

**United States Department of Labor
Employees' Compensation Appeals Board**

B.M., Appellant)
and) Docket No. 10-316
DEPARTMENT OF HOMELAND SECURITY,) Issued: December 23, 2010
TRANSPORTATION SECURITY)
ADMINISTRATION, Romulus, MI, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2009 appellant filed a timely appeal of the October 30, 2009 merit decision of the Office of Workers' Compensation Programs finding that he did not sustain an injury while in the performance of duty. 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 established that he sustained a back injury in the performance of duty on August 27, 2009, as alleged.

FACTUAL HISTORY

On September 3, 2009 appellant, then a 32-year-old transportation security screener, filed a traumatic injury claim alleging that at 5:00 a.m. on August 27, 2009 he hurt his upper back while stacking trays and taking them out to passengers. On the claim form, the employing establishment stated that it received notice of the alleged injury on September 3, 2009.

By letter dated September 10, 2009, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested a rationalized medical opinion from an attending physician which described a history of injury and all prior industrial and nonindustrial injuries to similar body parts, a firm diagnosis, findings, symptoms and test results, treatment provided, prognosis and extent of disability and opinion with medical reasons on why the diagnosed condition was caused or aggravated by the alleged August 27, 2009 employment incident.

In an August 28, 2009 employing establishment incident report, appellant stated that, after stacking trays at 5:00 a.m. on August 27, 2009, he received permission from Kristina Staff Riley, a supervisor, to go to the restroom. When he returned from the restroom, he asked Ms. Riley if he could sit down due to pain in his side. At 5:29 a.m. appellant sat in a supervisor's office for approximately one minute. He advised Ms. Riley that he was feeling fine and that he was able to return to work. Appellant was taken to the human resources office by Idell Foster, a manager, to complete a travel card. While completing the travel card, he experienced pain in his side. At 10:45 a.m. appellant fell to the floor due to severe pain. He was taken to a hospital by the Emergency Medical Service (EMS).

Hospital records dated August 27 to September 9, 2009 advised that appellant sustained a back strain and sprain, thoracic sprain and abdominal pain. Appellant refused to undergo any diagnostic testing on August 27, 2009. He was initially released to return to work with restrictions on September 3, 2009. Appellant was later released to return to his regular work duties on September 10, 2009.

In an August 28, 2009 computerized tomography scan report of appellant's abdomen and pelvis, Dr. Sampath Ramachandran, a Board-certified radiologist, found a three-millimeter nonobstructing calculus in the left kidney.

In an August 28, 2009 medical report, Dr. Solomon P. Knicely obtained a history that appellant experienced flank pain after lifting at work. He reported essentially normal findings on physical examination. Dr. Knicely reviewed diagnostic and laboratory test results. He advised that appellant had acute right-sided abdominal pain and possible abdominal wall spasm. In an August 28, 2009 disability certificate, Dr. Knicely advised that appellant could not work on that date or on August 29, 2009.

In a September 3, 2009 authorization for examination and/or treatment (Form CA-16) at Concentra Medical Center, Romulus, MI, Holly R. Dreher, a human resources program assistant, obtained a history that appellant injured the upper right side of his back on August 27, 2009.

In medical records dated September 3, 2009, Richard Wisz, a physical therapist, and Ron Dobrzynski, a physician's assistant, obtained a history that at 5:10 p.m. on August 27, 2009 appellant experienced a great deal of pain in the upper left side of his back while stacking trays. Mr. Wisz and Mr. Dobrzynski listed their findings on physical and neurological examination and diagnosed thoracic sprain. Mr. Dobrzynski also diagnosed shoulder strain-trapezius/rhomboideum and right peri-scapular strain/sprain by history.

In a September 10, 2009 progress note, Dr. Vincent E. Rampersaud, an orthopedic surgeon, obtained a history that at 5:10 p.m. on August 27, 2009 appellant experienced pain in the left upper side of his back while stacking trays. He listed his findings on physical and neurological examination. Dr. Rampersaud diagnosed thoracic strain.

In a September 28, 2009 form report, a Dr. Chad R. Mika indicated with an affirmative mark that appellant's lumbar strain was caused by lifting heavy trays at work on August 27, 2009. He advised that appellant was totally disabled for work from August 28 to September 3, 2009. In an August 30, 2009 disability certificate, Dr. Mika advised that appellant could not work for three days. In an August 30, 2009 narrative report, he noted appellant's complaint of pain in the right lower lumbar spine which began four days ago. Dr. Mika listed his essentially normal findings on physical examination and reiterated his prior diagnosis of lumbar strain.

In a September 30, 2009 letter, Cheryl Adams, a human resources specialist, controverted appellant's claim contending that the medical evidence of record was insufficient to establish that he sustained an injury while in the performance of duty on August 27, 2009. She contended that activities outside his employment, such as riding a bicycle to work, was in violation of his medical restrictions and falling off the bicycle in a parking lot on August 15, 2009 may have been an intervening factor. Ms. Adams contended that appellant engaged in fraudulent activities which included, seeking medical treatment, moaning and groaning when he was instructed to complete a travel card to attend required basic screener training,¹ requesting information from a manager about suing the employer for an injury he did not actually sustain because he needed the money, doctor shopping, receiving mail at a post office box, alleging an injury occurred just before disciplinary action was scheduled to be taken against him,² failing to promptly report the alleged injury to a supervisor, inconsistently describing the injured body part, presenting a history of injury that conflicted with witness statements, alleging an injury that did not occur in his usual work area and failing to follow up with physicians regarding his maximum medical improvement status.

Ms. Adams submitted numerous statements dated July 10 to September 30, 2009 from employees and managers in support of her contention that appellant did not sustain a back injury on August 27, 2009, as alleged. In an August 27, 2009 narrative statement, Ms. Dreher stated that she heard appellant moaning and groaning on that date. At 10:30 a.m., Ramona Burton, a program analyst, advised Ms. Dreher that appellant was in the lunch room complaining about stomach pain. Ms. Dreher saw appellant lying on the floor in the lunch room. He was moaning and groaning and complained about excruciating pain while holding his rib area. Appellant was evaluated by the EMS at the employing establishment. He rated his pain as 10. Appellant stopped moaning and groaning and asked to be taken off a gurney after being told by the EMS that he may not be able to drive home based on a physician's diagnosis of his condition. He advised the EMS that his pain was caused by strenuous lifting of bins that weighed three pounds

¹ Ms. Adams noted that appellant received a low performance rating which required him to become recertified as a screener. She stated that he refused to undergo the training because he needed to take care of his family.

² On August 7, 2009 the employing establishment issued a letter of reprimand to appellant for failing to follow instructions on July 19, 2009.

each. Appellant was transported to a hospital. The EMS stated that lifting such bins would not cause level 10 pain. Ms. Dreher stated that at 11:45 a.m. appellant called her from the hospital requesting that someone pick him up. Appellant advised her that his request for pain medication had been denied and that he had refused other medical treatment.

In an August 28, 2009 narrative statement, Ms. Dreher was advised by a representative from Oakwood Hospital on that date that appellant was discharged against the medical advice of the hospital. Appellant was unwilling to cooperate with any medical treatment and repeatedly requested pain medication. He was advised that a medical evaluation and diagnosis were required before any medication could be administered to him. Ms. Dreher stated that an emergency medical technician's report indicated that appellant had level 10 pain, but he was snoring and sound asleep while being examined by a physician. On August 28, 2009 she overheard appellant moaning again during a meeting with Hans Harris, a training specialist, in an office next to her cubicle. When Ms. Dreher went to the office, he opened the door and stopped moaning. During the meeting, Mr. Harris instructed appellant to complete a travel card to attend training. When Alanzo Nether, an operations employee, entered the office, appellant began moaning again. He asked appellant whether he needed medical assistance. Appellant responded no and was advised by Mr. Nether to obtain a note from a physician if he could not complete training.

In a September 9, 2009 narrative statement, Ms. Dreher related that Mr. Dobrzynski advised her that appellant provided a history that he sustained an injury while performing strenuous lifting of bins used by passengers on a repetitive basis. Mr. Dobrzynski advised that he was familiar with the bins and they only weighed six ounces. He further advised appellant that lifting a few of the bins should not cause such pain. Appellant directed Mr. Dobrzynski's attention to his red and swollen left hand which he attributed to his shoulder pain. He responded that the two injuries were not connected because they were not on the same side of the body.

In a September 2, 2009 narrative statement, Mr. Harris stated that twice on August 28, 2008 appellant displayed discomfort when he was asked to complete travel card training for an upcoming out-of-state training class. He was instructed to seek medical treatment for his condition, but failed to do so. Appellant stated that he could not complete the travel card training because he could not log onto the computer network.

In a September 2, 2009 narrative statement, Mr. Nether stated that on August 28, 2009 appellant complained about having pain for which he planned to seek medical treatment and refused to complete a training assignment. Appellant was advised to submit a medical excuse before returning to his scheduled work shift.

In a September 3, 2009 e-mail, Paul Roegner, a transportation security manager, stated that appellant submitted medical documentation which indicated that he could return to full-duty work with no restrictions. Appellant moaned and groaned stating that his back pain prevented him from completing travel documents.

In a September 29, 2009 e-mail, Chris Cook, an employee, related that on August 27, 2009 appellant appeared to be experiencing some discomfort based on his facial expressions. Appellant advised Mr. Cook that he had pain on his right side under his arm. He refused any

medical assistance and requested to speak to Ms. Dreher. Appellant related to Mr. Cook that he may have hurt himself while handling bins during the morning.

In an undated narrative statement, Ms. Adams related that on August 27, 2009 appellant was moaning while talking to Ms. Weaver, a human resource administrative assistant. Appellant was bent over chairs on his knees with his head lying on his folded arms. He advised Ms. Adams that he had not eaten in over six hours. An employee was bringing lunch to him. Ms. Adams saw him later that day lying on the floor in the lunch room crying and waiting for the EMS.

By decision dated October 30, 2009, the Office denied appellant's claim, finding that the evidence of record did not establish that the August 27, 2009 lifting incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only 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.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on

³ 5 U.S.C. §§ 8101-8193.

⁴ C.S., 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ S.P., 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ B.F., 60 ECAB ____ (Docket No. 09-60, issued March 17, 2009); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ D.B., 58 ECAB 464 (2007); *Paul Foster*, 56 ECAB 208 (2004).

⁸ C.B., 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008); D.G., 59 ECAB 734 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁹ Y.J., 60 ECAB ____ (Docket No. 08-1167, issued October 7, 2008); A.D., 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006).

whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹⁰ 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.¹¹

ANALYSIS

To support fact of injury an employee must establish that an incident occurred at the time, place and in the manner alleged.¹² The Board finds that appellant failed to meet his burden of proof to establish that he sustained a traumatic incident in the performance of duty on August 27, 2009.

Appellant asserted that he injured his back while stacking trays and carrying them to passengers. However, Ms. Dreher, a human resources program assistant, stated that appellant complained about stomach pain on August 27, 2009 for which he initially refused medical treatment. She saw appellant lying on the lunch room floor holding his rib area. Ms. Dreher stated that he initially refused treatment but was subsequently transported to a local hospital. The EMS advised appellant that his pain rating of 10 was not caused by lifting bins weighing three pounds each. Ms. Dreher related that a hospital record indicated that, during examination at the hospital, appellant was snoring and sound asleep. She noted his refusal to undergo medical treatment and discharge against the medical advice of the hospital after his request for pain medication was denied. On August 28, 2009 Ms. Dreher heard appellant moan while being instructed by Mr. Harris to complete a travel card to attend a training course. Ms. Dreher stated that he refused medical treatment. Mr. Dobrzynski advised her that the bins lifted by appellant only weighed six ounces and that they would not cause severe pain. He also advised Ms. Dreher that appellant's red and swollen left hand was not causally related to his shoulder pain as he had contended. The narrative statements of Ms. Adams, Mr. Harris, Mr. Nether and Mr. Roegner relate that appellant groaned, displayed discomfort and complained about pain when he was either asked or refused to complete travel card training despite being released to full-duty work with no restrictions. Ms. Adams stated that on August 27, 2009 appellant advised her that he had not eaten in six hours as he was bent over chairs on his knees with his head lying on his folded arms. Although Mr. Cook stated that appellant related to him that he may have hurt himself while handling bins during the morning on August 27, 2009, appellant stated that he experienced pain in his right side under his arm and not in his back as alleged.

The medical evidence submitted by appellant following the alleged August 27, 2009 incident provides several diagnoses that vary significantly including, back strain, thoracic sprain, abdominal pain and possible wall spasm, nonobstructing calculus in the left kidney, shoulder strain-trapezius/rhomboideus and right peri-scapular/sprain.

¹⁰ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

¹² *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002).

The Board finds that the factual and medical evidence of record is not sufficiently detailed to establish that an employment incident occurred in the performance of duty on August 27, 2009, as alleged. There are inconsistencies as to the history of injury and varying diagnoses as to cast doubt on the validity of appellant's claim. Due to the deficiencies and inconsistencies in the factual and medical evidence, the Board finds that appellant has not met his burden of proof in establishing that he experienced an employment-related incident at the time, place and in the manner alleged.¹³

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a back injury in the performance of duty on August 27, 2009, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ As appellant did not establish an employment incident alleged to have caused his injury, it is not necessary to consider any medical evidence. *S.P., supra* note 5; *Bonnie A. Contreras, supra* note 8.