United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 10-2323**
	)	**Issued: July 22, 2011**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Chula Vista, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2010 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated July 22 and September 2, 2010. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on June 30, 2009; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, a 59-year-old program manager/customs and border protection officer, filed a claim for benefits on July 8, 2009, alleging that he experienced chest pains, shortness of breath and severe fatigue while running uphill during a training exercise on June 30, 2009.

Appellant submitted a Form CA-16 report dated July 6, 2009 from Dr. Weilee E. Yeh, a Board-certified family practitioner, which indicated that he experienced chest pain while running up a hill on June 30, 2009.[2] A radiology/cardiology report dated September 10, 2009 indicated that he had symmetrical ventricles which were normal in size, shape and position, with no shift in the midline structures, mass effect, subdural hematoma or hemorrhage. The report showed indications of an old infarction of the anterior limb of the external capsule of the left basal ganglia; appellant also demonstrated mild generalized cortical atrophy.

By letter dated December 10, 2009, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician containing a diagnosis of a condition resulting from the alleged June 30, 2009 incident, describing his symptoms and the medical reasons for the conditions and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a July 10, 2009 form report from Dr. Yeh, which stated findings on examination, noted the history of injury and indicated that appellant had chest pain while running up a hill on June 30, 2009 but did not provide a diagnosis of a condition stemming from the June 30, 2009 work incident.[3] The report indicated that he was unable to perform his usual work.

By letter dated December 10, 2009, appellant was advised that while his claim was initially administratively handled to pay immediate medical expenses up to a maximum of $1,500.00 without formal adjudication, medical expenses now exceeded that amount and the claim required formal review and adjudication.

By decision dated January 22, 2010, the Office denied appellant's claim, finding that he did not submit medical evidence sufficient to establish that he sustained an injury in the performance of duty on June 30, 2009. It further found that none of the reports he submitted contained a diagnosis of the claimed conditions.

In a February 2, 2010 report, Dr. Yeh asserted that appellant developed chest pain and dizziness on June 30, 2009 because of appellant's advanced age and physical condition and because he was ordered to run up a hill without advance notice. He advised that appellant

[2] On July 6, 2009 the employing establishment issued a CA-16 form for medical services, this form, however, was not completed to authorize treatment by any specific physician or medical facility and therefore did not form a contract for services. *See Mary J. Briggs*, 37 ECAB 578 (1986).

[3] Under the heading "diagnosis" Dr. Yeh stated "Chest pain … ? anxiety vs. CAD [coronary artery disease]."

continued to have chest pain after the work incident. Dr. Yeh stated that in light of appellant's age and the strenuous effort required to run uphill he admitted him to the hospital on July 7, 2009 for a cardiac work up, in order to rule out cardiac disease or damage.

On February 2, 2010 appellant requested a hearing, which was held on May 6, 2010.

By decision dated July 22, 2010, an Office hearing representative affirmed the January 22, 2010 decision.

Appellant submitted a June 30, 2009 letter to his supervisor in which he took issue with having to undergo rigorous training exercises; *e.g.*, running up a steep hill, without advance notice. He stated that the training exercise posed an unnecessary risk to his health at his advanced age and subjected him to professional embarrassment in the presence of younger officers.

On August 6, 2010 appellant requested reconsideration.

By decision dated September 2, 2010, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[4] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] 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.[6]

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.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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

[8] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

opinion evidence is medical evidence which 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 factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[11] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

The Office accepted that appellant did run uphill on June 30, 2009 during a training exercise. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[12] Appellant has not submitted rationalized, probative medical evidence to establish that the June 30, 2009 employment incident would have been competent to cause the claimed injury.

Appellant submitted reports from Dr. Yeh. None of these reports, however, contained a diagnosis of any medical condition or a rationalized, probative medical opinion attributing a diagnosed condition to the June 30, 2009 work incident. Dr. Yeh supported causal relationship with a check mark in the July 6, 2009 Form CA-16 report; however, the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.[13] He stated on February 2, 2010 that appellant experienced chest pain and dizziness on June 30, 2009 because of his age and fitness level and because he was instructed to run up a hill with no prior warning. Dr. Yeh stated that, given appellant's advanced age and the stress of running uphill, he admitted appellant to the hospital on July 7, 2009 for a cardiac checkout to rule out cardiac disease or damage. He, however, provided no findings indicating that appellant sustained any cardiac damage or aggravated a preexisting cardiac condition as a result of the June 30, 2009 incident. Moreover, the September 20, 2009 radiology/cardiology report contained no findings of cardiac injury causally related to the work incident.

[9] *Id.*

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

[12] *Carlone*, *supra* note 7.

[13] *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[14] Dr. Yeh's opinion on causal relationship is of limited probative value in that he did not provide a diagnosis of a condition stemming from the June 30, 2009 work incident.[15] He did not describe appellant's accident in any detail or how the accident would have been competent to cause or aggravate any injury. Moreover, Dr. Yeh's reports are of limited probative value for the further reason that they are generalized in nature and equivocal in that they only noted summarily that appellant sustained chest pain, shortness of breath and fatigue during the June 30, 2009 work incident. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of June 30, 2009 caused or contributed to a compensable injury or disability.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the June 30, 2009 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained an injury in the performance of duty. The Office properly denied appellant's claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[16] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[17]

ANALYSIS -- ISSUE 2

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. His June 30, 2009 letter of complaint to his supervisor noted the health risks of rigorous training exercises he undertook that date but did not contain medical opinion evidence from a physician. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[18] Thus appellant did not provide any rationalized medical opinion pertinent to the relevant issue;

[14] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[15] *William C. Thomas*, 45 ECAB 591 (1994).

[16] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[17] *Howard A. Williams*, 45 ECAB 853 (1994).

[18] *See David J. McDonald*, 50 ECAB 185 (1998).

i.e., whether appellant sustained an injury in the performance of duty on June 30, 2009. His reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.[19]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on June 30, 2009. The Board finds that the Office properly refused to reopen his case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 2 and July 22, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[19] The Board notes that appellant submitted additional evidence to the record following the June 29, 2009 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).