United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 09-2107**
	)	**Issued: June 21, 2010**
DEPARTMENT OF DEFENSE, PORTSMOUTH NAVAL YARD, Portsmouth, NH, Employer	)	

Appearances:
Bradley M. Lown, Esq., for the appellant
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 August 24, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' July 22, 2009 merit decision denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained a traumatic injury to his right hip and thigh on June 5, 2008.

FACTUAL HISTORY

On June 16, 2008 appellant, a 37-year-old police officer, filed a traumatic injury claim alleging that he sustained an injury to his right hip and thigh on June 5, 2008. He stated that he developed lateral cutaneous femoral nerve syndrome as a result of his gun belt pressing against the nerves of his right hip while he climbed in and out of his patrol car and up and down stairs.

Appellant submitted a June 18, 2008 note from Dr. David Lauter, a Board-certified surgeon, who stated that appellant could return to work but was restricted from wearing a gun belt or tight-fitting pants. He also submitted an August 25, 2008 evaluation from Meghan Hosfort, physical therapist, who related appellant's complaints of hip pain allegedly caused by a June 2008 work injury. Appellant stated that his gun belt pinched his right hip, causing increasing pain as he climbed in and out of his cruiser and up and down stairs.

In an October 14, 2008 letter, the Office informed appellant that the evidence submitted was insufficient to establish that he had sustained an injury in the performance of duty. It advised him to submit additional evidence, including details as to how the alleged event occurred and a report from his physician containing a diagnosis, examination findings and a rationalized report explaining how his diagnosed condition was caused by the events of June 5, 2008.

In a report dated August 20, 2008, Dr. William S. Sutherland, a Board-certified orthopedic surgeon, related appellant's complaints of hip and thigh pain due to wearing a heavy utility belt. He stated: "I think his diagnosis is neuralgia paresthetica due to a tightness around his pelvis and exiting nerve root."

The record contains June 10, 2008 emergency room records from York Hospital, bearing an illegible signature. The records reflect that appellant was treated for right thigh pain, which began on "Thursday night at work" and developed gradually while he was wearing a heavy gun belt and climbing stairs at work.[1] The stated diagnosis was lateral cutaneous femoral nerve syndrome.

In a November 13, 2008 statement, appellant indicated that his injury occurred on June 5, 2008, when he was in and out of his cruiser, and up and down stairs, every half hour to check on dispatch. He explained that the bucket seat on the driver's side of his cruiser was "broken," making it more difficult for him to get in and out of his vehicle. Half-way through his shift on the night in question, appellant developed pain in his hip, radiating to his thigh. Appellant thought he might have strained a muscle at that time. Upon his return to work on June 9, 2008, the pain returned. When appellant's supervisor refused his request to report to the employee medical facility, appellant went to the York Hospital emergency room.

By decision dated November 21, 2008, the Office denied appellant's claim on the grounds that the evidence of record was insufficient to establish that the claimed medical condition was causally related to the established work-related events. It noted that none of the medical evidence contained an opinion addressing whether, or explaining how, his diagnosed condition was caused or aggravated by wearing a gun belt.

On December 16, 2008 appellant requested an oral hearing. His counsel contended that the evidence established that he had sustained the injury at the time, place and in the manner alleged. Appellant argued that the medical evidence, which was uncontroverted, established that

[1] The Board notes that the Thursday preceding June 10, 2008 was June 5, 2008.

appellant's right hip condition was causally related to work activities on June 5, 2008, and was exacerbated by wearing a holster.[2]

Appellant submitted reports dated November 12, 2008 from Dr. Sutherland, who related his continuing complaints of right anterior thigh and hip pain. Dr. Sutherland diagnosed neuralgia paresthetica, which he opined was due to appellant's tight-fitting clothing and gun belt on June 5, 2008.

In a report dated November 21, 2008, Dr. Lauter stated that appellant had sustained damage to his right lateral femoral cutaneous nerve due to chronic pressure from his gun belt. He diagnosed neuralgia paresthetica and identified the onset of appellant's condition as June 5, 2008. The record contains a June 25, 2008 report of a magnetic resonance imaging (MRI) scan of the right hip.

At the May 19, 2009 telephonic hearing, appellant described the physical requirements of his job, which included climbing stairs, climbing in and out of his cruiser approximately 50 times per shift and wearing a gun belt around his waist at all times. He noted that on June 5, 2008 he was wearing his gun belt, which weighed between 20 and 30 pounds. Appellant stated that the seat on the driver's side of the cruiser was broken. The seat was squeezing his hip and he was effectively sitting in a "bowl." After working for three to four hours, appellant felt pain in his right hip. He thought he had pulled a muscle. The pain subsided during the two days following the onset of his hip pain; however, it returned as soon as he put the holster back on when he returned to work on June 8, 2008. Appellant's representative contended that the evidence was unequivocal in establishing that he had sustained a work-related injury due to the pressure of his 20-pound holster.

In reports dated June 10, 2009, Dr. Sutherland related appellant's continued complaints of pain. He stated that appellant had right groin pain with radiation into the thigh that may be consistent with neuralgia paresthetica and L4 nerve root irritation.

By decision dated July 22, 2009, the Office hearing representative affirmed the November 21, 2008 decision denying appellant's claim. He found that the evidence failed to establish that appellant had a diagnosed condition causally related to the established June 5, 2008 employment activities.

On appeal, counsel argues that the medical evidence is uncontroverted and establishes that appellant sustained an injury in the performance of duty on June 5, 2008.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[3] provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the

[2] Counsel stated that the Office accepted a prior claim (File No. xxxxxx779) for a hernia condition.

[3] 5 U.S.C. §§ 8101-8193.

performance of duty.[4] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[5]

An employee seeking benefits under the Act has the burden of proof to establish 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place, and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7]

An award of compensation may not be based on appellant's belief of causal relationship.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[9] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported

[4] 5 U.S.C. § 8102(a).

[5] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[6] *Robert Broome*, 55 ECAB 339 (2004).

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] 20 C.F.R. § 10.303(a).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[11]

ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[12] However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[13]

The Office accepted that the incident occurred as alleged, but found that the medical evidence was insufficient to establish that appellant had a diagnosed condition causally related to the accepted June 5, 2008 employment activities. The Board finds, however, that the medical evidence of record supports that appellant sustained a work-related injury on June 5, 2008.

The June 10, 2008 emergency room report from York Hospital reflects that appellant sought treatment for right thigh pain, which began on June 5, 2008 and developed gradually while he was wearing a heavy gun belt and climbing stairs at work. The stated diagnosis was lateral cutaneous femoral nerve syndrome. As the report does not contain a legible signature from an individual who could be identified as a physician, it does not constitute probative medical evidence.[14] However, it is factually consistent with appellant's claim that he was injured on June 5, 2008. The August 25, 2008 evaluation by a physical therapist also lacks probative value on the issue of causal relationship.[15] However, it is in line with appellant's allegations.

Dr. Lauter's reports also support appellant's claim. His opinion that appellant had sustained damage to his right lateral femoral cutaneous nerve, resulting in neuralgia paresthetica,

[11] *John W. Montoya*, 54 ECAB 306 (2003).

[12] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[13] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *supra* note 12; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2).

[15] Physical therapists do not qualify as "physicians" under the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

as a result of chronic pressure from his gun belt, is not supported by rationale and is, therefore, of diminished probative value.[16] Dr. Lauter's statement, however, that the date of injury was June 5, 2008, is consistent with appellant's allegations that the onset of his condition began on that date due to accepted employment events. The Board notes that Dr. Lauter began treating appellant immediately following the accepted events of June 5, 2008 and expressed a thorough understanding of the details surrounding the accepted incident.

Dr. Sutherland found that appellant had right groin pain with radiation into the thigh. He diagnosed neuralgia paresthetica and L4 nerve root irritation, which he opined was due to performing work activities while wearing tight-fitting clothing and a gun belt on June 5, 2008. While Dr. Sutherland's reports did not offer an unequivocal opinion or fully describe the mechanism of injury, he provided an opinion, based on examination findings and an accurate factual and medical background, that appellant sustained an injury on June 5, 2008 due to the accepted employment events.

While none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained an employment-related injury to his right hip and thigh, and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted employment incidents, and are sufficient to require the Office to further develop the medical evidence and the case record.[17] On remand the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incidents and shall issue an appropriate decision in order to protect his rights of appeal.[18]

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained a traumatic injury to his right hip and thigh in the performance of duty on June 5, 2008.

[16] The Board has previously found that a report that addresses causal relationship with a check mark, without a medical rationale explaining how the work event caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship. *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[17] *See Virginia Richard*, *supra* note 12; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

[18] The issue in this case is whether appellant sustained a traumatic injury on June 5, 2008. The Board notes that appellant's allegations that his initial injury was exacerbated by his continued wearing of a heavy gun belt over a period of time, may be more appropriately addressed by the filing of an occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision

Issued: June 21, 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