United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 09-1437**
	)	**Issued: January 11, 2010**
DEPARTMENT OF THE ARMY, ARLINGTON NATIONAL CEMETERY, Arlington, VA, Employer	)	

Appearances:
Sharron Campbell, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 22, 2009 appellant filed a timely appeal of the March 24, 2009 merit decision of the Office of Workers' Compensation Programs, which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

[1] The current record includes evidence received after the Office issued its March 24, 2009 decision. The Board's review of a case is limited to the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1) (2009). The Board further notes that appellant requested oral argument. Appellant indicated that oral argument was necessary in order to better clarify errors in the paperwork, particularly with respect to his date of injury. As discussed *infra*, the current record is devoid of medical evidence. Given the paucity of both factual and medical information, the Board finds that oral argument would not likely aid in the resolution of the relevant factual and medical issues. Consequently, the Board, in its discretion, denies appellant's request for oral argument. *See* 20 C.F.R. § 501.5(a), (b).

FACTUAL HISTORY

On February 11, 2009, appellant, a 62-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) for an injury to his shoulder and neck that reportedly occurred on February 9, 2009. He was allegedly pushing a roll-about tent when he felt a burning sensation in his shoulder and neck. There were no witness statements as appellant reportedly was working alone. He claimed to have notified the employing establishment about his injury on February 10, 2009. In challenging the claim, the employing establishment noted that, while appellant claimed to have hurt himself in "September 2008," his supervisor had no knowledge of this injury until February 2009. The employing establishment further noted that there was no record of an incident concerning appellant and no work performance issues. In addition, appellant had not taken any sick or annual leave. The claim form additionally noted that he had been treated on February 8, 2009 by Dr. David G. Medland, but no medical evidence accompanied appellant's traumatic injury claim.

By letter dated February 20, 2009, the Office requested that appellant submit additional information regarding his claimed February 9, 2009 injury. It sought clarification on when the injury occurred, noting that appellant reportedly told his employer he was injured in September 2008, and if the injury occurred in September 2008, the Office questioned why appellant reportedly waited until February 2009 before bringing it to his supervisor's attention. Appellant was also asked to explain how he received medical treatment a day before the alleged February 9, 2009 injury. The Office also requested a comprehensive medical report, noting that the record did not include a diagnosis of any condition resulting from the alleged February 9, 2009 injury. Appellant was afforded 30 days to submit the requested factual and medical information. However, he did not respond within the allotted time frame.

In a decision dated March 24, 2009, the Office denied appellant's claim because he failed to establish fact of injury. Appellant not only failed to establish that the February 9, 2009 incident occurred as alleged, but he also failed to submit any evidence of an injury-related medical diagnosis.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as

[2] 5 U.S.C. §§ 8101-8193.

alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if 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.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

The record is devoid of any medical evidence indicating that appellant sustained an employment-related neck and/or shoulder injury. Despite the Office's February 20, 2009 request for additional information, appellant did not submit any medical evidence whatsoever. Regardless of whether the alleged tent-pushing incident occurred in September 2008 or February 2009, there is no medical evidence to *prima facie* establish that appellant sustained any type of injury. Accordingly, the Office properly denied the claim.

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty.

[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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