United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 07-422**
	)	**Issued: May 4, 2007**
DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD, Baltimore, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 6, 2006 appellant filed a timely appeal[1] from decisions of the Office of Workers' Compensation Programs dated May 1 and September 15, 2006, denying his claim of traumatic injury on March 6, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on March 6, 2006 as alleged.

FACTUAL HISTORY

On March 16, 2006 appellant, then a 52-year-old sheet metal mechanic, filed a traumatic injury claim, Form CA-1, alleging that he strained his lower back when lifting a moisture

[1] Along with his appeal, appellant submitted new factual and medical evidence. The Board is unable to review new evidence, as it was not a part of the record when the Office made its final decision. 20 C.F.R. § 501.2(c).

separator from a pallet on March 9, 2006. The employing establishment controverted his claim. Supervisor Willie Harrington stated that appellant informed him on March 6, 2006 that he may have pulled a muscle but then disregarded an instruction to go to the employing establishment's clinic immediately. Mr. Harrington noted that appellant did not report to the clinic until March 9, 2006.

By letter dated March 30, 2006, the Office requested additional factual and medical information about appellant's claim. Appellant responded with medical records from the employing establishment's clinic, the ambulance service, the emergency room and Physician Assistant Lisa Ng. On the undated intake form from the employing establishment's clinic it is indicated that on March 6, 2006 appellant was lifting a 400-pound object with another employee when he began having lower back pain. Appellant reported that the pain, which was initially mild, steadily worsened, despite the use of over-the-counter pain medication and heating pads. The clinic physician, a Dr. Taylor, diagnosed acute lower back pain, and sent appellant to the emergency room in an ambulance.

The March 9, 2006 report from the ambulance records included appellant's statement that, on Monday, March 6, 2006, he was lifting a heavy item at work when the weight shifted and he tried to compensate to catch it. Appellant stated that the pain, which felt like a sharp object was sticking him in the lower right back, increased to the point that standing and walking hurt him.

At the emergency room, appellant underwent a magnetic resonance imaging (MRI) scan to determine the cause of the pain in his lower back. Dr. Nancy Ho-Laumann, a Board-certified diagnostic radiologist, diagnosed mild diffuse disc bulging without significant central canal stenosis or neural foraminal encroachment at levels L2-3, L3-4 and L4-5. At L5-S1 she diagnosed posterior endplate spurs and mild disc bulging in the left paracentral and neural foraminal area that caused mild left neural foraminal narrowing. Dr. Ho-Laumann found that there was no acute injury. The emergency room registration record indicated that the injury was employment related and that it occurred at work. On the emergency physician record, a Dr. Jeffries noted that appellant's injury arose in the context of lifting a heavy object at work on March 6, 2006. He reviewed the MRI scan report, noted no evidence of compression and made a clinical diagnosis of acute myofascial strain of the lumbar region.

In a March 15, 2006 report, Ms. Ng, a physician's assistant, noted that appellant was experiencing constant sharp pain in his back, right side and right leg that was aggravated by movement. She reported that the medication appellant received at the emergency room was not very helpful and made him "spacey." On examination, Ms. Ng noted tenderness over the paralumbar area and a range of motion at the waist limited by pain. She stated that he would be referred to an orthopedic surgeon.

By decision dated May 1, 2006, the Office denied appellant's claim on the grounds that he had not established that he was injured in the performance of duty as alleged. It found that appellant's allegation that he was injured on March 9, 2006 while lifting a moisture separator was not borne out by the medical evidence, which stated that appellant had been lifting a heavy item on March 6, 2006.

On May 19, 2006 appellant requested a review of the written record. In an attached letter, he stated that he was providing several documents for consideration, including a letter and documentation from the physician at the employing establishment, a letter from his supervisor, a letter from a witness to the injury, documentation from the hospital and documentation from his personal physician. However, the record contained only copies of medical records already in the file.

By decision dated September 15, 2006, the Office hearing representative modified the denial of appellant's claim finding that appellant had submitted evidence sufficient to establish that an employment incident occurred on March 6, 2006 at the time, place and in the manner alleged.[2] However, she affirmed the Office's decision as modified finding that appellant had not submitted medical evidence to establish that he was injured in the performance of duty. The Office hearing representative noted that all of the medical and factual evidence was consistent as to appellant's actions on March 6, 2006, when he was lifting a 400-pound moisture separator, and March 9, 2006, when he was taken to the emergency room. The medical evidence, however, did not establish that appellant sustained a medical condition as a result of the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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; that an injury was sustained while in the performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the incident caused a personal injury and, generally, this can be established only by medical evidence.[5]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a

[2] The hearing representative noted that the CA-1 form originally completed by appellant indicated that he was injured on March 6, 2006, but that the date of injury appeared as March 9, 2006 on the electronic version that was created subsequently.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Ellen L. Noble*, 55 ECAB 530 (2004).

physician.[6] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant,[7] and must be one of reasonable medical certainty,[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS

The Office has accepted that on March 6, 2006 appellant was lifting a 400-pound moisture separator with a coworker. The issue to be determined is whether appellant has established that he sustained an injury as a result of the accepted incident. The Board finds that appellant has not submitted sufficient medical evidence to meet this burden of proof.

The evidence establishes that appellant reported to the employing establishment's clinic on March 9, 2006 with complaints of low back pain. The clinic's physician, Dr. Taylor, diagnosed acute lower back pain. However, he did not provide a definite diagnosis as to the cause of appellant's back pain. Dr. Taylor did not provide a rationalized statement explaining how the employment incident caused or contributed to appellant's low back condition.

After being transported to the emergency room on March 9, 2006, appellant underwent an MRI scan of his lumbar spine. Dr. Ho-Laumann, a Board-certified diagnostic radiologist, diagnosed mild diffuse disc bulging at L2-3, L3-4 and L4-5 and posterior endplate spurs and mild disc bulging in the left paracentral and neural foraminal area of L5-S1 that caused mild left neural foraminal narrowing. She stated that there was no acute injury visible. Dr. Ho-Laumann's diagnostic report is devoid of an explanation of how appellant's low back symptoms were caused or aggravated by lifting the moisture separator at work. Without an opinion on causal relation, her report is insufficient to establish appellant's claim of injury.

The emergency room physician, Dr. Jeffries, indicated that appellant's injury was employment related and that it occurred when he was lifting a heavy object at work. Dr. Jeffries noted that the MRI scan report prepared by Dr. Ho-Laumann indicated disc bulging but no compression. He diagnosed acute myofascial strain of the lumbar spine. Though he stated that the diagnosed injury was caused by the employment incident of lifting a heavy object, he did not provide any explanation for this medical opinion. The Board has held that medical opinions without adequate rationale are of limited probative value.[10] Dr. Jeffries' opinion is thus insufficient to establish that appellant was injured in the performance of his federal duties.

[6] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

[10] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale).

Appellant also submitted a report by Ms. Ng, a physician's assistant. This report is of no probative value as the Board has found a physician's assistant is not a physician as defined under the Act and therefore is not competent to provide medical evidence.[11]

The Board finds that appellant has not provided sufficient evidence to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on March 6, 2006 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and May 1, 2006 are affirmed.

Issued: May 4, 2007
Washington, DC

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

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

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

[11] 5 U.S.C. § 8101(2); *see Ricky S. Storms*, 52 ECAB 349 (2001).