United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 10-1621**
	)	**Issued: March 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Macon, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 2, 2010 appellant filed a timely appeal from the March 19, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim and the April 21, 2010 nonmerit decision denying his request for reconsideration. Pursuant to 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 a cervical injury while in the performance of duty on January 20, 2010; and (2) whether the Office properly refused to reopen his case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 27, 2010 appellant, a 43-year-old mail handler, filed a traumatic injury claim alleging that he sustained a herniated cervical disc on January 20, 2010 while separating trays of mail off the floor of a pallet.

Appellant submitted January 22, 2010 discharge instructions from Coliseum Northside Emergency Department. Dr. Gary Godlewski, a treating physician, diagnosed tendinitis.

In a January 20, 2010 work excuse, Dr. David A. De La Sierra, a Board-certified family practitioner, diagnosed cervical radiculopathy. He stated that appellant should be excused from work from January 20 through 23, 2010.

On a prescription slip dated January 27, 2010, Dr. Christina L. Mayville, a Board-certified neurologist, stated that appellant had an acute herniation of a cervical disc (C6-7) and would remain out of work indefinitely.

On February 2, 2010 the employing establishment controverted appellant's claim on the grounds that the medical evidence failed to establish causal relationship.

In a letter dated February 11, 2010, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It allowed him 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted a February 12, 2010 surgical report from Dr. Arthur Gregorian, a treating physician, who performed an anterior cervical discectomy with fusion at the C6-7 levels. He diagnosed cervical radiculopathy with loss of herniated surgical discs at cervical discs at C6-7 level.

In a March 9, 2010 report, Dr. Gregorian stated that appellant had been "previously disabled due to his old right shoulder injury, and it [was] certainly possible that repeated lifting, pushing and bending at work was the source of his herniated disc and cervical radiculopathy." Dr. Gregorian released appellant to work with restrictions as of March 30, 2010.

Appellant submitted a January 20, 2010 report from Dr. De La Sierra containing a diagnosis of cervical radiculopathy. Dr. De La Sierra noted that appellant had left-sided neck pain radiating to his left shoulder which "started after a work out."

By decision dated March 19, 2010, the Office denied appellant's claim. It accepted that the January 20, 2010 incident of moving occurred as alleged. The Office found that the medical evidence was insufficient to establish that appellant had sustained a cervical injury on January 20, 2010.

On April 1, 2010 appellant requested reconsideration.

By decision dated April 21, 2010, the Office denied appellant's request for reconsideration on the grounds that he did not present any evidence or argument warranting further merit review.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides for payment of compensation for 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" is regarded as

[1] 5 U.S.C. § 8102(a).

the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7]

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[8]

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[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Robert Broome*, 55 ECAB 339 (2004).

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Id.*

[8] *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS -- ISSUE 1

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the January 20, 2010 workplace incident occurred as alleged. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused an injury to his cervical spine. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Appellant submitted January 22, 2010 discharge instructions from Dr. Godlewski, who diagnosed tendinitis; a January 20, 2010 work excuse from Dr. De La Sierra, who diagnosed cervical radiculopathy; and a January 27, 2010 disability slip from Dr. Mayville, who diagnosed acute herniation of a cervical disc at C6-7. The physicians did not provide a full and factual or medical background or findings from examination. Moreover, they did not provide any opinion as to the cause of appellant's diagnosed cervical condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.[9]

Dr. Gregorian's reports are insufficient to establish appellant's claim. A February 12, 2010 surgical report noted an anterior cervical discectomy with fusion at the C6-7 levels. Dr. Gregorian diagnosed cervical radiculopathy with loss of herniated discs at the C6-7 level. He did not address the cause of appellant's diagnosed condition or address the January 20, 2010 incident at work. On March 9, 2010 Dr. Gregorian stated that appellant had been "previously disabled due to his old right shoulder injury, and it [was] certainly possible that repeated lifting, pushing and bending at work was the source of his herniated disc and cervical radiculopathy." The physician's opinion is of limited probative value in that he did not provide a complete factual or medical background of appellant's cervical condition or set forth findings from examination. Dr. Gregorian did not explain how the incident of January 20, 2010 was competent to have caused appellant's herniated cervical disc or radiculopathy. His opinion is speculative in addressing the possibility that repetitive work activity over a period of time might have caused the diagnosed conditions. This undermines appellant's claim of traumatic injury.

In a January 20, 2010 report, Dr. De La Sierra diagnosed cervical radiculopathy and stated that appellant had left-sided neck pain radiating to his left shoulder which "started after a work out." The report did not provide any history of the January 20, 2010 incident, examination findings or an opinion as to the cause of the diagnosed condition. Dr. De La Sierra's report suggests that appellant's neck condition was caused or exacerbated by a work out, rather than by the established January 20, 2010 work events. Based on these deficiencies, the physician's opinion is of limited probative value.

Appellant expressed his belief that his cervical condition resulted from the January 20, 2010 employment incident. 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] Neither the fact that the condition became apparent during a period of

[9] *Michael E. Smith*, 50 ECAB 313 (1999).

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

employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Appellant's belief that his condition was caused by the accepted incident is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit sufficient medical evidence to establish his claim. As there is no probative, rationalized medical evidence addressing how appellant's claimed cervical condition was caused or aggravated by the January 20, 2010 incident, he did not establish that he sustained an injury, as alleged.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[12] the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[15] The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[16]

ANALYSIS -- ISSUE 2

Appellant's April 1, 2010 request for reconsideration did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. He did not advance any relevant legal argument not previously considered by the Office. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

[11] *Id.*

[12] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(2).

[14] *Id*. at § 10.607(a).

[15] *Id.* at § 10.608(b).

[16] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Appellant did not submit any evidence or argument in support of his request for reconsideration. Therefore, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his April 1, 2010 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 20, 2010. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 21 and March 19, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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