United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 10-1358**
	)	**Issued: February 7, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Columbia, SC, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 April 20, 2010 appellant filed a timely appeal from a January 14, 2010 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 this case.

ISSUE

The issue is whether appellant established an injury in the performance of duty on January 16, 2009.

FACTUAL HISTORY

On January 30, 2009 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a hernia causally related to his employment on January 16, 2009. In a statement dated January 31, 2009, he reported that on January 16, 2009 he was unloading a truck when he felt a sharp pain in his stomach. Appellant was able to

continue working. He received medical treatment on January 22, 2009, and saw another physician on January 27, 2009. Appellant noted that surgery was scheduled for February 2009.

In a statement dated February 9, 2009, Vanne Walker, a supervisor, stated that unloading of trucks involved pushing and pulling. Appellant advised the supervisor that he felt sick to his stomach. Mr. Walker stated that it was not determined to be an injury when appellant made his initial report to the platform supervisor, but the injury was discovered after several visits to his physicians to see what was causing pain. In a February 6, 2009 report, an employing establishment health and resource specialist stated that appellant told a supervisor on February 1, 2009 that he had a sharp stomach pain on January 16, 2009.

Appellant submitted a February 9, 2009 duty status report (Form CA-17) from Dr. Jon Stanford, a surgeon, diagnosing a ventral hernia. The injury described was a pain in the stomach while unloading trucks on January 16, 2009. Dr. Stanford checked a box "yes" that the history of injury given by the employee corresponded to this description. In a CA-17 dated February 24, 2009, Dr. Joseph Williams, an internist, similarly diagnosed a ventral hernia. He described clinical findings and pain in the abdomen that developed at work on January 22, 2009. This report provided a description of a January 16, 2009 incident and a box checked "yes" that the history corresponded to this description.

In a report dated February 24, 2009, Dr. Williams stated that appellant was seen on January 27, 2009 with complaints of periumbilical pains that were first noted while doing his work as a mail sorter. On examination, he noted a ventral hernia and appellant underwent a hernia repair surgery on February 11, 2009. Dr. Williams stated, "In regards to how this condition may have occurred, it is clear that ventral hernias can occur naturally. Obviously any moderate to heavy lifting can exacerbate this type of hernia."

By decision dated March 24, 2009, the Office denied the claim for compensation. It found the factual evidence was insufficient to establish the January 16, 2009 incident occurred as alleged. The medical evidence was also found insufficient.

In an October 26, 2009 letter, appellant requested reconsideration. In an undated statement, he indicated that he reported the incident on January 22, 2009. Appellant experienced pain on January 16, 2009, but did not think much of it at that time. When it returned intermittently the next week, he went to a physician. In a January 29, 2009 report, Dr. Stanford provided a history that appellant was having mid abdominal wall discomfort, usually associated with heavy lifting and prolonged standing. He listed the results on examination and diagnosed a ventral hernia.

In a report dated September 28, 2009, Dr. Stanford advised that appellant was initially seen on January 29, 2009 with abdominal discomfort that was associated with heavy lifting and prolonged standing. Following the February 11, 2009 surgery, appellant "made it aware to me that his ventral hernia was attributed to an incident that occurred on January 16, [20]09." Dr. Stanford stated that appellant had provided a written description of a January 16, 2009

incident unloading trucks, and the written description was consistent with the details provided on a postoperative visit. He stated:

> "It is my opinion that the patient had a ventral hernia and that the symptoms of his ventral hernia with disability were aggravated and accelerated from his activities at work and may have been aggravated by the work injury detailed in [appellant's] statement. I cannot say that his ventral hernia was directly caused from this injury at work. This is based on review of my chart where a patient interview form that was filled out on January 28, 2009 details the symptoms which brought [appellant] to my office. In my office form a question states 'When did this start,' and a handwritten reply is in my chart stating 'a few months ago - getting worse.'"

By decision dated January 14, 2010, the Office denied modification of the March 24, 2009 decision. It found the January 16, 2009 incident was not factually established and that the medical evidence was insufficient on causal relation.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[1] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[2] An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. It is well established that a claimant cannot establish fact of injury if there are inconsistencies, such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment, which may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[4]

The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5] The Office's procedures recognize

[1] 5 U.S.C. § 8102(a).

[2] *Valerie C. Boward*, 50 ECAB 126 (1998).

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[6] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[7]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. 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.[8]

ANALYSIS

The Office denied appellant's claim for compensation on the grounds that he did not establish that the January 16, 2009 incident occurred as alleged or that it caused an injury.

The Board finds that the record does not establish inconsistencies that are sufficient to cast doubt on whether the employment incident occurred as alleged. The Board notes that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9] Appellant stated that he was unloading a truck on January 16, 2009 when he first experienced pain related to his hernia condition. There is contrary evidence in the record. Mr. Walker, the supervisor, described the activities involved in unloading a truck and did not contest the fact that appellant was engaged in unloading material on January 16, 2009.

Mr. Walker stated that appellant reported he was sick to his stomach, without clearly stating when this occurred. Appellant stated he reported this injury on January 22, 2009 and an employing establishment resource specialist stated it was on February 1, 2009; but, there do not appear to be any statements from the supervisor who received notification. The delay in notification is not sufficient to cause doubt concerning the claim. Appellant explained that he did not believe the injury to be significant; but, after intermittent symptoms returned he sought medical treatment. In this regard, the Board notes that on January 29, 2009 Dr. Stanford related appellant's pain to lifting, although appellant did not give a specific history of the January 16, 2009 incident. Dr. Stanford subsequently confirmed that appellant provided a history of the

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[7] *Id.*

[8] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[9] *Id.*

incident following the February 11, 2009 surgery. The duty status reports of February 9 and 24, 2009 are consistent with the history of the January 16, 2009 incident.

The Board finds that the evidence of record is sufficient to establish the January 16, 2009 incident when appellant was unloading a truck and had pain in his abdomen. Having established the factual component of fact of injury, the issue is whether the medical evidence establishes that his hernia is related to the January 16, 2009 incident. Dr. Williams briefly stated in February 24, 2009 report that appellant had pain while doing his work as a mail sorter, without providing a history of the January 16, 2009 incident. He noted that lifting could exacerbate a hernia, without providing a complete background or rationalized medical opinion on how lifting produced the diagnosed condition.

In the September 28, 2009 report, Dr. Stanford opined that the ventral hernia "may have been aggravated" by the work incident. This opinion is equivocal and does not constitute a rationalized medical opinion.[10] Dr. Stanford noted that appellant had referred to having abdominal pain for "a few months." He did not provide a full history of any preexisting condition or treatment, an unequivocal opinion that the January 16, 2009 incident aggravated the ventral hernia or explain the mechanism of injury and the nature or extent of any aggravation. Dr. Stanford did not address whether the February 11, 2009 surgery was causally related to the employment incident.

On appeal, appellant argues that he submitted sufficient factual and medical evidence to establish his claim. The Board finds that the factual evidence establishes the January 16, 2009 lifting incident at work. For the reasons noted, the Board finds the medical evidence of record is of limited probative value on causal relation.

CONCLUSION

The Board finds that appellant did not establish an injury causally related to a January 16, 2009 employment incident.

[10] *See D.D.*, 57 ECAB 734 (2006) (physician's opinion that work activity may be aggravating the claimant's knee condition was speculative and held to be of diminished probative value).

ORDER

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

Issued: February 7, 2011
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