United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 09-1805**
	)	**Issued: June 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Jamaica Plains, MA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 7, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 13, 2009 which denied appellant's claim for a traumatic injury. He also appealed a May 28, 2009 Office decision which denied merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a hernia while in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On November 18, 2008 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that on the same day he was walking up stairs to deliver mail and felt pain in the groin area. He stopped work on November 18, 2008 and returned to full duty without restrictions on November 21, 2008.

In support of his claim, appellant submitted a medical note from Dr. Michael J. Lowney, an osteopath, dated November 19, 2008, who advised that appellant could return to work part time, six hours per day on November 20, 2008 and full duty on November 21, 2008. In a November 24, 2008 disability certificate, Dr. Lowney returned appellant to work on November 21, 2008, full time without restrictions. On December 3, 2008 he prepared a medical note and diagnosed right inguinal hernia and referred appellant for a surgical evaluation. Appellant was seen by Dr. Christopher Boyd, a Board-certified general surgeon, on December 15, 2008, for right groin discomfort. He reported being a letter carrier with complaints of groin discomfort for approximately one month. Dr. Boyd noted findings upon physical examination when standing of bilateral groin bulges. He diagnosed bilateral inguinal hernias and recommended laparoscopic bilateral inguinal hernia surgery. Appellant submitted a December 15, 2008 medical/surgical consent form and a disability certificate for January 23, 2009, the day of surgery.

On January 29, 2009 the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a January 23, 2009 report from Dr. Boyd who performed a bilateral laparoscopic direct inguinal hernia repairs with mesh and diagnosed bilateral direct inguinal hernias and left indirect lipoma of the cord. Accompanying the operative report was a preadmission screening, preoperative instructions and anesthesia record for the surgery. In an undated attending physician's report, Dr. Boyd diagnosed bilateral inguinal hernia and noted with a checkmark "no" that this condition was not caused or aggravated by an employment activity. He recommended appellant resume regular work on March 1, 2009 with no lifting over 30 pounds. Similarly, in a February 11, 2009 report, Dr. Boyd noted that appellant underwent surgery and could return to light-duty work on February 12, 2009 with restrictions and return to full duty on May 11, 2009.

In a decision dated March 13, 2009, the Office denied appellant's claim for an injury on the grounds that the medical evidence was insufficient to establish his groin injury was causally related to his work duties.

On March 26, 2009 appellant requested reconsideration and asserted that on November 18, 2008 as he was ascending stairs carrying his mailbag he experienced a sudden pain in his groin area and reported it to his supervisor. He noted that Dr. Lowney provided a report describing his condition and a referral for a surgical evaluation. Appellant asserted that the checkmark on the attending physician's report prepared by Dr. Boyd indicating that his condition was not work related was merely a "Scribner's error" and any expectation that a person could remember details that were months old was unreasonable. He also noted that he was not provided with a cart for mail delivery. On April 28, 2007 Dr. Lowney prepared a disability certificate and diagnosed dorso lumbar sprain/strain with mild osteoarthritis of the spine and recommended appellant should use a cart for mail delivery. Appellant submitted a January 23, 2009 anesthesia record and February 11, 2009 report from Dr. Boyd, both previously of record.

In a May 28, 2009 decision, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her 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 of the Act, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained a bilateral groin injury while climbing stairs to deliver mail. The Board notes that the evidence supports that the incident occurred on November 18, 2008 as alleged. The Board finds, however, that the medical evidence is insufficient to establish

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

that appellant sustained a bilateral groin injury causally related to the November 18, 2008 work incident.

On January 29, 2009 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the November 18, 2008 work incident may have caused or aggravated his claimed condition.

In support of his claim, appellant submitted a medical note from Dr. Lowney dated November 19, 2008 who advised that appellant could return to work part time, six hours per day on November 20, 2008 and full duty on November 21, 2008. In a November 24, 2008 disability certificate, Dr. Lowney returned appellant to work on November 21, 2008 full time without restrictions. Similarly, on December 3, 2008, he diagnosed right inguinal hernia and referred appellant for a surgical evaluation. However, these notes fail to provide a diagnosis of a medical condition,[7] note a history of injury,[8] or offer an opinion on how appellant's employment could have caused or aggravated his condition.[9] Consequently these reports were of little probative value and do not establish appellant's traumatic injury claim.

Appellant also submitted a December 15, 2008 report from Dr. Boyd who diagnosed bilateral inguinal hernias and recommended laparoscopic bilateral inguinal hernia surgery. He reported being a letter carrier with complaints of groin discomfort for approximately one month. Other submissions included a December 15, 2008 medical/surgical consent form, a disability certificate for January 23, 2009, a January 23, 2009 operative report from Dr. Boyd, a January 23, 2009 preadmission screening, preoperative instructions and anesthesia record for surgery. However, as noted above, these notes neither note a history of injury[10] nor offer an opinion on how appellant's employment could have caused or aggravated his condition[11] and are therefore insufficient to meet appellant's burden of proof.

Likewise, a February 11, 2009 report from Dr. Boyd which noted appellant underwent surgery and could return to light-duty work on February 12, 2009 with restrictions and full duty on May 11, 2009 is insufficient to establish the claim as the physician did not provide a history of injury or specifically address whether appellant's work activities had caused or aggravated a diagnosed medical condition.[12] Appellant also submitted an undated attending physician's report from Dr. Boyd who diagnosed bilateral inguinal hernia; however, this report does not establish

[7] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[8] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[9] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[11] *Supra* note 9.

[12] *Supra* note 9.

that appellant's hernia condition was work related, rather, he noted with a checkmark "no" that this condition was not caused or aggravated by employment activity.

No other medical evidence submitted by appellant provides a physician's opinion on the causal relationship between appellant's work factors on November 18, 2008 and a diagnosed medical condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[13] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[14]

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[15] the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[16] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[17]

[13] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *See* 5 U.S.C. § 501.2(c). The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant after the October 29, 2008 Office decision.

[15] 5 U.S.C. § 8128(a).

[16] 20 C.F.R. § 10.606(b).

[17] *Id.* at § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant's March 26, 2009 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration asserted that on November 18, 2008 he was ascending stairs carrying his mailbag and experienced a sudden pain in his groin area and reported it to his supervisor. He sought treatment from Dr. Lowney who provided a report describing his condition. Appellant asserted that the checkmark on the attending physician's report prepared by Dr. Boyd, indicating that his condition was not work related, was a Scribner's error but he did not submit a report from Dr. Boyd to support his speculative contention. His letter did not show how the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Appellant did not set forth a particular point of law or fact that the Office had not considered or establish that the Office had erroneously interpreted a point of law. Additionally, the Board notes that the factual aspects of his claim are not in dispute, rather his claim was denied because he failed to submit medical evidence supporting that his employment caused or aggravated his hernia condition. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted an April 28, 2007 disability certificate in which Dr. Lowney diagnosed dorso lumbar sprain/strain with mild osteoarthritis of the spine and recommended that appellant use a mail cart to deliver mail. However, this certificate, while new, is not relevant because it does not specifically address the issue of whether an employment activity caused or aggravated a medical condition on the date in question, November 18, 2008.

Also submitted was a February 11, 2009 report from Dr. Boyd and an anesthesia record from the January 23, 2009 surgery; however, these reports are duplicative of evidence already contained in the record, and was previously considered by the Office in its decision dated March 13, 2009 and found to be insufficient.[18] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Thus, appellant did not submit relevant and pertinent evidence not previously considered by the Office.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied his March 26, 2009 request for reconsideration.

On appeal appellant asserts that he faxed a February 12, 2009 report from Dr. Boyd and a letter from the Department of Labor to the Office in support of his reconsideration request; however, he stated that the Office did not acknowledge receiving these documents or consider them prior to issuing a decision. Appellant attached a copy of these documents to his appeal papers. However, the Board's jurisdiction is limited to the evidence that was before the Office at

[18] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini,* 44 ECAB 657 (1993); *Eugene F. Butler,* 36 ECAB 393, 398 (1984); *Bruce E. Martin,* 35 ECAB 1090, 1093-94 (1984).

the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant on appeal.[19]

Appellant further asserts that Dr. Lowney's April 28, 2007 disability certificate, restricting him from carrying a mailbag, was significant because had this note been considered appellant would have been provided a mail cart and possibly avoided sustaining a hernia. As noted above, this evidence, while new, is not relevant under 20 C.F.R. § 10.606(b)(2) because it does not specifically address the issue of whether an employment activity caused or aggravated a medical condition on the date in question.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a bilateral groin injury causally related to his November 18, 2008 employment incident. The Board finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 28 and March 13, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 22, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[19] 5 U.S.C. § 501.2(c).