U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVE A. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Tacoma, WA

Docket No. 99-289; Submitted on the Record;
Issued September 19, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained mechanical low back pain and carpal tunnel in his right hand in the performance of duty, causally related to factors of his federal employment.

On December 18, 1997 appellant, then a 42-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that since November 28, 1997 he experienced sharp pain in his lower back while off-loading mail and had to seek medical treatment for this condition. He also alleged that he was diagnosed with carpal tunnel syndrome and believed that this condition was due to the repetitive grasping of mail and pulling/pushing of heavy equipment. On the reverse side of this form, the employing establishment noted that they were aware of appellant's back condition since July 7, 1997. Appellant stopped work on November 29, 1997 and returned to limited-duty work on December 7, 1997. He worked limited duty on December 8 and 9, 1997 and remained off duty through December 15, 1997. Appellant stopped work on August 13, 1998 after being placed on enforced leave by the employing establishment.

In a decision dated March 12, 1998, the Office of Workers' Compensation Programs denied appellant's claim for failure to establish fact of injury. The Office found the initial evidence of file supported a "modicum of support" that appellant was exposed to the activities or employment factors to which he attributed the claimed medical condition, however, the evidence did not establish that a medical condition had been diagnosed in connection with those employment factors. The Office also noted that the initial evidence in the file consisted of military medical records from October 7, 1975 to December 11, 1997, chiropractic chart notes from

February 12 and March 4 and a February 24, 1997 medical report from Dr. James A. Frandanisa, a chiropractor.[1]

By letter dated March 24, 1998, appellant requested reconsideration of the Office's March 12, 1998 decision and submitted a March 18, 1998 narrative report along with the previously submitted February 24, 1997 report from Dr. Frandanisa. Appellant also submitted a January 19, 1998 statement wherein he listed the specific job activities he believed to have contributed to his low back injury and his carpal tunnel syndrome. In a nonmerit decision on reconsideration dated June 16, 1998, the Office denied appellant's request for reconsideration of the March 12, 1998 decision on the grounds that the evidence submitted on reconsideration was not sufficient to warrant modification of its prior decision. The Office also found that Dr. Frandanisa diagnosed subluxations of the cervical, thoracic and lumbar spine areas and related appellant's complaints to his reported work injury of November 28, 1997 but did not address his work factors as a causative factor in any way. The Office further found that no medical evidence was provided which discussed any wrist conditions. The Office determined that the medical evidence was not sufficient to establish that appellant sustained an injury due to any workplace factors.

By letter dated June 30, 1998, appellant again requested reconsideration and submitted a June 22, 1998 emergency room report, April 9, 1998 x-ray reports of the lumbar and thoracic spine, chart notes of occupational therapy from May 1998 and some correspondence from the employing establishment pertaining to a request for a fitness-for-duty evaluation. In a letter dated September 7, 1998, appellant requested the status of his reconsideration request. A July 27, 1998 narrative report from Dr. Frandanisa was provided along with Department of Veterans Affairs emergency room reports progress notes, x-ray reports, an electromyogram (EMG) report of July 6, 1998 finding no evidence of carpal tunnel on either side various medical records and letters from the employing establishment notifying appellant of proposed placement on enforced leave. In a merit decision on reconsideration dated September 23, 1998, the Office denied appellant's reconsideration request on the grounds that the evidence submitted on reconsideration was insufficient to warrant modification of its prior decisions. The Office found that appellant had not established that the preexisting sacralization of the lumbar spine was injured by his federal employment. The Office further found that appellant had not established that he has carpal tunnel syndrome or that such condition was due to his federal employment.

The Board finds that appellant has not met his burden of proof in establishing that he sustained his claimed conditions of mechanical low back pain and carpal tunnel syndrome in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that an injury

[1] The record shows that appellant submitted various factual and medical documentation dated prior to November 28, 1997, the day he first realized the disease or illness was caused or aggravated by his federal employment. The Board will not consider appellant's predated factual and medical documentation with this decision other than to note that appellant had a preexisting chronic back condition.

[2] 5 U.S.C. §§ 8101-8193.

was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion 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,[5] must be one of reasonable medical certainty[6] 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.[7]

In the present case, there is insufficient rationalized medical opinion evidence to support that appellant suffered an injury or disability causally related to any factors of his federal employment. Department of Veterans Affairs emergency room reports from February, November and December 1997 and February 1998 provide a diagnosis of lower back pain. The reports relate a history of back pain and state that appellant is a mailhandler and that his job involves repetitious lifting, but fail to provide an opinion addressing the causal relationship between the diagnosis to any of appellant's work factors. Additional records from the Department of Veterans Affairs hospital and emergency room reports also do not provide an opinion addressing causal relationship.

The relevant medical evidence of record consists of Dr. Frandanisa's reports of March 18, 1998 and February 24, 1997, in which he diagnosed by x-ray an acute post-traumatic cervical, thoracic and lumbar subluxation with attendant joint fixation and an acute post-traumatic cervical, thoracic and lumbar sprain/strain which were "on a more probable than not basis resultant of the on-the-job injury dated November 28, 1997." Dr. Frandanisa reasoned that although appellant had episodes of low back pain in his past history, it was understandable that an individual with a transitional segment in the lumbar spine may be more likely to sustain injury to that region compared to someone who does not have this normal variant present. He stated

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *William E. Enright*, 31 ECAB 426, 430 (1980).

that the actions required to move a six-hundred to seven-hundred pound container required excessive force and opined that as appellant was trying to move the container he pulled and, when the container would not move, he twisted his body and pushed. Dr. Frandanisa opined that it was this twisting while pushing or pulling that caused the soft tissue damage and the damage to appellant's joints. He also submitted a July 27, 1998 report, in which he stated that appellant has a condition known as sacralization of the lumbar vertebra and opined, based on his examination findings, x-ray findings and multiple treatments, that appellant was not capable of performing all of the job requirements for his particular position. He reasoned that the type of injury to the lumbosacral region plus the structural changes occurring in the joint or multiple joints, greatly increases the risk of injury due to the increased amount of stress already being placed on appellant's lumbar vertebra. Dr. Frandanisa opined that appellant may do quite well with another position that required less physical stress and repetitive motions than those required of his present position.

The Board finds that Dr. Frandanisa has not provided a reasoned medical opinion, supported by objective findings as to the medical connection between appellant's diagnosed condition of chronic low back pain and factors of appellant's federal employment. The Board notes that section 8101(2) of the Act[8] explains that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[9] Although he diagnosed subluxations of appellant's spine, he did not describe appellant's specific work duties in any detail or provide medical reasoning explaining how or why appellant's job duties would affect his preexisting spinal condition or produce the structural changes occurring in appellant's joints as noted in his July 27, 1998 report. Moreover, Dr. Frandanisa refers only to the November 28, 1997 incident in his reports of March 18, 1998 and February 24, 1998. As the February 24, 1998 report reflects that appellant was examined on February 12, 1998, the x-rays upon which Dr. Frandanisa relied were taken approximately 2.5 months after the date of injury.[10] The reports, of Dr. Frandanisa are insufficient to establish appellant's claim as he has not provided any medical rationale or reasoning explaining how and why appellant's condition of chronic low back pain which he found 2.5 months after the injury is related to factors of his federal employment.[11]

Moreover, the Board notes that there is no evidence of carpal tunnel syndrome. The July 6, 1998 EMG/nerve conduction volesity studies found no evidence of carpal tunnel on either side.

[8] 5 U.S.C. § 8101(2).

[9] *Bruce Chameroy*, 42 ECAB 121 (1990).

[10] *See Linda L. Mendenhall*, 41 ECAB 532, 537 (1990); *see also Robert J. McLennan*, 41 ECAB 599 (1990).

[11] To be of probative value, a physician's opinion must be based on a complete factual and medical background and be supported by medical rationale explaining the nature of the relationship between the condition and employment factors. *Lucretia M. Nielson*, 42 ECAB 583 (1991).

Inasmuch as medical evidence is needed to establish a causal connection between appellant's alleged conditions and his work factors, appellant's arguments pertaining to being on enforced leave and the fact that he has spinal changes as evidenced in Dr. Frandanisa's July 27, 1998 report is irrelevant in establishing a fact of injury in an occupational disease claim.

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment[12] or that work activities produce symptoms revelatory of an underlying condition[13] does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and appellant has failed to submit such evidence in the present case.[14] Consequently, appellant has not submitted rationalized medical evidence explaining how and why the diagnosed condition was caused or aggravated by appellant's federal employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated September 23, June 16 and March 12, 1998 are hereby affirmed.

Dated, Washington, DC
September 19, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[12] *William Nimitz, Jr., supra* note 5.

[13] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[14] *Victor J. Woodhams*, *supra* note 4.