United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 10-159**
	)	**Issued: July 22, 2010**
DEPARTMENT OF HEALTH & HUMAN SERVICES, OFFICE OF THE SECRETARY, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2009 appellant filed a timely appeal from a September 28, 2009 merit decision of the Office of Workers' Compensation Programs. 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 has established an injury in the performance of duty on November 19, 2008.

FACTUAL HISTORY

On November 24, 2008 appellant, then a 53-year-old administrative law judge, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury on November 19, 2008 "while reaching over the desk to punch files while exhibiting files." He described the injury as a subluxated vertebrae in the cervical or thoracic spine. By letter dated January 6, 2009, the Office requested additional evidence regarding the claim.

On February 10, 2009 the Office received a November 20, 2008 treatment note from Dr. David Brill, an osteopath, who stated that appellant was complaining of upper back pain, and had "hurt his back moving some boxes at work." Dr. Brill diagnosed a thoracic sprain. In a note dated January 15, 2009, he reported that appellant "did some shoveling and lifting at work" and had neck pain. Dr. Brill diagnosed somatic dysfunction with muscle spasm.

By decision dated February 11, 2009, the Office denied the claim for compensation. It stated that appellant had not submitted evidence in response to the January 6, 2009 letter.

Appellant requested a telephonic hearing before an Office hearing representative, which was held on July 16, 2009. According to appellant, he had been receiving treatment from a chiropractor for neck symptoms prior to the November 19, 2008 incident, and he received treatment from the chiropractor after the employment incident. With respect to medical evidence, appellant submitted a December 1, 2008 note from Dr. Brill indicating that appellant was still having upper back pain and was being treated by a chiropractor.

By decision dated September 28, 2009, the hearing representative affirmed the February 11, 2009 decision. The hearing representative reviewed all of the medical evidence of record.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the 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" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[2] An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[5] In clear-cut

[1] 5 U.S.C. § 8102(a).

[2] *Valerie C. Boward*, 50 ECAB 126 (1998).

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[6]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. 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.[7]

ANALYSIS

Appellant filed a claim alleging a traumatic injury on November 19, 2008 when he was reaching over a desk to punch holes in files. He did not provide a more detailed description of the employment incident. The Office did accept that an employment incident occurred on November 19, 2008. As noted above, to establish the claim for compensation there must be medical evidence with a diagnosis and an opinion, based on a complete and accurate background, on causal relationship with the employment incident.

With respect to the medical evidence, the Board notes that the November 20, 2008 and January 15, 2009 treatment notes were originally submitted on February 10, 2009, and should have been considered by the Office in its February 11, 2009 decision.[8] While the Office did not appear to consider the evidence in that decision, as it stated no evidence had been received in response to a request for additional evidence, the Board notes that the hearing representative did consider and review all the evidence of record in her September 28, 2009 decision.

As to the content of the medical evidence submitted, the record does not contain a rationalized opinion on causal relationship. Dr. Brill referred briefly to "moving some boxes" in his November 20, 2008 note, and to "shoveling and lifting" in his January 15, 2009 note. According to appellant he was reaching over a desk to punch holes in files, and Dr. Brill's description of the incident does not establish that he had a clear understanding of the employment incident on November 19, 2008. In addition, Dr. Brill did not provide a rationalized medical opinion establishing causal relationship between a diagnosed condition and the employment incident.

[6] *Id.*

[7] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004).

[8] *See Yvette N. Davis,* 55 ECAB 475 (2004).

It is appellant's burden of proof to submit the necessary evidence to establish the claim for compensation. For the above reasons, the Board finds appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on November 19, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2009 is affirmed.

Issued: July 22, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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