

participate and received a five-second taser exposure. Mr. Neal noted that he did not report any pain or injury after the exposure.

On April 1, 2008 the Office requested additional information, including a medical report containing a diagnosis and a rationalized explanation as to how the diagnosed condition was causally related to the May 10, 2007 taser incident. No such report was forthcoming.

By decision dated May 28, 2008, the Office denied appellant's claim on the grounds that there was no medical evidence establishing that he sustained a back injury on May 10, 2007 as alleged.

On May 1, 2009 appellant requested reconsideration.

Appellant sought chiropractic treatment beginning August 8, 2007. In an August 28, 2007 patient questionnaire, he stated that he developed neck, shoulder and back pain earlier that year. Appellant noted that his symptoms began during long drives.

On December 21, 2007 Dr. David A. Dengler, a chiropractor, noted that appellant was under his care for injuries sustained in a November 28, 2007 motor vehicle accident while on duty.¹

On June 22, 2008 Dr. Barry R. Maron, an attending Board-certified orthopedic surgeon, provided a report in support of appellant's application for disability retirement. Following the May 2007 taser incident, he experienced low back pain. The November 28, 2007 motor vehicle accident aggravated appellant's condition. Dr. Maron also diagnosed major depression and post-traumatic stress disorder.

On August 10, 2008 Dr. Maron reviewed the medical history and provided findings on physical examination. He noted that on May 10, 2007 appellant participated in an optional training exercise in which he was shot with a taser in the back. Several weeks later appellant developed chronic lumbar spine pain. He initially received chiropractic treatment. A February 8, 2008 magnetic resonance imaging (MRI) scan of appellant's cervical, thoracic and lumbar spine was normal. Appellant's symptoms included aching in the low and mid back and he experienced urinary problems. On physical examination he had difficulty maintaining a comfortable body posture. Appellant had a normal forward progression gait but leaned very slightly to the right side. He could heel and toe walk and could touch his toes with slight discomfort. Neck and lumbar range of motion was normal. The seated supine, decubitus and prone examinations elicited slight pain at the bilateral paralumbar areas and sacroiliac areas. There were no sciatic tension signs elicited and straight leg raising was normal. Dr. Maron diagnosed dorsolumbar chronic strain pattern and dorsal and lumbar complex pain syndrome. He theorized that the taser incident on May 10, 2007 caused a musculoskeletal reaction in the soft tissues creating unusual vulnerability to musculoskeletal stresses. Dr. Maron stated that taser injuries cause dysfunction, not objective changes on blood studies or contrast radiography. Small muscle bundles contract upon stimulation by a taser voltage charge and necrose. This

¹ Under OWCP file number xxxxxx994, the November 28, 2007 accident was accepted for neck and lumbar sprains.

causes multiple small areas of myonecrosis which eventually become scars. Muscles which cannot contract in an efficient and smooth fashion are painful.

By decision dated June 30, 2009, the Office denied modification of the May 28, 2008 decision.

LEGAL PRECEDENT

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 incident at the time, place and in the manner alleged.² Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of 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 claimant.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee'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.⁵

ANALYSIS

The Office accepted the first component of fact of injury, that appellant was shot in the back with a taser during an optional training exercise on May 10, 2007. The second component is whether he sustained a medical condition as a result of the incident.

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

The record shows that appellant did not advise his instructor at the time of the May 10, 2007 taser incident that he was injured. Appellant did not file a claim regarding the incident until 10 months later. He sought chiropractic treatment in August 2007 and indicated that he developed neck, shoulder and back pain earlier that year due to long drives. Appellant did not mention the May 10, 2007 taser incident.

Dr. Dengler noted that he treated appellant for a November 2007 motor vehicle accident. No mention was made of the May 10, 2007 taser incident.

Dr. Maron did not examine appellant until June 2008, more than one year after the May 10, 2007 taser incident. He advised that several weeks after the May 2007 taser incident, he developed chronic lumbar spine pain. However, there is no contemporaneous medical evidence describing a back condition on May 10, 2007 or several weeks later. A February 8, 2008 MRI scan of appellant's cervical, thoracic and lumbar spine was normal. His symptoms on examination by Dr. Maron included aching in the low and mid back and urinary problems. On physical examination appellant had difficulty maintaining a comfortable body posture but neck and lumbar range of motion was normal. Different postures elicited slight pain at the bilateral paralumbar areas and sacroiliac areas but there were no sciatic tension signs elicited and straight leg raising was normal. Dr. Maron diagnosed dorsolumbar chronic strain pattern and dorsal and lumbar complex pain syndrome. He theorized that the taser incident caused a musculoskeletal reaction in the soft tissues that caused dysfunction, not objective changes on blood studies or contrast radiography. However, Dr. Maron's opinion is speculative. He did not provide a definite diagnosis and a rationalized explanation as to how the May 10, 2007 taser incident caused appellant's back condition. Such a reasoned medical explanation is particularly important in light of the fact that appellant did not file a claim for the May 10, 2007 incident until March 2008 and did not see Dr. Maron until June 2008. Additionally, there was an intervening incident, the November 28, 2007 motor vehicle accident. Considering the circumstances, Dr. Maron's reports are not sufficient to establish that appellant sustained a work-related back injury on May 10, 2007.

The Board finds that the evidence is insufficient to establish that appellant sustained a back injury on May 10, 2007 while in the performance of duty.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on May 10, 2007 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 30, 2009 and May 28, 2008 are affirmed.

Issued: September 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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