United States Department of Labor
Employees' Compensation Appeals Board

S.O., Appellant	)	
and	)	**Docket No. 09-2315**
	)	**Issued: June 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Des Moines, IA, Employer	)	

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 September 17, 2009 appellant filed a timely appeal from the June 2, 2009 nonmerit decision and May 4, 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 his case.

ISSUES

The issues are: (1) whether appellant established that he sustained an injury in the performance of duty causally related to his employment; and (2) whether the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 23, 2009 appellant, a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) for right hip pain that he alleges produces pain which radiates from his hip

and down his thigh. He attributed his condition to "working long hours," and activities associated with "walking mail routes" on "uneven ice and snow."

Appellant submitted a February 18, 2009 report (Form CA-16) in which Dr. Kim Countryman, Board-certified in family medicine, presented findings on examination and diagnosed hip pain.[1] By check mark, Dr. Countryman opined that appellant's condition was employment related. She attributes his condition to walking on uneven ground in "severe weather." In a separate report, also dated February 18, 2009, Dr. Countryman reviewed appellant's medical history, presented findings on examination and diagnosed "pelvis/hip" joint pain.

On March 3, 2009 Dr. Countryman excused appellant from work through March 15, 2009 and provided work restrictions. In a separate report, also dated March 3, 2009, she reviewed his medical history, presented findings on examination and diagnosed "pelvis/hip" joint pain.

On March 9, 2009 Dr. John F. Nettrour, Board-certified in family medicine, excused appellant from work "for two weeks."

Appellant submitted a report (Form CA-17) as well as a separate note, both dated March 25, 2009, bearing illegible signatures.

By decision dated May 4, 2009, the Office denied the claim, finding that, while appellant established the employment factors he deemed responsible for his condition, he had not established that these identified employment factors caused a medically-diagnosed condition.

On May 21, 2009 appellant requested reconsideration.

Appellant submitted no evidence supporting his reconsideration request and by decision dated June 2, 2009, the Office denied the request, without conducting merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] 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.[4] As part of his burden, the employee must submit rationalized medical opinion evidence

[1] The Board notes that the Office issued a CA-16 form. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 form issued to appellant did not authorize either examination or treatment and was therefore not properly executed.

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *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.[5] 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.[6]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[8]

ANALYSIS -- ISSUE 1

The Office accepted that appellant established the employment factors he deemed responsible for his condition. Appellant's burden is to demonstrate the established employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be proven by rationalized medical opinion evidence. The medical opinion evidence of record lacks the requisite reasoning to establish the causal relationship between appellant's condition and the identified employment factors. Consequently, the Board finds that he has not established that he sustained an injury in the performance of duty causally related to his employment.

The reports and notes signed by Dr. Nettrour and Dr. Countryman have diminished probative value on the issue of causal relationship. The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of the stated conclusions.[9] Dr. Nettrour's note did not present a diagnosis, supported by a review of

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

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

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[8] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *See Anna C. Leanza*, 48 ECAB 115 (1996).

appellant's medical history and findings on examination, nor did he explain how the established employment factors caused a medically-diagnosed condition.[10]

Dr. Countryman diagnosed "pain," which is a symptom, not a compensable diagnosis.[11] While she check marked "yes" to the question whether appellant's condition was work related and attributed appellant's condition to walking on uneven ground in "severe weather," her opinion is not supported by sufficient medical rationale. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history, is of diminished probative value.[12] Furthermore, Dr. Countryman did not describe the mechanism of injury; that being the process by which appellant's condition was produced by the established employment factors. These defects reduce the probative value of these physicians' opinions such that their notes and reports do not establish the requisite causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.[13] 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.[14] The fact that a condition manifests itself or worsens during a period of employment[15] or that work activities produce symptoms revelatory of an underlying condition[16] does not raise an inference of causal relationship between a claimed condition and employment factors.

Because the medical evidence contains no reasoned discussion of causal relationship, one that soundly explains how the established employment factors caused or aggravated a diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

[10] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[11] *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

[12] *Lucrecia, M. Nelson*, 42 ECAB 583, 594 (1991).

[13] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

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

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

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

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[17] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[18] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[19] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[20]

ANALYSIS -- ISSUE 2

Appellant's reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Consequently, he is not entitled to merit review under the first two enumerated grounds under 20 C.F.R. § 10.606(b)(2).

Because appellant did not submit new relevant and pertinent evidence with his reconsideration request, he was not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2). Accordingly, the Office properly denied his request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty causally related to his employment. The Board also finds that the Office properly denied his request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[17] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[18] 20 C.F.R. § 10.606(b)(2).

[19] *Id.* at § 10.607(a).

[20] *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the June 2 and May 4, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 22, 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