misinterpreted the statement by Dr. Redman. In the report, Dr. Redman states: "55-year-old male presents for second time since redeployment for left lower back/buttock pain. Reports he fell while deployed to OEF on 30 November 2008." Rather than implicating a second injury, Dr. Redman merely noted the fact that he was examining appellant for a second time following appellant's return to the United States from Afghanistan. It is clear that Dr. Redman was provided an accurate history of the employment incident of November 30, 2008. For these reasons, the case will be remanded to the Office for further development of appellant's claim.[7]

CONCLUSION

The Board finds that the case is not in posture for decision.

[6] *See James M. Weems*, 9 ECAB 315 (1957); *John J. Feeley*, 8 ECAB 576 (1956).

[7] Based on this disposition of the appeal, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the June 24 and May 4, 2009 decisions of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further development consistent with this decision.

Issued: April 20, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board