United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 07-2008**
	)	**Issued: April 11, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Memphis, TN, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 26, 2007 appellant filed a timely appeal of May 24 and June 29, 2007 decisions of the Office of Workers' Compensation Programs which denied his request for further merit review of his claim. He also timely appealed a May 9, 2007 decision which found that he did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on February 26, 2007; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 22, 2007 appellant, then a 58-year-old mail handler, filed a traumatic injury claim alleging that, on February 26, 2007, he experienced severe back pain to the lower back

while bending related to a time and dating assignment in the performance of duty.[1] He stopped work on February 26 and returned on March 6, 2007. The employing establishment advised that "they had no knowledge of this accident."

In a March 5, 2007 report, Dr. Rommel Childress, a Board-certified orthopedic surgeon, noted that appellant was seen for recent problems and difficulties stemming from his activities at work. He noted that appellant was stooping and bending at work, when he had severe worsening of his pain. Dr. Childress recommended bed rest and restricted activities.

By letter dated April 5, 2007, the Office informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

The Office subsequently received a statement from appellant dated April 9, 2007 describing how his injury occurred and several medical reports. In reports dated January 24 and 30, 2007, Dr. Roger Vogelfanger, a Board-certified psychiatrist, advised that appellant was under his care since December 1, 2006 and could work part time.

In a February 6, 2007 report, Dr. Childress, indicated that appellant was injured on September 23, 2005. He diagnosed lumbar spasm and cervical strain and released appellant to work full time. In a March 5, 2007 duty status report, Dr. Childress indicated that appellant missed work from February 26 to March 5, 2007 due to severe back spasms. In a March 8, 2007 duty status report, he repeated September 23, 2005 as the date of injury, and diagnosed lumbar spasm and cervical strain, and advised that appellant could return to work full time. In a separate March 8, 2007 report, Dr. Childress noted that a magnetic resonance imaging (MRI) scan indicated that appellant had foraminal stenosis on the left upper extremity and spasms in the lower back. In reports dated March 26, 2007, he noted that the date of injury was September 23, 2005 and repeated his diagnoses of lumbar spasm and cervical strain. Dr. Childress noted that appellant had been off work since March 16, 2007 due to increased back pain and spasm and right radicular discomfort. He advised reducing appellant's workload to six hours per day.

In an April 9, 2007 statement, appellant alleged that, on February 26, 2007, he was documenting mail on pallets which required bending and stooping. He alleged that, at approximately 10:45 a.m., he felt pain extending from his neck to his lower back. Appellant alleged that the pain increased as he continued to work.

In an April 19, 2007 report, Dr. Childress advised that appellant should continue working six hours per day and opined that it appeared that he aggravated an old injury. He noted that, while appellant was instructed to complete a Form CA-1 for a new injury, he indicated that appellant was being treated for an aggravation of the old injury. Dr. Childress opined that he did not consider it to be a new injury.

[1] The claim before the Board on appeal involves claim No. 062185352. As noted in the text of the decision, appellant has filed several other claims with the Office. However, these other claims are not before the Board on the present appeal.

By decision dated May 9, 2007, the Office denied appellant's claim finding that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related event.

On May 9 and 10, 2007 appellant requested reconsideration. He alleged that his injury was a consequential injury. Appellant also alleged that his injury should be accepted based on his two previous surgeries to his neck under claim No. 060715957. He also referred to his claim No. 062150046. Appellant indicated that his claims should be combined as his injury was to the neck and back, the same as in his other cases.

By decision dated May 24, 2007, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.[2]

On June 15, 2007 appellant requested reconsideration.

By decision dated June 29, 2007, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

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 timely filed within the applicable time limitation period of the Act[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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. The second

[2] An earlier decision dated May 16, 2007 adjudicating the same matter, was issued in error, and reissued on May 24, 2007.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyet*, 41 ECAB 992 (1990).

component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.[9]

ANALYSIS -- ISSUE 1

Appellant alleged that on February 26, 2007 he experienced severe back pain to the lower back while bending and stooping related to a time and dating assignment in the performance of duty. The Board finds that the evidence supports that the claimed events, bending and stooping, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that bending and stopping at work caused a personal injury on February 26, 2007. The medical evidence contains no reasoned explanation of how the specific employment incident on February 26, 2007 caused or aggravated an injury.[10]

The record contains numerous reports from Dr. Childress. The Board initially notes that his February 6, 2007 report is prior to the date of injury and would not be relevant to the present claim for a traumatic injury on February 26, 2007. The Board also notes that Dr. Childress indicated that appellant's date of injury was September 23, 2005, in his March 8 and 26, 2007 reports and thus, these reports are not sufficient to show that the work events of February 26, 2007 caused or aggravated an injury. Dr. Childress also submitted additional reports dated March 5, 2007 in which he noted that appellant was stooping and bending at work, when he had severe worsening of his pain and advised that appellant was unable to work from February 26 to March 5, 2007 due to severe back spasms. However, as he did not specifically discuss how the work events of February 26, 2007 caused or aggravated the diagnosed back spasms. While Dr. Childress' April 19, 2007 report noted that appellant filed a claim for a new injury, he considered his treatment of appellant to be for an aggravation of an old injury. He did not explain how the February 26, 2007 work incident caused a new injury or aggravated a

[7] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[8] *Id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[9] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007).

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

preexisting injury. Thus, this report is insufficient to establish appellant's claim. Other reports from Dr. Childress did not specifically address whether the February 26, 2007 work incident caused or aggravated a new injury.

Appellant also submitted reports dated January 24, and 30, 2007 in which Dr. Vogelfanger, advised that appellant was under his care since December 1, 2006 and advised that appellant could return to work four hours a day and then six hours per day. However, the Board notes that these reports predate the date of injury and are not relevant to the claim for an injury on February 26, 2007.

Other medical records submitted by appellant do not contain a physician's opinion addressing causal relationship. In the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet his burden of proof. As the medical reports provided by appellant do not contain a firm diagnosis and a specific and reasoned opinion regarding the cause of appellant's condition, they are insufficient to establish that he sustained an employment injury on February 26, 2007.[11]

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[12] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the Office; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[13]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[14]

[11] *See Willie M. Miller*, 53 ECAB 697 (2002).

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b).

[14] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant disagreed with the denial of his claim and requested reconsideration on May 9, and 10, 2007, and also on June 15, 2007. The underlying issue on reconsideration was whether he met his burden of proof in establishing that he sustained an injury in the performance of duty on February 26, 2007. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether he sustained an injury in the performance of duty. In his June 15, 2007 reconsideration request, he made no specific argument with regard to the Office's denial of his claim and he did not submit new evidence.

In his May 9 and 10 requests for reconsideration, appellant alleged that his injury was a consequential injury. He alleged that his injury should be accepted based on his two previous surgeries to his neck under claim No. 060715957 and No. 062150046. Appellant indicated that his claims should be combined as his injury was to the neck and back, the same as in his other cases. However, the Board notes that the issue in the present case is whether appellant sustained an injury in the performance of duty on February 26, 2007.[15] The issue is medical in nature, and appellant did not submit any additional medical evidence with his request for reconsideration to support his claim for an injury on February 26, 2007. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[16]

Appellant did not provide any relevant and pertinent new evidence to establish that he sustained an injury in the performance of duty. Consequently, his requests for reconsideration do not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his requests for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

[15] This does not preclude appellant from contacting the Office with regard to pursuing any separate claim for which he might feel that his continuing condition may be related.

[16] *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 29, May 24 and 9, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 11, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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