United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
	)	**Docket No. 10-893**
and	)	**Issued: October 26, 2010**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, New Egypt, NJ, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from a January 14, 2010 merit decision of the Office of the Workers' Compensation Programs. 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on November 9, 2009.

FACTUAL HISTORY

On November 9, 2009 appellant, then a 30-year-old surface maintenance mechanic, filed a traumatic injury claim alleging that, on that date, he was injured while he was loading a tow bar onto the bed of a transport vehicle. He reported feeling a pop in his groin and had intense pain on the right side of his body between the thigh and the lower abdominal area. In a witness statement, a coworker recalled seeing appellant wince in discomfort while lifting the tow bar. Appellant stopped work on November 9, 2009 and returned to work the next day.

In a December 8, 2009 worksheet, a continuation of pay (COP) nurse contacted the employing establishment by telephone to confirm with appellant's supervisor that he returned to his regular duties on November 10, 2009.[1]

In a letter dated December 11, 2009, the Office informed appellant that additional evidence was needed to establish his claim. It gave him 30 days to submit medical reports detailing any treatment from a physician, clinic or hospital. In particular, the Office emphasized that the physician's report must include dates of examination and treatment, history of injury, a detailed description of findings, results of x-rays and laboratory tests, diagnosis and clinical course of treatment followed, and the physician's opinion supported by a medical explanation pertaining to how the reported work incident caused the injury.

In a decision dated January 14, 2010, the Office denied appellant's claim for compensation benefits. It found that he failed to provide any medical evidence demonstrating that his injury was caused by the work incident.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of the Act[4] and that he filed his claim within the applicable time limitation.[5] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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[1] *See* FECA Bulletin No. 10-04 (issued September 10, 2010).

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[5] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[8] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence, which includes a physician's 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, 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.[9]

ANALYSIS

The evidence supports that appellant was lifting a tow bar as alleged on November 9, 2009. However, he did not submit any medical evidence to establish that lifting the tow bar caused or aggravated a diagnosed medical condition.

On December 11, 2009 the Office advised appellant of the type of medical evidence needed to establish his claim. In particular, it asked that appellant submit a medical report from his physician explaining why the work incident caused an injury. The record establishes that appellant failed to submit any medical evidence before the Office denied his claim on January 14, 2010. Thus, there is no medical evidence from a physician supporting that the November 9, 2009 work incident caused or aggravated a diagnosed medical condition. Appellant did not provide the factual and medical evidence required to establish a *prima facie* claim.[10]

Consequently, appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to his federal employment.[11]

CONCLUSION

The Board finds that appellant has not established that he sustained an injury causally related to his employment on November 9, 2009.

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *See Donald W. Wenzel*, 56 ECAB 390 (2005).

[11] The Board notes that appellant submitted additional evidence to the Office after it rendered its decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.3 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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