U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK W. CHRISTENSEN and U.S. POSTAL SERVICE,
GAY STREET POST OFFICE, West Chester, PA

Docket No. 00-1521; Submitted on the Record;
Issued April 2, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that he was injured in the performance of duty.

On July 26, 1998 appellant, then a 51-year-old rural carrier, filed an occupational disease claim, alleging that, while he was on limited duty as a result of bilateral carpal tunnel syndrome, he sustained pain in both elbows due to repeated spreading of bundles of marriage mail around to the different routes in the office.

By letter dated August 4, 1998, the Office of Workers' Compensation Programs requested that appellant submit further information.

By letter dated August 8, 1998, appellant's supervisor indicated that appellant was never used to distribute mail, that he does pick up and deliver express mail and some very small auxiliary routes, that he does not case mail at any time and that he works within the confines of his limited-duty status.

By letter dated August 24, 1998, appellant requested an extension of time to file further information. By decision dated September 14, 1998, the Office denied appellant's request for an extension of time and found that, as appellant had not met the requirements for establishing that he sustained an injury as alleged, his claim was denied.

Appellant then submitted an unsigned medical report dated August 27, 1998, in which Dr. Michael J. Maggitti, a Board-certified orthopedic surgeon, indicated that appellant's elbow problems originally began with his carpal tunnel syndrome and went away with an injection and carpal tunnel surgery, but that after a couple of years of repeated lifting of marriage mail he developed severe pain in his elbows. Appellant also submitted a signed medical report from Dr. Maggitti who stated that appellant suffered from bilateral lateral epicondylitis (tennis elbow) directly related to his work activities.

In a letter dated September 10, 1998, appellant described the movements involved in sorting marriage mail. He noted that the movements require a lifting motion from a pallet stacked with bundles into either a carrier's hamper or set next to the carrier's case or placed in a smaller cart, transported and then again lifted out and placed next to the carrier's case. Appellant also noted that the employing establishment had recently added more routes and that, as a result thereof, it can take two to three hours to distribute the marriage mail. He noted that the marriage mail generally arrived once a week.

In a decision dated September 14, 1998, the Office denied appellant's claim, finding that the evidence was not sufficient to meet the guidelines for establishing that he sustained an injury due to the claimed employment factor. The Office noted that, although the initial evidence supported that appellant actually experienced the claimed employment factor, the evidence did not establish that a condition had been diagnosed in connection with this.

By letter dated September 17, 1998, appellant requested a requested a hearing.

In a decision dated December 4, 1998, the hearing representative remanded the case for a *de novo* decision, to determine whether appellant actually performed the duties alleged.

In a letter dated January 13, 1999, a manager for the employing establishment noted:

> "[Appellant] was required to spread bundles of marriage mail once a week when assistance was needed. The process involves moving bundles of circulars from a pallet to the carrier casing area. This may involve stacking directly at the case or placing the bundles in mail containers (hampers) at the carrier case. Generally, the pallets are placed close to the carrier route cases then the bundles are transported. These bundles weigh between 5 and 15 pounds. There are approximately 450 bundles to spread. This process takes about 2 [to] 3 hours if done individually but generally there are 2 [to] 4 employees performing this function so that it can be completed in time for carrier departure."

In a decision dated April 8, 1999 and finalized on April 9, 1999, the Office denied appellant's claim, finding that the evidence did not support a causal relationship. Specifically, the Office found that the factual information provided by the employing establishment does not support that appellant does any lifting and/or carrying of heavy mail or sorting of mail on a repetitive basis and that, therefore, the medical opinion of Dr. Maggitti was considered to be of diminished probative value, since the factual evidence upon which he based his opinion was incorrect.

By letter dated April 12, 1999, appellant requested a hearing.

By letter dated May 27, 1999, the employing establishment requested that Dr. Maggitti approve appellant's return to work as a modified carrier, with restrictions of no lifting over 20 pounds with his right hand and no repetitive activity. On May 29, 1999 he approved the position.

At the hearing held on October 19, 1999, appellant testified that he started working for the employing establishment on a part-time basis in 1984, that he became a full-time career

employee in 1987, that, while working as a rural carrier, he started to have problems with his hands going numb and was diagnosed with having carpal tunnel syndrome, that the Office accepted his claims for carpal tunnel syndrome and he had surgery and that afterwards he stayed in the rural carriers' craft on limited duty. Basically, appellant noted that he did a lot of administrative work, including answering telephone calls, helping customers with their mail problems and delivering parcels and express mails. He noted that he started having problems with his elbows about the same time he developed carpal tunnel syndrome.

Appellant noted that the repetitious aspect of his job involved the marriage mail, that the marriage mail consisted of packets of mail that ranged from fairly light to fairly heavy and he would have to sort the bundles and deliver to the appropriate carrier. He noted that, if one did not get any help, it would take anywhere from two to three hours to sort it through, that occasionally he would have help and other times he would not. Appellant acknowledged that his marriage mail duties were usually only once a week, that he stopped doing the marriage mail and that on a continual weekly basis it probably only lasted "not even three months." He noted that, since he stopped doing the marriage mail, his arm problems have dissipated a little bit. At the hearing, the hearing representative asked for an addendum to appellant's doctor's report indicating that the doctor was aware that appellant only worked with the marriage mail one time a week. However, no additional medical evidence was received.

In a decision dated December 9, 1999, the hearing representative found that appellant had not met his burden of proof to demonstrate that he was injured in the performance of duty, as claimed. Specifically, the hearing representative noted that appellant did not engage in heavy lifting, and that he was not exposed to repetitive lifting to any significant amount. Furthermore, he noted that the medical evidence did not establish that appellant sustained an injury due to the limited repetitive duties he performed, in that, although Dr. Maggatti suggested that appellant's condition was due to repetitive duties, his report was not based on an accurate description of appellant's duties.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that an injury 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.[2]

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

[1] 5 U.S.C. §§ 8101-8193 (1989).

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

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.[3] 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, must be one of 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.[4]

In this case, there is insufficient rationalized medical opinion evidence to support that appellant sustained an injury in the performance of duty. First, the Board notes that the unsigned medical notes of Dr. Maggitti cannot be considered probative medical evidence.[5] The remaining medical report by him dated September 22, 1998, although signed, is similarly deficient. In this report, Dr. Maggitti opines that appellant's bilateral lateral epicondylitis is consistent with a repetitive motion stress activity, and was directly related to his work activities. He based this opinion on appellant's statement that his work required heavy lifting and carrying of heavy cases of mail and repetitive use of his upper extremities. However, the evidence of record does not indicate that appellant performed any heavy lifting, in fact, the typical marriage mail bundle weighed 5 to 15 pounds. With regard to repetitive use of his arms, the hearing representative properly noted that appellant's repetitive movements were insignificant. As noted by the hearing representative, appellant only performed the duty for a period of less than three months and he would only have been exposed to any degree of repetitiveness for one to two hours on twelve or fewer occasions and he had assistance about two-thirds of the time.

At the hearing, the hearing representative noted his concern that appellant's doctor did not understand the limited extent of appellant's repetitive activity, left the record open for 30 days and requested that appellant provide a supplemental opinion from Dr. Maggatti indicating whether he understood that appellant only did the marriage mail one time a week. No further medical evidence was submitted. Furthermore, Dr. Maggatti's medical report did not describe appellant's specific work duties in any detail or provide medical reasoning explaining how his *de minimis* repetitive action activities resulted in the alleged injuries to appellant's elbows. His opinion is, therefore, speculative, equivocal and of diminished probative value. This report is insufficient to meet appellant's burden of proof.

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 or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between

[3] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[4] *Id.*

[5] *Merton J. Sills*, 39 ECAB 572, 575 (1998).

the condition and the employment factors.[6] 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.[7] As appellant has not submitted rationalized medical opinion evidence explaining how and why the diagnosed condition was caused or aggravated by his federal employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated December 9 and April 8, 1999 are hereby affirmed.

Dated, Washington, DC
April 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

[6] *Id.* at 218.

[7] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).