

FACTUAL HISTORY

The case was before the Board on a prior appeal.² As the Board noted, appellant filed a traumatic injury claim, Form CA-7, alleging that he sustained a hernia on January 16, 2009 when he was unloading a truck and felt a sharp pain in his stomach. OWCP denied the claim by decisions dated March 4, 2009 and January 14, 2010, finding that the incident on January 16, 2009 had not been established as alleged. The Board modified the January 14, 2010 OWCP decision, finding the evidence was sufficient to establish a January 16, 2009 employment incident. The denial of the claim was affirmed as the medical evidence was not sufficient to establish an injury causally related to the January 16, 2009 employment incident. The history of the claim as provided in the Board's prior decision is incorporated herein by reference.

By letter dated January 6, 2012, appellant, through his representative, requested reconsideration. According to counsel, the Board's prior decision did establish that appellant sustained an injury on January 16, 2009, but the opinion of Dr. Jon Stanford, a Board-certified surgeon, was equivocal.

Appellant submitted a January 4, 2012 report from Dr. Stanford, who stated in pertinent part:

“There is a question in regard to the causality of the patient's hernia and to a reasonable medical certainty, if the January 16, 2009 work accident caused or aggravated his ventral hernia. I have reviewed the copy of the [B]oard's Decision and Order regarding [appellant's] request for disability; [i]t appears that by this document it has been established that an injury did occur on January 16, [2009]. I cannot conclude within a reasonable medical certainty that the heavy lifting event on January 16, [2009] caused his hernia. I can say that with reasonable medical certainty an injury as described and other reports as described occurring on January 16, 2009 would have aggravated the ventral hernia, prompting medical evaluation and treatment.”

By decision dated July 16, 2012, OWCP performed a merit review of the evidence. According to OWCP, the Board's prior decision had found appellant submitted sufficient evidence to establish fact of injury. OWCP found the evidence on reconsideration was insufficient to warrant modification of the denial of the claim.

LEGAL PRECEDENT

FECA 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.”³ The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of “arising out of an in the course of

² Docket No. 10-1358 (issued February 7, 2011).

³ 5 U.S.C. § 8102(a).

employment.”⁴ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁵ In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by rationalized medical evidence.⁶

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, 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.⁷

ANALYSIS

In its prior decision, the Board noted the above legal precedent and discussed the evidence of record in relation to the issue presented. There appears to be some confusion, both by OWCP and appellant, as to the determination regarding “fact of injury.” OWCP states that the Board found that fact of injury was established, and appellant asserts that the Board found he had sustained an injury on January 16, 2009. The Board found, and clearly explained the basis for its finding, that an employment incident was established on January 16, 2009. Any reference to the history given in medical reports was simply to confirm there were no inconsistencies in the factual allegation as to the employment incident.

To establish fact of injury, as the legal precedent above explains, there are two components: (1) the establishment of an employment incident as alleged, and (2) medical evidence establishing an injury causally related to the employment incident. The Board found that the first component was established in this case. As to the second component, the Board found the medical evidence was not sufficient to establish an injury causally related to the January 16, 2009 employment incident, as there was no rationalized medical evidence on the issue.

On reconsideration, appellant submitted a January 4, 2012 report from Dr. Stanford, who noted that the issue was whether the work incident caused or aggravated a ventral hernia. Dr. Stanford then incorrectly states that the Board found an injury had occurred on January 16, 2009. He opines that he cannot say with reasonably medical certainty that the work

⁴ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁵ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

incident caused a hernia. Dr. Stanford then concludes that the “injury as described and other reports as described occurring on January 16, 2009 would have aggravated the ventral hernia, prompting medical evaluation and treatment.” He does not explain the “injury as described.” If Dr. Sanford believes the January 16, 2009 incident aggravated a ventral hernia, he must discuss the employment incident and explain the nature and extent of any aggravation. The January 4, 2012 report does not provide a rationalized medical opinion on causal relationship. Thus, appellant has failed to meet his burden of proof to establish that the accepted incident caused the medical condition of ventral hernia.

On appeal, appellant argues that Dr. Sanford’s report is sufficient to establish an aggravation of a hernia condition as employment related. For the reasons stated above, the Board finds the evidence is not sufficient to establish the second component -- that the injury was causally related to the January 16, 2009 incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds appellant has not established an injury in the performance of duty on January 16, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2012 is modified to reflect that an employment incident on January 16, 2009 has been established and affirmed as modified.

Issued: April 10, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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