United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 10-95**
	)	**Issued: June 29, 2010**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Carson City, NV, 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 October 13, 2009 appellant filed a timely appeal from the May 20, 2009 merit decision denying his traumatic injury claim. 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 established that on March 18, 2009 he sustained an injury in the performance of duty causally related to his employment.

FACTUAL HISTORY

On March 30, 2009 appellant, a 33-year-old surface maintenance mechanic, filed a traumatic injury claim (Form CA-1) for a lower back sprain that he attributed to a March 18, 2009 incident when, as he was climbing down a catwalk while unhooking a trailer, he slipped, fell, and landed on his right elbow and pelvis. His supervisor, Stephen Rundell, signed the claim form noting that time lost would be covered by continuation of pay or leave.

The record contains a March 18, 2009 nurse note that states that appellant had a low back sprain and right arm and pelvis contusions but was returned to work on March 23, 2009.

Appellant submitted a report, dated March 19, 2009, in which Dr. Julie A. Locken, a Board-certified diagnostic radiologist, reported that x-rays of appellant's lumbar spine were "essentially unremarkable" and revealed "no acute fracture." Dr. Locken also noted that the x-rays revealed "question of minimal disc space narrowing at the lumbosacral junction."

By letter dated April 15, 2009, the Office advised appellant that further evidence was necessary to establish his claim. Appellant was requested to submit a narrative medical report from his treating physician, which included a diagnosis and a rationalized medical opinion explaining the cause of the diagnosed condition.

By decision dated May 20, 2009, the Office denied the claim because the evidence of record did not demonstrate the employment incident occurred as alleged or caused a medically-diagnosed condition.[1]

LEGAL PRECEDENT

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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

[1] Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

[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).

[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).

incident at the time, place and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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.[9]

ANALYSIS

Appellant attributed his condition to a March 18, 2009 incident when, as he was climbing down a catwalk while unhooking a trailer, he slipped, fell, and landed on his right elbow and pelvis. The record contains a March 18, 2009 nurse note and a March 19, 2009 x-ray of the lumbar spine. Although a nurse's report is not considered medical evidence,[10] it can be used to support appellant's allegation that an incident occurred on that date. As the evidence of record supports that the incident occurred and as there is no evidence of record contradicting appellant's assertion that this incident occurred as alleged, the Board finds that he has established the employment incident he deems responsible for his condition.[11]

A person who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.[12]

This is a medical issue that can only be proven by probative medical opinion evidence. Prior to the Office's May 20, 2009 decision, appellant did not submit a medical report that substantiated a firm diagnosis of his condition. Dr. Locken's report merely noted that x-rays of appellant's spine were essentially normal and noted that the x-rays raised a question as to whether minimal disc space narrowing was present. Appellant submitted no rationalized medical evidence establishing the incident or that he had in fact sustained an injury due to the alleged incident.

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[7] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

[10] *George H. Clark*, 56 ECAB 162, 167 (2004).

[11] *Thomas L. Agee*, 56 ECAB 465, 467 (2005).

[12] *See Roy L. Humphrey*, 57 ECAB 238 (2005); *see Naomi A. Lilly*, 10 ECAB 560, 574 (1959).

Accordingly, the Board finds that appellant has not established that on March 18, 2009 he sustained an injury in the performance of duty causally related to his employment.

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 incident caused or aggravated a diagnosed medical condition, the Board finds appellant has not established the essential elements of his claim.

CONCLUSION

The Board finds appellant has not established that on March 18, 2009 he sustained an injury in the performance of duty causally related to his employment.

[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).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 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