United States Department of Labor
Employees' Compensation Appeals Board

N.T., Appellant	)	
and	)	**Docket No. 06-1669**
	)	**Issued: November 24, 2006**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 1, 2006 and a nonmerit decision dated June 23, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury on January 21, 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 February 4, 2005 appellant, then a 52-year-old mail handler, filed an occupational disease claim alleging that he developed a sciatic nerve injury due to loading and unloading trucks, pushing containers, lifting trays, turning, bending and processing the mail. He first

became aware of his condition on January 21, 2005 and first related this condition to his employment on that date. When appellant's left leg began hurting on January 21, 2005 he assumed it was due to arthritis. He stated that his pain increased and that he could not move on January 22, 2005 and sought medical treatment.

By letter dated February 15, 2005, the Office requested additional factual and medical information from appellant.

Dr. Brennen J. Beatty, a physician Board-certified in emergency medicine, examined appellant on January 22, 2005 and diagnosed sciatica. He listed appellant's symptoms of pain in the left buttocks with no trauma. Dr. Beatty noted that appellant attributed his condition to repetitive use.

Dr. Joel J. Levine, a Board-certified family practitioner, examined appellant on January 25, 2005 and diagnosed lumbar sprain. He noted that appellant had left leg pain and tenderness. Dr. Levine diagnosed probable sciatica and degenerative joint disease.

Dr. Alexan A. Abdelmalek, a physician Board-certified in physical medicine, completed a note on January 26 2005. Appellant had left anterior thigh pain for six days which was not influenced by activity. In an accompanying form report dated February 28, 2005, Dr. Abdelmalek diagnosed low back pain and left hip pain.

Dr. Taha Ahmad, a physician Board-certified in preventative medicine, completed a report on February 9, 2005 and diagnosed low back pain. He noted that appellant believed that he developed his condition due to repetitive use. Dr. Ahmad stated that appellant was at work on January 21, 2005 and developed left thigh pain. Appellant sought medical treatment and then developed back pain. Dr. Ahmad diagnosed low back pain and left hip pain. He noted that appellant could not identify a specific event which triggered his pain and stated that, as a mail handler appellant had to move, push and pull heavy items which could predispose him to lumbar disc herniation. Dr. Ahmad stated that the only diagnosis that could link his two body parts was lumbar disc herniation at the L2, 3 or L4 level which would produce a femoral nerve neuropathy type of thigh pain. He recommended a magnetic resonance imaging (MRI) scan.

An x-ray dated January 25, 2005 found that appellant's left hip and lumbosacral spine were within normal limits with mild degenerative changes.

Appellant submitted a narrative statement dated March 1, 2005. His left leg began hurting on January 21, 2005, which he assumed was due to arthritis. Appellant stated that on January 22, 2005 he could not move his lower body and sought medical treatment that evening. He noted that he began to experience low back pain on January 30, 2005.

Appellant underwent an MRI scan on February 24, 2005 which demonstrated bulging discs at L3-4, L4-5 and L5-S1. On February 28, 2005 Dr. Ahmad diagnosed low back pain and left leg pain. He noted that appellant did not have the MRI scan results and that appellant was sure that his condition developed due to his work duties. On March 18 and 31, 2005 Dr. Ahmad again examined appellant and diagnosed degenerative disc disease of the lumbar spine. He noted that the MRI scan revealed disc bulges and a protrusion. Dr. Ahmad stated, "[appellant] may have had a low back strain which can occasionally radiate pain in the left leg. Alternatively he

may have had pinching of the sciatic nerve after it leaves the low back by the piriformis muscle." Dr. Ahmad noted that appellant's left leg pain had resolved at the time he first examined him. He concluded, "With regard to work-related causation, he does do manual mail handling which involves heavy pushing and pulling…. This can produce both back strain as well as disc protrusions."

By decision dated May 10, 2005, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish the cause of his condition

Appellant requested an oral hearing on May 28, 2005 and submitted additional reports from Dr. Ahmad dated April 12, to May 6, 2005. Dr. Ahmad noted improvement in his symptoms. Appellant also resubmitted the medical reports already of record.

Appellant testified at the oral hearing on February 21, 2006 regarding his left leg condition. His left leg pain began in the evening and increased throughout his work shift. Appellant stated that he had to be carried to his car to seek medical treatment on the following evening. He confirmed that he had no prior back or leg injury. Appellant stated that he was traying mail when his left leg pain began. He stated that his back pain did not begin until January 30 or 31, 2005. The hearing representative allowed appellant 30 days to submit additional medical evidence.

Appellant resubmitted Dr. Abdelmalek's January 26, 2005 note, the February 24, 2005 MRI scan report and treatment notes dated May 26 to December 28, 2005. Dr. Abdelmalek requested an extension of appellant's limited duty, but did not provide any opinion regarding the causal relationship between appellant's work and his diagnosed conditions. He completed a form report on July 22, 2005 and diagnosed lumbar radiculopathy and bulging discs.

By decision dated May 1, 2006, the hearing representative affirmed the Office's May 9, 2005 decision, as modified to find that appellant performed work activities as alleged, on January 21, 2005. However, the hearing representative found that the medical evidence was not sufficient to establish a causal relationship between appellant's back condition and his employment activities.

In a letter dated June 12, 2006, appellant requested reconsideration and stated, "There are remarks that are false in the decision." He did not submit any further statement or document in support of his request. By decision dated June 23, 2006, the Office declined to reopen appellant's claim for consideration of the merits as his letter neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

A traumatic injury is defined as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[1] An occupational disease or illness, on

[1] 20 C.F.R. § 10.5(ee).

the other hand, means a condition produced by the work environment over a period longer than a single workday or shift.[2]

An employee who claims benefits under the Federal Employees' Compensation Act[3] has the burden of establishing that he or she sustained an injury while in the performance of duty.[4] 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 that 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 medical evidence.[5]

The medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] The physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.[7] 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.[8]

ANALYSIS -- ISSUE 1

The Board notes that, although appellant filed a notice of occupational disease, both the Office and the hearing representative properly developed his claim as one for a traumatic injury as the alleged injury resulted from a series of events or incidents within a single workday or shift on January 21, 2005.[9] The hearing representative accepted the "incident" component of fact of injury. However, she found that appellant had not submitted sufficient rationalized medical opinion evidence to establish that his sciatica, bulging discs on degenerative disc disease were due to this incident.

The medical evidence addressing causal relationship includes a report from Dr. Beatty, a physician Board-certified in emergency medicine, who merely noted that appellant attributed his

[2] 20 C.F.R. § 10.5(q).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[5] *Id.*

[6] *John W. Montoya*, 54 ECAB 306, 308 (2003).

[7] *Id.*

[8] *Louis T. Blair*, 54 ECAB 348, 350 (2003).

[9] 20 C.F.R. § 10.5(ee).

condition to repetitive use in the performance of his federal work duties. The Board has held that the belief of a claimant that a condition was caused or aggravated by his or her employment is not sufficient to establish causal relationship.[10] Causal relationship is a medical question which can only be resolved through medical evidence.[11] As Dr. Beatty did not offer his own opinion regarding the causal relationship between appellant's conditions and his employment, but instead merely restated appellant's beliefs on the matter, this report is not sufficient to meet his burden of proof.

Dr. Ahmad, a physician Board-certified in preventative medicine, completed reports on February 9 and 28, 2005 again noting that appellant believed his condition was due to his employment. These statements are insufficient for the reasons given above. Dr. Ahmad further noted on February 9 and March 18, 2005 that appellant performed such activities as lifting, pushing and pulling heavy objects which could predispose him to lumbar disc herniation or back strain. These statements, which suggest that appellant's employment could have contributed to his diagnosed conditions, are not sufficient to meet his burden of proof. Dr. Ahmad did not offer a clear opinion that he believed that appellant's employment activities did in fact cause his diagnosed condition. The merely possibility that such activities are capable in some instances of causing such injuries is not sufficiently definitive to meet appellant's burden of proof in establishing an injury in the performance of duty. An award of compensation may not be based on surmise, conjecture or speculation.[12] As appellant has not submitted medical opinion evidence with a clear and unequivocal opinion that his diagnosed condition arose as the result of his employment duties on January 21, 2005, he has failed to meet his burden of proof and the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees Compensation Act,[13] the Office's regulation provide that the evidence or argument submitted by 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) constitute relevant and pertinent new evidence not previously considered by the Office.[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 on the merits.[15]

[10] *Robert A. Boyle*, 54 ECAB 381, 384 (2003).

[11] *Id.*

[12] *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

[13] 5 U.S.C. §§ 8101-8193, § 8128(a).

[14] 20 C.F.R. § 10.606(b)(2).

[15] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant requested reconsideration of the hearing representative's May 1, 2006 decision on June 12, 2006. In support of his request, appellant merely stated that the hearing representative's decision contained false remarks. This allegation without further identification of the false remarks or evidence establishing that the hearing representative's decision was based on an improper factual background, does not rise to the level of a legal argument and is insufficient to require the Office to reopen his claim for consideration of the merits. Appellant's request for reconsideration did not show that the Office erroneously applied or interpreted a specific point of law; did not advance a relevant legal argument not previously considered by the Office and did not contain relevant and pertinent new evidence not previously considered by the Office. As the request did not comply with the Office's standards, the Office properly declined to reopen appellant's claim for review of the merits.

CONCLUSION

The Board finds that appellant did not submit the necessary medical opinion evidence to establish that his diagnosed conditions resulted from his employment duties on January 21, 2005. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits.

ORDER

IT IS HEREBY ORDERED THAT the June 23 and May 1, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 24, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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