United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 09-2158**
	)	**Issued: April 26, 2010**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Pittsburgh, PA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 26, 2009 appellant filed a timely appeal from the February 26, 2009 merit decision 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 November 4, 2008.

FACTUAL HISTORY

On November 5, 2008 appellant, a 48-year-old electronics technician, filed a traumatic injury claim alleging that he sustained injuries to his neck and back when the employment vehicle in which he was a passenger was rear-ended by another motor vehicle. He missed no time from work.

In a November 5, 2008 report (Form CA-16), Dr. Jason R. Koch, a chiropractor, stated that the vehicle in which appellant was riding was hit from behind at a stoplight on the previous day. He diagnosed cervical, thoracic and lumbar strains/sprains. Dr. Koch indicated by placing a checkmark in the "yes" box that the injury was caused or aggravated by the employment activity described.

In letters dated November 21, 2008, the Office informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised to submit additional evidence, 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 diagnose condition. The Office also informed appellant that, because his chiropractor's report did not diagnosed a spinal subluxation, he could not be considered a physician under the Federal Employees' Compensation Act and his report had no medical value in establishing the traumatic injury claim.

Appellant submitted notes, disability slips and reports from Dr. Koch for the period November 5 through 26, 2008. Dr. Koch reiterated his diagnoses of cervical, thoracic and lumbar sprains/strains, and recommended chiropractic manipulation to remove fixations and to improve neurophysiological function and biomechanics of the spine. He reported that appellant had moderate spasms in the neck, mid- and lower back, and a "functionally short left leg while in a prone position." On November 26, 2008 Dr. Koch provided examination findings, which reflected decreased range of motion in the thoracic and lumbar spines. None of his reports documented any x-rays of appellant's spine.

In a decision dated December 29, 2008, the Office denied appellant's claim. It accepted that the November 4, 2008 incident occurred as alleged; however, there was insufficient medical evidence to relate appellant's back condition to the motor vehicle accident.

On January 30, 2009 appellant requested reconsideration. In a January 23, 2009 report, Dr. Richard A. Rydze, a Board-certified internist and an employing establishment medical director, reviewed a history of the November 4, 2008 incident, appellant's subsequent treatment and diagnosis of acute cervical strain. He noted that appellant had an increase in neck pain that he had not experienced before the incident. Based upon his review of the case record, Dr. Rydze concurred with the chiropractic treatment given for appellant's acute neck injury. He stated that there was no need for an x-ray, as this was a muscular injury.

Appellant submitted a November 5, 2008 report (Form CA-20) from Dr. Koch reiterating the information contained in his duty status report of the same date. On February 6, 2009 Dr. Koch described the history of appellant's alleged injury and treatment. He stated that x-rays were not necessary to diagnose cervical, thoracic and lumbar sprains/strains, and that it would have been unethical for him to have ordered x-rays for the sole purpose of diagnosing a subluxation. Appellant also submitted a November 4, 2008 illness and injury report.

By decision dated February 26, 2009, the Office denied modification of its December 29, 2008 decision, finding that Dr. Koch did not qualify as a physician under the Act. It found that there was no probative medical evidence, which provided the diagnosis of a condition causally related to the November 4, 2008 incident.

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 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]

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[1] 5 U.S.C. § 8102(a).

[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).

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 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 the November 4, 2008 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 of record does not contain a rationalized medical opinion from a qualified physician establishing that the work-related motor vehicle accident caused or aggravated his claimed cervical condition. Therefore, appellant has failed to satisfy his burden of proof.

Dr. Koch, a chiropractor, diagnosed cervical, thoracic and lumbar sprains/strains. He opined that appellant's injuries were caused by the November 4, 2008 accident. A chiropractor is a physician as defined under the Act only where he diagnoses a spinal subluxation by x-ray.[10] Dr. Koch did not diagnose a spinal subluxation or obtain an x-ray of appellant's cervical spine. Therefore, his reports do not constitute probative medical evidence. Acknowledging the absence of x-rays, Dr. Koch opined that they were not necessary to determine whether appellant had sustained the diagnosed sprains/strains. The Board notes, however, that the issue of his status as a "physician" is determined by the terms of the Act. As Dr. Koch did not diagnose a spinal subluxation as demonstrated by x-ray, as required by section 8101(2) of the Act, he is not a physician and his reports have no probative value.

Dr. Rydze's January 23, 2009 report is also insufficient to establish appellant's claim. He did not provide any examination findings. There is no evidence that Dr. Rydze examined appellant at all. His concurrence with the chiropractor's treatment was based solely upon his review of the case record. Although Dr. Rydze indicated that appellant had an increase in neck pain that he had not experienced before the incident, he did not provide any opinion explaining how the diagnosed conditions were caused or aggravated by the November 4, 2008 incident.[11]

[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*, 54 ECAB 306 (2003). *See also A.D.*, 58 ECAB 149 (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).

For all of these reasons, his report is of limited probative value.[12] The record does not contain a rationalized opinion by a qualified physician supporting appellant's contention that his condition was causally related to the November 4, 2008 incident.

Appellant expressed his belief that his neck and back conditions 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.[13] 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.[14] Causal relationship must be substantiated by reasoned medical 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, he has not met his burden of proof.

On appeal, appellant expressed confusion as to why his supervisor's claim, filed for injuries resulting from the accepted November 4, 2008 accident, was accepted by the Office, when his own claim was rejected. As noted, the medical evidence of record is insufficient to establish that he sustained an injury causally related to the accepted employment incident.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a traumatic injury on November 4, 2008, as alleged.

[12] For reasons stated above, Dr. Rydze's opinion that an x-ray was unnecessary does not qualify Dr. Koch as a physician under the Act.

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

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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