United States Department of Labor
Employees' Compensation Appeals Board

ADAM T. SLUDER, Appellant	)	
and	)	**Docket No. 05-1394**
	)	**Issued: August 17, 2005**
DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, Atlanta, GA, Employer	)	

Appearances:
Adam T. Sluder, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On June 21, 2005 appellant filed a timely appeal of the June 13, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim for an employment-related traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on April 26, 2005.

[1] The record on appeal includes evidence submitted after the Office issued the June 13, 2005 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

FACTUAL HISTORY

On May 1, 2005 appellant, a 30-year-old federal air marshal, filed a traumatic injury claim alleging that he injured his lower back on April 26, 2005 while participating in employment-related training. He described his condition as severe lower back pain. Appellant explained that he was conducting defensive measure exercises and he twisted his back during actual hands-on "'fighting'" with other air marshals. Appellant did not submit any medical evidence with his claim.

On May 10, 2005 the Office advised appellant of the need for medical evidence in support of his claimed injury of April 26, 2005. The Office afforded appellant 30 days to submit the requisite medical information.

The Office subsequently received May 3, 2005 treatment notes and a May 10, 2005 attending physician's report (Form CA-20) from Dr. William E. Snell. The treatment notes indicate complaints of worsening low back pain since April 26, 2005. Also included were prescriptions for pain medication and muscle relaxants. The May 10, 2005 form report noted a diagnosis of "LBP" with an ICD-9 code of 724.5 (backache, unspecified). Dr. Snell did not identify either a date of injury or a specific cause of injury.

In a decision dated June 13, 2005, the Office denied appellant's claim because he failed to establish fact of injury. The Office found that appellant did not establish that the event occurred as alleged. Additionally, the medical evidence did not establish a diagnosis that could be connected to the claimed event.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment

[2] 5 U.S.C. § 8101 *et seq.*

[3] 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

The Office found that appellant did not establish either component of fact of injury. The Board disagrees. The employing establishment did not dispute that appellant was involved in a training exercise on April 26, 2005. In fact, appellant's supervisor, Paul M. Price, noted on the claims form that "unknown air marshals had practice headgear on and there were multiple assailants during the exercise." When the Office requested additional information on May 10, 2005, the request was limited to medical information. There was no mention of any deficiencies with respect to the factual evidence regarding the claimed incident of April 26, 2005. Thus, contrary to the Office's finding, appellant has established the April 26, 2005 employment incident. Accordingly, the June 13, 2005 decision is modified to reflect that appellant participated in an employment-related training exercise on April 26, 2005 that involved simulated fighting and physical contact.

Appellant, however, cannot discharge his burden of proof by merely demonstrating that he was exposed to a potentially injurious employment factor. He must also demonstrate that the April 26, 2005 employment incident caused a personal injury.[6] The medical evidence of record fails to establish that appellant sustained an employment-related back injury as alleged. The Office determined that Dr. Snell's diagnosis of "backache (ICD-9 724.5)" was not a diagnosis, but a description of pain symptoms. Whether backache is a mere symptom of pain or a definitive medical diagnosis is not the dispositive issue. Appellant did not meet his burden of proof because he did not specifically relate his findings to the April 26, 2005 employment incident. Although the May 3, 2005 treatment notes identify April 26, 2005 as the date of onset of appellant's complaints, the treatment records do not mention what, if anything, occurred on that particular date. Similarly, the May 10, 2005 attending physician's report does not mention any particular cause of injury nor does it identify a specific date of injury. Therefore, the Board finds that appellant failed to establish that he sustained an injury as a result of his April 26, 2005 accepted employment incident.

CONCLUSION

The Board finds that appellant actually experienced the April 26, 2005 employment incident as alleged. Appellant, however, failed to establish that he sustained an injury as a result of his April 26, 2005 employment incident.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[6] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board