

**United States Department of Labor
Employees' Compensation Appeals Board**

WILLIAM D. BRENDLE, Appellant)	
)	
and)	
)	Docket No. 04-386
)	Issued: June 10, 2004
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Salisbury, NC, Employer)	

Appearances:
William D. Brendle, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 1, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated September 11, 2003 which found that he failed to establish that he sustained an injury during the course of his employment on July 25, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this fact of injury case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on July 25, 2002.

FACTUAL HISTORY

On October 1, 2002 appellant, a 52-year-old laborer, filed a traumatic injury claim alleging that on July 25, 2002 he sustained an injury to his right jawbone under his neck while in the performance of duty.

In an October 23, 2002 letter, the Office advised appellant of the type of medical and factual evidence needed to establish his claim.

By decision dated November 26, 2002, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury in the performance of duty.

Appellant requested an oral hearing in an undated letter.

A hearing was held on June 26, 2003 at which appellant provided testimony and submitted evidence. The evidence submitted at the hearing consisted of Matthew Family Physicians bill forms dated August 26 and October 7, 2002 when he saw Dr. David H. Hall, an attending Board-certified family practitioner, and a letter to Dr. Hall dated October 6, 2002 from appellant regarding his July 25, 2002 injury.

By decision dated September 11, 2003, the hearing representative affirmed the denial of appellant's claim. In support of his decision, he found the medical and factual evidence failed to establish that appellant sustained an injury to his jawbone in the performance of duty on July 25, 2002.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing 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 filed within the applicable time limitation 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."¹ 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.²

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.³ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁴ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *Daniel J. Overfield*, 42 ECAB 718 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

circumstances and his subsequent course of action.⁵ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁶ The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷

Rationalized medical 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

In this case, it is not disputed that appellant was performing duties as a laborer on July 25, 2002. Consequently, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, the Office found that the medical evidence submitted was insufficient to establish that the July 25, 2002 incident resulted in an injury, causally related to any specific workplace factors. Appellant's own statements concerning his right jawbone condition are irrelevant to the main issue of the present case, *i.e.*, whether appellant has submitted sufficient medical evidence to support his claim that he sustained an injury as a result of the July 25, 2002, incident. Appellant was advised of the deficiency in his claim on October 23, 2002 and afforded the opportunity to provide supportive evidence; however, sufficient medical evidence addressing whether any medical condition arose out of the July 25, 2002 incident has not been submitted.

In support of his claim that he sustained an injury on July 25, 2002, appellant submitted medical bills from Dr. Hall dated August 26 and October 7, 2002. The October 7, 2002 bill referenced removal of moles and a previous diagnosis of joint pain in the shoulder with a date of August 2002. This evidence is insufficient to support appellant's burden as the bills contained

⁵ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁶ *Id.* at 255-56.

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

no history, explanation or reference to an employment injury sustained on July 25, 2002.⁹ Moreover, the bills failed to provide findings upon physical examination, a diagnosis or a well-reasoned discussion explaining how appellant's condition is causally related to appellant's employment.¹⁰ Furthermore, even if the copies of appellant's medical bills from Dr. Hall were considered as medical reports and not a bill, they are not probative on the issue of causation as they do not provide an opinion on the causal relationship between appellant's diagnosed conditions and his employment.¹¹

Although the Office advised appellant of the type of medical evidence needed to establish his claim, appellant failed to submit medical evidence responsive to the request. Consequently, appellant has not established that his injury was caused by the July 25, 2002 employment incident.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on July 25, 2002.

⁹ See *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003) (to establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship); *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); see also *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹⁰ See *Charles W. Downey*, 54 ECAB ____ (Docket No. 02-218, issued February 24, 2003) (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 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 established incident or factor of employment); *Louis T. Blair, Jr.*, 54 ECAB ____ (Docket No. 02-2289, issued January 16, 2003); *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002); see also *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

¹¹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence, which does not offer any opinion regarding the cause of an employee's condition, is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 11, 2003 is affirmed.

Issued: June 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member