United States Department of Labor
Employees' Compensation Appeals Board

JAMES K. McVEY, Appellant	)	
and	)	**Docket No. 06-428**
	)	**Issued: April 11, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Portland, OR, Employer	)	

Appearances:
James K. McVey, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 16, 2005 appellant filed a timely appeal from a July 13, 2005 merit decision of the Office of Workers' Compensation Programs, denying his claim of a work-related injury on March 4, 2005 and a September 14, 2005 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decision and the nonmerit decision in this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on March 4, 2005; 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 March 10, 2005 appellant, a 45-year-old transportation security screener, filed a traumatic injury claim alleging that he injured his right groin area during an emergency screening on March 4, 2005. He stopped work on March 8, 2005.

In a prescription note dated March 9, 2005, Dr. Stephen A. Weil, a Board-certified internist, placed appellant off work for six weeks. On April 14, 2005 Dr. Weil recommended a magnetic resonance imaging (MRI) scan to determine the extent of appellant's right hip bursitis. An April 21, 2005 prescription note placed appellant on total disability until further notice.

Appellant was referred by Dr. Weil to Dr. Anthony I. Colorito, a Board-certified orthopedic surgeon. In an April 27, 2005 report, Dr. Colorito related that appellant injured his right hip on March 11, 2005 while lifting heavy luggage at work and noted symptoms of right groin pain. Dr. Colorito reported that x-rays and an April 18, 2005 MRI scan were normal and recommended a bone scan to evaluate the spine. He also referenced three prior back surgeries: a 1995 laminectomy and spinal fusions performed in 1996 and 2000. In an attending physician's report dated April 28, 2005, Dr. Weil stated that he initially treated appellant on March 9, 2005 for hip pain and diagnosed possible bursitis. He checked a box "yes," indicating that appellant's condition was caused or aggravated by his employment.

Appellant filed several claims for compensation from April 17 to May 28, 2005 and also submitted records for pay periods ending on April 30, May 14 and 28, 2005. On June 7, 2005 the Office advised appellant regarding the evidence needed to establish his claim. Appellant submitted several additional claims for compensation from May 29 to July 9, 2005 and time records from June 11 and 25 and July 9, 2005.

On June 29, 2005 Dr. Weil stated that he treated appellant for right hip or abdominal pain which he tentatively diagnosed as bursitis. He noted that rotational movement caused such severe pain that appellant would fall to his knees. Dr. Weil noted that treatment consisted of physical therapy and anti-inflammatory medication and that appellant remained symptomatic with multiple medical situations that arose at work. He last saw appellant on June 20, 2005 for paresthesias down the left leg. Dr. Weil noted that the left leg condition was likely due to prior surgeries and not work related.

By decision dated July 13, 2005, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the claimed incident occurred but that the medical evidence failed to establish that appellant sustained a compensable injury as a result of the accepted incident.

On September 6, 2005 appellant requested reconsideration and submitted additional claims for wage loss from July 10 to September 3, 2005. Appellant also submitted time records for pay periods ending on July 23 and August 6 and 20, 2005. In a work capacity evaluation dated July 11, 2005, Dr. Weil stated that he was unable to provide a diagnosis for appellant's condition but that appellant remained disabled for work.

By decision dated September 14, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant further merit review.[1]

LEGAL PRECEDENT -- ISSUE 1

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.[2] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the claimed condition, as well as any attendant disability 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.[3] 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.[4]

ANALYSIS -- ISSUE 1

It is not disputed that appellant screens aircraft passengers and lifts luggage as part of his duties. However, the medical evidence does not establish that this caused or aggravated a medical condition.

Dr. Weil provided brief notes dated March 9 and April 14 and 21, 2005, which failed to provide a definite diagnosis of appellant's condition and offered no opinion regarding the causal relationship of his condition and the implicated March 4, 2005 incident. Although the physician stated on April 14, 2005 that appellant had bursitis, he also recommended an MRI scan "to see if we can discern what really is going on." The March 9 and April 21, 2005 reports merely placed

[1] The Board notes that this case record contains evidence submitted subsequent to the Office's September 14, 2005 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

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

[3] *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB 174 (2002).

[4] *Joan F. Burke*, 54 ECAB 406 (2003).

appellant on disability. Dr. Weil did not provide any opinion addressing how appellant's disability was done to his work activities of March 4, 2005.

In an April 28, 2005 attending physician's report, Dr. Weil indicated by checking a box "yes" that appellant's right hip pain and possible bursitis were causally related to the March 4, 2005 incident. However, when a physician's opinion supporting causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.[5] Medical reports not containing a rationalized medical opinion on causal relationship are entitled to little probative value.[6] Dr. Weil did not provide medical reasoning to explain his opinion in support of causal relationship. In a June 29, 2005 report, Dr. Weil tentatively diagnosed bursitis and related appellant's history of treatment. However, the physician did not provide a description of the March 4, 2005 incident or discuss how appellant's job caused or aggravated his diagnosed condition. Instead, the physician noted that his most recent treatment of appellant was for a left leg condition that was not employment related but was likely due to prior surgeries.

Dr. Colorito's April 27, 2005 report noted that appellant injured his hip at work on March 11, 2005 while lifting luggage. However, appellant's claim form implicated an incident at work on March 4, 2005. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of diminished probative value.[7] Further, Dr. Colorito reported that x-rays and an MRI scan were normal. Dr. Colorito did not otherwise explain how lifting luggage caused or aggravated a particular medical condition. As the physician did not provide any rationalized medical opinion to support that appellant had a medical condition caused or aggravated by specific employment activities, this report fails to establish that appellant sustained a work-related injury. As noted above, medical reports not containing rationale on causal relationship are entitled to little probative weight.[8] Moreover, the medical evidence fails to provide a firm diagnosis of appellant's condition -- described by appellant as a groin strain, by Dr. Weil as right hip bursitis and an impression of hip pain with "uncertain diagnosis" by Dr. Colorito.

Appellant's claims for compensation and the employing establishment's records recording his leave-without-pay (LWOP) status do not address the underlying medical issue in this case and are of no probative value in establishing the claim.

As there is insufficient medical evidence to establish that appellant sustained injury due to a March 4, 2005 incident at work. Appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty on March 4, 2005. The Board will affirm the Office's finding that appellant did not meet his burden of proof in establishing that he sustained an injury on that date as alleged.

[5] *Gary J. Watling*, 52 ECAB 2878 (2000).

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

[7] *Douglas M. McQuaid*, 52 ECAB (2001).

[8] *See also Jimmie H. Duckett*, 52 ECAB 332 (2001).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[9]

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10]

ANALYSIS -- ISSUE 2

With respect to the September 6, 2005 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office.

The Board also finds that appellant did not submit relevant and pertinent new evidence not previously considered by the Office. As the underlying issue is medical in nature, appellant must submit relevant new medical evidence under this standard to require the Office to reopen the claim for a merit review. He submitted a July 11, 2005 work capacity evaluation from Dr. Weil. While this report is new, it is not relevant as the physician noted that he was unable to determine when appellant could return to work. Dr. Weil did not provide any opinion relating appellant's disability to his work on March 4, 2005. His previously submitted reports failed to provide a diagnosis or any opinion on causal relationship.[11]

Appellant also submitted claims for wage loss and time and attendance records noting his use of LWOP. However, these reports are also not relevant as they fail to address the underlying medical issue in this appeal.

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[9] 5 U.S.C. § 8128(a).

[10] *Eugene F. Butler*, 36 ECAB 393 (1984).

[11] Submitting evidence that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening the claim. *Brent A. Barnes*, 56 ECAB ___ (Docket No. 04-2025, issued February 15, 2005).

The Board finds that the September 6, 2005 reconsideration request did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or provided relevant and pertinent new evidence not previously considered by the Office. The Board accordingly finds that the Office properly denied the reconsideration request without merit review of the claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board also finds that the Office properly denied appellant's October 12, 2005 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 14 and July 13, 2005 are affirmed.

Issued: April 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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