United States Department of Labor
Employees' Compensation Appeals Board

GILBERTO ORTIZ-RIVERA, Appellant	)	
and	)	**Docket No. 05-1041**
	)	**Issued: September 14, 2005**
DEPARTMENT OF THE INTERIOR, U.S. FISH & WILDLIFE SERVICE, Rio Grande, PR, Employer	)	

Appearances:
Gilberto Ortiz-Rivera, 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 March 26, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 14, 2004 merit and February 25, 2005 nonmerit decisions denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 29, 2004 appellant, then a 46-year maintenance worker, filed a traumatic injury claim alleging that on July 21, 2004 he suffered injuries when his government vehicle hit a

concrete wall as he swerved to avoid a collision. He stated that the nature of the injury was "because of the [impact] with the wall of concrete" and that he had his seat belt on and was pulled forward. In support of his claim, appellant submitted a July 22, 2004 attending physician's report signed by Dr. Hector Cases, a Board-certified neurologist, which provided an illegible diagnosis. Dr. Cases' report reflected that he had treated appellant on March 8, April 28 and July 22, 2004; that his low back pain had worsened as a result of the July 21, 2004 accident; and that appellant would "always have a degree of low back pain [and] discomfort."

By letter dated August 9, 2004, the Office notified appellant that the information previously submitted was insufficient to substantiate his claim and advised him to provide within 30 days a comprehensive medical report from his treating physician which described his symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of the treatment; and the doctor's opinion, with medical reasons, on the cause of his condition. The letter specifically advised appellant to secure from his physician a reasoned medical opinion as to how the July 21, 2004 automobile accident contributed to his alleged medical condition.

Appellant failed to submit any additional information or evidence in response to the Office's request.

By decision dated September 14, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was causally related to the alleged work-related event.

By letter dated November 27, 2004, appellant requested reconsideration of the Office's September 14, 2004 decision. Appellant stated that he was submitting medical evidence in conjunction with his request which provided a diagnosis and a rationalized medical opinion regarding the cause of his condition. However, no additional medical evidence was submitted.

By decision dated February 25, 2005, the Office denied appellant's request for merit review on the grounds that the evidence submitted was cumulative.

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 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 his claim, including the fact that the individual is an employee of the

[1] 5 U.S.C. § 8102(a).

[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 ___ (Docket No. 04-1257, issued September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

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 he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, which consists 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, whether the employment incident caused a personal injury, generally can be established only by medical evidence.[4]

The claimant must establish 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]

The medical evidence generally required to establish causal relationship is rationalized medical opinion evidence, which is medical evidence that includes a physician's rationalized opinion as to 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]

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record does not provide sufficient facts or a rationalized medical opinion to establish that appellant sustained a diagnosed condition that was causally related to his July 21, 2004 employment-related accident.

Appellant did not provide the factual and medical evidence necessary to establish a *prima facie* claim for a condition arising from the performance of duty. As a threshold matter,

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[3] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

[4] *Deborah L. Beatty*, 54 ECAB ___ (Docket No. 02-2294, issued January 15, 2003). *See also Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003); *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 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] *Florencio D. Flores*, 55 ECAB ___ (Docket No. 04-942, issued July 12, 2004).

[8] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

he did not identify an injury or condition for which he is seeking compensation. He stated that the nature of the injury was "because of the [impact] with the wall of concrete" and that he had his seat belt on and was pulled forward. Appellant has alleged circumstances which might have contributed to an injury or illness, but he has not described a specific injury or identified a diagnosed condition resulting from the alleged injury. His vague allegation that he was injured in an automobile accident is insufficient to constitute a basis for the payment of compensation.[9]

The Office accepted that appellant experienced the alleged work-related incident. However, the evidence fails to establish how the incident caused or contributed to his diagnosed condition. The medical evidence of record consists of Dr. Cases' July 22, 2004 attending physician's report. However, the report fails to provide a legible diagnosis or an explanation as to the relationship between a diagnosed condition and the employment-related incident. Dr. Cases' statement that appellant's back pain worsened does not address the basis for the pain or the cause of the condition. The Board has long held 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.[10] An award of compensation may not be based on appellant's belief of causal relationship. 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.[11] Therefore, the Board finds that Dr. Cases' report lacks probative value.

There is no medical evidence of record establishing that appellant sustained a diagnosed medical condition or that explains the physiological process by which the work-related accident would have caused a diagnosed condition. The Office advised appellant that it was his responsibility to provide within 30 days, among other things, a comprehensive medical report from his treating physician 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 any additional medical documentation in response to the Office's request within the allotted time. Therefore, the Office properly denied appellant's claim for benefits under the Act.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[12] the Office's regulations provide that 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) submit relevant and pertinent new evidence not previously considered by the Office.[13] To be entitled to a merit review of an Office decision

[9] *See Robert Broome*, *supra* note 3.

[11] *Dennis M. Mascarenas*, *supra* note 6 at 218.

[11] *James A. Long*, 40 ECAB 538 (1989).

[12] 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)(1)-(2).

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 of the merits.

ANALYSIS -- ISSUE 2

The Board finds that the Office's denial of merit review did not constitute an abuse of discretion.

In order for appellant to obtain review of the merits of his claim, it was necessary for him either to show that the Office erroneously applied or interpreted a point of law; to advance a point of law or fact not previously considered by the Office; or to submit relevant and pertinent evidence not previously considered by the Office.[15] Appellant did not contend that the Office had erroneously applied or interpreted a point of law; nor did he advance a point of law or fact not previously considered by the Office. Instead, he stated that he was submitting medical evidence in conjunction with his request which provided a diagnosis and a rationalized medical opinion regarding the cause of his condition. However, appellant did not provide new relevant and pertinent medical evidence. In fact, no additional medical evidence was submitted. Therefore, appellant failed to satisfy any of the standards which would have entitled him to a merit review under the Act. Accordingly, the Board finds that the Office properly denied his request for reconsideration.

CONCLUSION

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

[14] *Id.* at § 10.607(a).

[15] 20 C.F.R. § 10.606(b)(1)-(2).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 25, 2005 and September 14, 2004 are affirmed.

Issued: September 14, 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