

United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant

and

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Richmond, VA, Employer

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Docket No. 09-1732
Issued: February 25, 2010

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 June 17, 2009 appellant filed a timely appeal from a December 19, 2008 merit decision of the Office of Workers' Compensation Programs affirming an August 26, 2008 decision that denied his claim. 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 an injury in the performance of duty on July 14, 2008 causally related to his employment.

FACTUAL HISTORY

On July 18, 2008 appellant, a 51-year-old revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 2008 he was involved in a motor vehicle accident while driving to a taxpayer's place of business. He alleges that the vehicle he was driving was struck from behind and that he sustained back pain and discomfort.

In a May 4, 2006 report, Dr. Isaac Goodrich, a Board-certified neurologist, reported that appellant was undergoing low back surgery on May 16, 2006. In a subsequent report, dated October 11, 2006, he reported that appellant's status was post removal of a herniated nucleus pulposus at the L2-3 level.

Appellant submitted a police report, dated July 14, 2008, in which the officer noted that appellant's vehicle sustained minor damage to its bumper and that appellant was complaining of back discomfort.

The Office received a July 24, 2008 form report, with an illegible signature, from Family and Internal Medicine of Dixwell Avenue pertaining to appellant's July 14, 2008 office visit. This form report indicates that appellant was diagnosed with low back sprain.

Another July 24, 2008 report (Form CA-20) was received by Dr. Babu Kumar, a Board-certified internist. He reported findings on examination and diagnosed low back sprain and checked the box "no" in response to the question of whether appellant's condition was caused or aggravated by an employment activity.

By decision dated August 26, 2008, the Office accepted that appellant was involved in a motor vehicle accident on July 14, 2008 but denied appellant's claim because the evidence of record did not establish that the accepted employment incident caused a medically-diagnosed injury.

In a September 15, 2008 note, Dr. Kumar noted that appellant was involved in a motor vehicle accident "on the way to work." He also relates that appellant has a prior history of back pain.

On September 17, 2008 requested review of the written record.

By decision dated December 19, 2008, the Office affirmed its August 26, 2008 decision because the evidence of record did not demonstrate that the accepted employment incident caused a medically diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² 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.³ As part of his burden, the employee must submit rationalized medical opinion evidence

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

based on a complete factual and medical background showing causal relationship.⁴ 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.⁵

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 incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

The Office accepted that appellant was involved in a motor vehicle accident on July 14, 2008. Appellant's burden is to demonstrate the accepted employment incident caused a diagnosed injury. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence. Appellant has not submitted sufficient medical evidence and therefore has not met his burden of proof.

The medical evidence of record consists of reports and a note from Drs. Goodrich and Kumar. The Board notes that Dr. Goodrich's reports pertained to appellant's back condition in 2006, two years prior to the accepted incident. These reports, while helpful in establishing appellant's medical history regarding his low back, are not probative in establishing that appellant sustained an injury on July 14, 2008.

Dr. Kumar's reports are also of limited probative value. In his initial report dated July 24, 2008, he checked the box "no" indicating that appellant's condition was not caused or aggravated by an employment incident. After appellant discussed this report with him, Dr. Kumar submitted a report dated September 15, 2008 wherein he stated that appellant had been involved in a motor vehicle accident on his way to work and that appellant had a prior history of back pain. His report is of insufficient value to establish even a *prima facie* claim for compensation because it does not provide a rationalized medical opinion explaining how the accepted motor vehicle accident caused a diagnosed medical condition. Dr. Kumar did not medically link appellant's back condition to the accepted incident.

Appellant failed to meet his burden of proof to establish a *prima facie* claim for compensation. Although he submitted a statement which identified the factors of employment

⁴ *G.T., id; Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

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

that he believed caused his condition, he failed to submit any probative medical evidence in support of his claim. The Office informed appellant of the need to submit a physician's opinion which explained how the claimed condition was related to the implicated employment factors. Appellant failed to submit any medical evidence sufficient to establish his claim.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹ The fact that a condition manifests itself or worsens during a period of employment¹⁰ or that work activities produce symptoms revelatory of an underlying condition¹¹ does not raise an inference of causal relationship between a claimed condition and employment factors. Appellant has not submitted sufficient probative medical opinion evidence and therefore has not satisfied his burden of proof.

CONCLUSION

The Board finds that appellant has not established he sustained an injury in the performance of duty on July 14, 2008 causally related to his employment.

⁸ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

⁹ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹⁰ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹¹ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the December 19 and August 26, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 25, 2010
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