United States Department of Labor
Employees' Compensation Appeals Board

D.K., Appellant	)	
and	)	**Docket No. 10-113**
	)	**Issued: October 1, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 9, 2009 appellant filed a timely appeal of a June 10, 2009 Office of Workers' Compensation Programs' merit decision and a July 7, 2009 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a traumatic injury on April 2, 2008; and (2) whether the Office properly declined to reopen appellant's claim for reconsideration of the merits under section 8128(a).

FACTUAL HISTORY

On April 23, 2008 appellant, then a 53-year-old carrier, filed a traumatic injury claim alleging that he sustained neck and shoulder injury as well as numbness in his arm and loss of sensation in his hand while moving a tray of mail on April 2, 2008. Dr. Marc A. Linson, a Board-certified orthopedic surgeon, completed a form report on June 2, 2008 and stated that appellant sustained an injury at work, listing the date of injury as April 2, 2008 and stated that he

had previously undergone spinal fusion. Dr. Linson indicated with a checkmark "yes" that appellant's current condition of painful neck was caused or aggravated by his employment and stated that appellant had chronic neck problems related to work.

In a letter dated June 10, 2008, the Office requested additional factual and medical evidence from appellant and allowed 30 days for a response. In an April 22, 2008 note, Dr. Linson found degenerative changes at C4-5 and suggested that additional spinal surgery was appropriate. He noted that appellant planned to retire. On May 20, 2008 Dr. Linson stated that appellant was totally disabled and planning a medical retirement. The employing establishment indicated that appellant was approved for disability retirement on June 9, 2008.

By decision dated July 23, 2008, the Office denied appellant's claim on the grounds that he failed to submit sufficient medical evidence to establish the causal relationship between his diagnosed neck and shoulder condition and the April 2, 2008 employment incident.

Appellant requested a review of the written record on August 18, 2008.

On July 28, 2008 Dr. Linson stated that appellant had work-related neck injury resulting in cervical radiculitis and necessitating surgical treatment. He stated that appellant's condition became exacerbated by a work injury on April 2, 2008 when he was moving a tray of mail and noted numbness in his arms and hand. Dr. Linson stated, "Therefore, his original work-related condition to his neck relating to long-standing neck problem has been exacerbated by a work injury of April 2008 as described above." Appellant submitted an April 12, 2008 MRI scan of the cervical spine.[1]

By decision dated January 6, 2009, an Office hearing representative affirmed the July 23, 2008 decision, finding that Dr. Linson's July 28, 2008 report was not sufficiently detailed or reasoned to establish that the April 2, 2008 employment incident resulted in an injury.

Appellant requested reconsideration on February 2, 2009. He resubmitted the April 12, 2008 MRI scan. In a January 13, 2009 statement, Richard A. Bergeron, union steward, asserted that on April 8, 2008 appellant reported the April 2, 2008 employment incident. He stated that appellant had been off work due to recommendations of the postal physician. In a report dated January 14, 2009, Dr. Linson stated that appellant aggravated and exacerbated his neck condition on April 2, 2008 resulting in significant changes at the C4-5 level as demonstrated on the April 12, 2008 MRI scan.

By decision dated June 10, 2009, the Office denied modification of the July 23, 2008 decision finding that the medical evidence was not sufficient to establish appellant's claim.

Appellant requested reconsideration on June 24, 2009. He resubmitted the January 13, 2008 statement from Mr. Bergeron, his claim form, an April 7, 2008 note from Dr. Linson indicating that appellant could perform light duty, the April 12, 2008 MRI scan, as well as

[1] On April 8, 2008 appellant filed a notice of recurrence alleging on April 2, 2008 he sustained a recurrence of disability related to his March 18, 1999 employment injury. He stated that he was moving a tray of mail and experienced numbness in his left arm, neck pain and loss of sensation in his hand.

treatment records from Dr. Linson dated April 22, 2008 and January 14, 2009. On April 7, 2008 Dr. Linson stated that appellant's condition had deteriorated and he experienced numbness in the right side and pain progressing through the workweek. He recommended another MRI scan.

In a decision dated July 7, 2009, the Office denied appellant's recommendation request on the grounds that it did not contain new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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.[3] 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.[4]

The Office defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[5] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.[7] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[8] Medical rationale 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 activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale

[2] 5 U.S.C. §§ 8101-1893.

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] 20 C.F.R. § 10.5(ee).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *J.Z.*, 58 ECAB 529 (2007).

[8] *T.F.*, 58 ECAB 128 (2006).

explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.[9]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained a cervical injury on April 2, 2008. In support of his claim, he submitted medical reports from his attending physician, Dr. Linson, a Board-certified orthopedic surgeon. On April 22, 2008 Dr. Linson described degenerative changes at C4-5 and suggested that additional spinal surgery was necessary. On May 20, 2008 Dr. Linson stated that appellant was totally disabled and planning to retire. These notes do not provide an accurate history of the April 2, 2008 employment incident. Dr. Linson did not demonstrate knowledge of appellant moving mail that day. These reports are insufficient to establish that appellant sustained a traumatic injury on that date due to this defect.

On June 2, 2008, Dr. Linson stated that appellant sustained an injury at work, listing the date of injury as April 2, 2008. He indicated with a checkmark "yes" that appellant's current condition of painful neck was caused or aggravated by his employment and stated that appellant had chronic neck problems related to work. This report provided reference to a work injury occurring on April 2, 2008. However, Dr. Linson did not describe the work injury and does not explain how appellant's work activities on that day caused or contributed to his chronic neck problems. He failed to provide a clear diagnosis of appellant's current neck condition, only describing a painful neck. The Board has held that an opinion on causal relationship which consists of a physician checking "yes" to a medical form report question on whether a claimant's condition was related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[10] Dr. Linson failed to offer adequate medical explanation of how appellant's accepted work activities caused or contributed to his preexisting neck condition. Without such medical reasoning this report is not sufficient to meet appellant's burden of proof.

On July 28, 2008 Dr. Linson stated that appellant had a work-related neck injury resulting in cervical radiculitis and spinal fusion, necessitating which became exacerbated by a work injury on April 2, 2008 when appellant was moving a tray of mail and noted numbness in his arms and hand. Dr. Linson stated, "Therefore, his original work-related condition to his neck relating to long-standing neck problem has been exacerbated by a work injury of April 2008 as described above." On January 14, 2009 he reiterated that appellant aggravated and exacerbated his neck condition on April 2, 2008 resulting in significant changes at the C4-5 level as demonstrated on the April 12, 2008 MRI scan. These reports provide some additional detail regarding the employment incident of April 2, 2008 in that Dr. Linson noted that appellant moved a tray. Dr. Linson did not address the weight of the materials moved or adequately explain how the employment incident resulted in additional changes at the C4-5 level of appellant's cervical spine. He did not offer the necessary medical reasoning explaining how the specific activity of lifting a tray of mail resulted in the spinal changes, as demonstrated on the MRI scan. Dr. Linson's reports are not sufficiently rationalized to establish appellant's claim.

[9] *A.D.*, 58 ECAB 149 (2006).

[10] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

LEGAL PRECEDENT -- ISSUE 2

The Act provides in section 8128(a) that the Office may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.[11] Section 10.606(b) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that the Office erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by the Office; or includes relevant and pertinent new evidence not previously considered by the Office.[12] Section 10.608 of the Office's regulations provide that, when a request for reconsideration is timely, but does meet at least one of these three requirements, the Office will deny the application for review without reopening the case for a review on the merits.[13]

ANALYSIS -- ISSUE 2

On June 24, 2009 appellant requested reconsideration of the Office's June 10, 2009 merit decision. The Office denied reconsideration of the merits. Appellant resubmitted evidence already of record at the time of the Office's June 10, 2009 decision. As the Office had previously considered this evidence in reaching its decision, this evidence is not new or sufficient to require the Office to reopen appellant's claim for further consideration of the merits.

On April 7, 2008 Dr. Linson indicated that appellant could perform light-duty work and stated that his condition had deteriorated to include numbness in the right arm and pain progressing through the workweek. He recommended an additional MRI scan. While new, these reports are not relevant or pertinent to the issue of appellant's claim, whether he has submitted sufficient rationalized medical opinion evidence to establish a causal relationship between his April 2, 2008 employment incident and his current condition. The reports do not address the April 2, 2008 employment incident or otherwise expand on the physician's opinion on causal relation. Therefore, this evidence is not relevant to the issue on which the claim was denied. As appellant failed to submit medical evidence relevant to the reason for which the Office denied his claim in the June 10, 2009 decision, it properly declined to reopen his claim for reconsideration of the merits.

On appeal, appellant contends that he has submitted sufficient medical evidence to meet his burden of proof. As noted, the Board finds that the medical evidence from Dr. Linson is not sufficient to establish that the accepted incident caused injury to his neck or shoulder. Appellant argues that his claim should be accepted for a recurrence of disability. The Office defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and

[11] 5 U.S.C. §§ 8101-8193, 8128(a).

[12] 20 C.F.R. § 10.606.

[13] *Id*. at § 10.608.

member or function of the body affected."[14] Appellant identified a specific date, April 2, 2008, and a specific event, lifting a tray of mail as the cause of his injury. The Office properly considered his claim for a new traumatic injury rather than a recurrence of disability which is defined as a spontaneous change in a medical condition which had resulted from a previous injury or illness without an injury or new exposure to the work environment that caused the illness.[15]

CONCLUSION

The Board finds that appellant did not submit sufficient rationalized medical opinion evidence to establish that his cervical or shoulder condition is causally related to the April 2, 2008 employment incident. The Board further finds that the Office properly refused to reopen his claim for reconsideration of the merits.

ORDER

IT IS HEREBY ORDERED THAT the July 7 and June 10, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 1, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[14] *Id*. at § 10.5(ee).

[15] *Id*. § 10.5(x).