U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM T. GAITHER and DEPARTMENT OF THE ARMY, FORT GEORGE G. MEADE, Odenton, MD

Docket No. 01-1912; Oral Argument Held October 3, 2002; Issued November 27, 2002

Appearances: *William T. Gaither, pro se*; *Paul J. Klingenberg, Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty as alleged.

On March 26, 1999 appellant, a 60-year-old pipefitter, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained an injury to his left hand and wrist while handling pipe wrenches daily. He stated that handling pipe wrenches results in a constant twisting of his hands and wrists. Appellant advised that he first realized his condition was caused or aggravated by his employment in December 1998. On August 25, 1999 he underwent left ring finger and left thumb pulley release surgery. He has been working light duty since his surgery.

In a letter dated May 12, 1999, the Office informed appellant that the materials he submitted were insufficient to establish his claim for benefits. He was advised to provide a comprehensive medical report from his treating physician, which contains a medical explanation of how his federal employment exposure contributed to the condition diagnosed.

Appellant submitted additional medical evidence, which included medical notes from Dr. Steven R. Boyea dated April 27, 1999 and Dr. Arlene E. George dated March 24, 1999 as well as a sick slip dated April 14, 1999.

By decision dated June 23, 1999, the Office rejected appellant's claim finding that he had failed to establish fact of injury. The Office found that the medical information submitted did not provide a history of the employment factors alleged and did not confirm that the injury to appellant's left hand was the result of his federal employment.

On two subsequent occasions appellant requested reconsideration of his claim and obtained a merit review. The Office denied modification initially on October 3, 2000. By decision dated April 18, 2001, the Office similarly denied modification regarding appellant's second and most recent request for reconsideration.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that his left-hand condition was causally related to factors of his federal employment.

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 is 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 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.[4] 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] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a

[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

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

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

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

period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.[8]

In the present case, appellant alleged that his left hand condition of his finger locking up and pain from his wrist to his elbow was caused or materially aggravated by working with pipe wrenches on a daily basis. The Office found, however, that appellant did not submit sufficient medical evidence to establish that he sustained an occupational injury due to these factors.

In support of his claim, appellant submitted medical notes from various physicians documenting left ring finger and left thumb triggering, sick leave slips, documents relating to the preoperation process/procedure, his surgical procedure and postoperative treatment and care. However, none of the documents contain any evidence regarding appellant's claimed work factors, which would document an occupational exposure. Additionally, the treatment notes of appellant's physical therapists or of the registered nurse are of no probative value inasmuch as a physical therapist or a registered nurse are not considered a physician under the Federal Employees' Compensation Act and, therefore, are not competent to give a medical opinion.[9]

In a report dated October 13, 2000, Colonel Thierno A. Diallo, an Occupational Health Physician, stated that he reviewed appellant's record and interviewed him on October 12, 2000. He opined that appellant suffers from trigger finger of the left ring finger/thumb and was operated on August 25, 1999 for that condition. He further opined that "this condition could be caused and/or aggravated by his occupation as pipefitter." Dr. Diallo's report offered an equivocal opinion on the causal relationship of appellant's left-hand condition, which is insufficient to establish appellant's burden of proof.[10]

An award of compensation may not be based on surmise, conjecture and speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[11] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated his diagnosed conditions and present medical rationale in support of his or her opinion. As no medical evidence identifying the cause of appellant's left hand condition was submitted, appellant has failed to meet the first requirement to establish the presence or existence of the disease for which compensation is claimed in an occupational disease claim. Therefore, he has failed to discharge his burden of proof.

[8] *Robert G. Morris*, 48 ECAB 238, 239 (1996); *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

[9] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

[10] *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[11] *Donald W. Long*, 41 ECAB 142 (1989).

The decisions of the Office of Workers' Compensation Programs dated April 18, 2001 and October 3, 2000 are affirmed.[12]

Dated, Washington, DC
November 27, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

[12] The Board notes that appellant stated that he had new medical evidence during his oral argument to the Board. The Board's jurisdiction on appeal is limited to a review of the evidence, which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).