U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT M. McDONALD and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, San Diego, CA

Docket No. 02-238; Submitted on the Record;
Issued December 5, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated compensation benefits for the accepted conditions of bilateral overuse syndrome; right ulnar neuropathy and left carpal tunnel syndrome effective September 30, 1999; (2) whether appellant's cervical spondylosis is causally related to his federal employment: and (3) whether appellant sustained a right triceps injury in the performance of duty on October 21, 1998, as alleged.

On October 29, 1998 appellant, then a 39-year-old pharmacist, filed a claim alleging that his arm, wrist and hand pain was a result of his federal employment:

> "After approximately four weeks of order entry in am[bulatory] care section, started having wrist pain in right wrist continuously. About eight or so weeks after starting I developed lateral right elbow pain. After this, medial elbow pain on right developed. On October 21, 1998 I believe I tore right tricep[s] tendon punching 'time clock."

Appellant began working in the ambulatory care pharmacy on July 13, 1998. He first noted symptoms involving his upper extremities around the beginning of August 1998.

On November 30, 1998 the Office requested that appellant submit additional information to support his claim. When it received no response within the time provided, the Office denied his claim for compensation by decision dated February 9, 1999.

Appellant requested that his appointment be changed from full-time permanent to temporary intermittent on May 9, 1999 as he had accepted employment elsewhere. Based on a recommendation that he not be allowed to continue to function in the capacity of a pharmacist at

the employing establishment, appellant was not scheduled to work after the change in his appointment. He left to work for a private employer on or about May 14, 1999.[1]

On November 11, 1999 appellant requested reconsideration and submitted evidence to support his claim. Work status reports from the employees' health services clinic made no mention of a traumatic injury in October 1998. An October 21, 1998 note described the date of injury as "symptoms started two months [ago]." An October 23, 1998 note diagnosed tendinitis/overuse pain. An October 30, 1998 note gave no date of injury and described the injury or illness as "right arm pain." Appellant complained on October 30, 1998 that his right arm was swollen and had sharp shooting pain. He described a "jabbing" motion when using the time clock for each patient. The progress note on October 30, 1998 diagnosed right triceps tendinitis "not occupationally related; occurred while polishing car per patient."

On December 30, 1998 Dr. Isaac Bakst, a Board-certified neurologist, performed electrodiagnostic studies for the purpose of excluding entrapment neuropathy and cervical radiculopathy. Results showed a right ulnar neuropathy at the elbow that was mild and chronic. Results also showed minimal left median neuropathy secondary to carpal tunnel syndrome.

On January 27, 1999 Dr. Artemio G. Pagdan, a Board-certified neurologist, reported that most of appellant's symptoms were due to chronic recurrent myofascial pain syndrome due to repetitive use syndrome or overuse syndrome. Examination of the neck revealed normal findings.

On May 3, 1999 Dr. L. David Rutberg, a Board-certified neurologist, reported that appellant was suffering with right ulnar neuropathy at the elbow and a left median neuropathy at the wrist, related to repetitive and overuse activities in his profession as a pharmacist at the employing establishment.

Appellant presented to Dr. Bakst on September 14, 1999 with a left upper extremity complaint. Two and a half months earlier he was stretching and experienced spasms, aching and a dull heavy pain in the left upper extremity. Dr. Bakst reported: "He has had symptoms on the right, but overall compared to the way it has been, there may be some improvement. At this point, a question arises whether he has a left ulnar neuropathy." Dr. Bakst diagnosed: (1) rule out left ulnar neuropathy; and (2) rule out cervical radiculopathy or other cause of general muscle weakness.

On September 21, 1999 Dr. Bakst conducted electrodiagnostic studies to evaluate appellant's left upper extremity. Nerve conduction velocity (NCV) studies of the left median and ulnar nerve were normal. An electromyogram (EMG) showed mild neuropath changes at the left C6-7 and right C6 distributions. Dr. Bakst diagnosed mild cervical radiculopathy at those levels. A magnetic resonance imaging (MRI) scan obtained on November 7, 1999 revealed C5-6 and C6-7 disc herniations with neural foramina narrowing. On November 23, 1999 Dr. Bakst diagnosed cervical radiculopathy secondary to cervical spondylosis.

[1] Appellant was formally terminated from his position at the employing establishment on May 8, 2000.

In a decision dated March 10, 2000, the Office reviewed the merits of appellant's claim and denied compensation benefits for failure to establish causal relationship.

Appellant requested reconsideration on March 9, 2001 and submitted additional evidence. In a report dated March 7, 2001, Dr. Wayne K. Baybrook, a Board-certified neurologic surgeon, related appellant's history and complaints. He described his findings on physical and neurologic examination. He reviewed medical records and correspondence from appellant to various entities and physicians. Dr. Baybrook diagnosed: (1) chronic sprain/strain, cervical spine, resulting in herniated nucleus pulposus at C5-6 and C6-7 proven by MRI scan, status post anterior discectomy and fusion of July 3, 2000; and (2) repetitive use syndrome, bilateral upper extremities, causing chronic sprain, bilateral elbows, resulting in cubital tunnel syndrome and chronic sprain, bilateral wrists, resulting in carpal tunnel syndrome, proven by EMG and NCV studies. Dr. Baybrook reported that the injury to appellant's neck, elbows and wrists were interconnected and all occurred as a result of the lack of proper ergonomics at his work station in the ambulatory care/outpatient pharmacy during the time he worked there from July 13, 1998 to May 14, 1999. He added that appellant's injuries necessitated surgical intervention in the cervical region on July 3, 2000.

After further development of the evidence, the Office reviewed the merits of appellant's claim and issued a decision on June 6, 2001. The Office accepted his claim for bilateral overuse syndrome, left carpal tunnel syndrome and right ulnar neuropathy, but found that all these conditions resolved by September 30, 1999. The Office also denied compensation for appellant's neck condition.

On June 14, 2001 the Office reviewed additional evidence, clarified its June 6, 2001 decision and extended appellant new review rights. The Office accepted as factual that he performed time clock duties, but found no evidence that he suffered a traumatic injury to his arm in October 1998, as a result of this activity.

The Board finds that the Office properly terminated compensation benefits for the accepted conditions of bilateral overuse syndrome, right ulnar neuropathy and left carpal tunnel syndrome effective September 30, 1999.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.[2] The fact that the Office accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on the Office with respect to the period subsequent to the date of termination or modification.[3]

The Office accepted appellant's claim for the conditions of bilateral overuse syndrome, right ulnar neuropathy and left carpal tunnel syndrome, but found that these conditions resolved

[2] *Edwin Lester*, 34 ECAB 1807 (1983).

[3] *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blame (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

by September 30, 1999. The Office, therefore, has the burden of proof to justify the termination of benefits effective that date.

The medical evidence submitted in this case was sufficient to establish a causal relationship between appellant's bilateral upper extremity conditions and his federal employment. Dr. Baybrook diagnosed repetitive use syndrome, bilateral upper extremities, resulting in cubital and carpal tunnel syndrome and he explained how repetitive tasks at the ambulatory care pharmacy from July 13, 1998 to May 14, 1999 aggravated these conditions. It is well established that, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. When the aggravation is temporary, however, and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.[4]

After appellant left federal service on May 14, 1999 to work in the private sector, he was no longer exposed to the nonergonomic working conditions that Dr. Baybrook discussed. When appellant presented to Dr. Bakst on September 14, 1999 with a left upper extremity complaint, Dr. Bakst noted past symptoms on the right and possible improvement, such that he needed only to rule out neuropathy on the left. NCV studies of the left median and ulnar nerve were normal on September 21, 1999. Given the negative diagnostic studies on the left, appellant's history of improved symptoms on the right and the lack of continuing exposure to aggravating factors at the ambulatory care pharmacy, the Board finds that the period of employment-related disability ceased no later than September 30, 1999, the date the Office terminated benefits for the accepted upper extremity conditions. The Office met its burden of proof.

The Board also finds that the evidence is insufficient to establish that appellant's cervical spondylosis is causally related to his federal employment.

A claimant seeking benefits under the Federal Employees' Compensation Act[5] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[6] including that he sustained an injury in the performance of duty and that any specific condition or disability for work, for which he claims compensation is causally related to that employment injury.[7]

The Office accepted that appellant sustained an injury in the performance of duty, but did not accept his claim for the condition of cervical spondylosis. The burden of proof remains with appellant to establish that this condition is causally related to his employment at the ambulatory care pharmacy.

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[4] *Gaeten F. Valenza*, 39 ECAB 1349 (1988).

[5] 5 U.S.C. § 8101-8193.

[6] *Nathanie1 Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

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

Causal relationship is a medical issue[8] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty,[10] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[11]

Dr. Baybrook reported on March 7, 2001 that the injury to appellant's neck, elbows and wrists were interconnected and all occurred as a result of the lack of proper ergonomics at his work station in the ambulatory care/outpatient pharmacy during the time he worked there from July 13, 1998 to May 14, 1999. He did not adequately explain, however, how the medical record demonstrated that it was the lack of proper ergonomics at the ambulatory care pharmacy that caused or aggravated appellant's cervical condition. Dr. Baybrook did not reconcile the absence of any neck complaint during the period of that employment. Indeed, while Dr. Pagdan reported on January 27, 1999 that most of appellant's symptoms were due to repetitive use syndrome or overuse syndrome, an examination of his neck was found to be normal. The first indication that he might have a cervical spine condition came on September 21, 1999, when an EMG showed mild neuropath changes at the left C6-7 and right C6 distributions. This was more than four months after appellant's exposure to nonergonomic factors of his federal employment had ceased and even then appellant reported no complaints of cervical pain or discomfort to the examining physician. Dr. Baybrook's opinion is insufficiently rationalized in this regard to establish a causal connection between appellant's federal employment from July 13, 1998 to May 14, 1999 and his subsequently diagnosed cervical radiculopathy secondary to cervical spondylosis. As he has not submitted sufficient medical evidence to establish that his cervical spondylosis and need for surgery were employment related, appellant has not met his burden of proof.

The Board also finds that the evidence in this case fails to establish that appellant sustained a right triceps injury in the performance of duty on October 21, 1998 as alleged.[12]

When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure

[8] *Mary J. Briggs*, 37 ECAB 578 (1986).

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

[10] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

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

[12] Appellant reported on November 11, 1999 that he had injured his right upper arm on or about October 14, 1999[sic]: "I remember reaching up to time stamp a card and felt a sharp pain in my right upper arm. It felt like something snapped between my inner elbow and half way up my triceps muscle. I reported this to employee health." The Pharmacy Service Chief reported that their records indicated that this occurred on October 21, 1998 not October 14, 1999, as reported.

occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[13]

On his October 29, 1998 claim for compensation, appellant stated: "On October 21, 1998 I believe I tore right tricep[sj tendon punching 'time clock." The Office accepts as factual that appellant performed time clock duties and does not dispute that he performed these duties on October 21, 1998 as alleged. The evidence is, therefore, sufficient to establish that appellant experienced a specific event or incident at the time, place and in the manner alleged. The question for determination is whether punching the time clock on October 21, 1998 caused an injury to his right triceps tendon.

As the Board noted earlier, causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Appellant submitted no rationalized medical opinion evidence to support that he injured his right triceps tendon on October 21, 1998 as alleged. Indeed, when he presented to the employee health services clinic on October 21, 1998 he reported no injury on that or any other date. The October 21, 1998 clinic noted only that "symptoms started two months [ago]." Two days later, a clinic note diagnosed tendinitis/overuse pain but gave no indication that appellant had recently injured his right triceps tendon. Appellant presented with right arm complaints on October 30, 1998 and described a "jabbing" motion when using the time clock for each patient. The progress note diagnosed right triceps tendinitis, but did not relate this condition to time clock duties at work. Instead, the physician noted "not occupationally related; occurred while polishing car per [appellant]." Without a reasoned medical opinion diagnosing a right triceps condition and relating that condition to the performance of time clock duties on or about October 21, 1998, the record in this case fails to establish that appellant sustained a right triceps injury as alleged. He has not met his burden of proof.

[13] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, *supra* note 7.

The June 14 and June 6, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
December 5, 2003

Colleen Duffy Kiko
Alternate Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member