United States Department of Labor
Employees' Compensation Appeals Board

ARTURO M. LOPEZ, JR., Appellant **and** **DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX, Employer**	)	**Docket No. 04-1790** **Issued: December 3, 2004**

Appearances:
Arturo M. Lopez, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 7, 2004 appellant filed an appeal of a February 4, 2004 merit decision of the Office of Workers' Compensation Programs which found that he did not sustain an injury in the performance of duty on August 28, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on August 28, 2003, as alleged.

FACTUAL HISTORY

On August 28, 2003 appellant, then a 43-year-old aircraft parts repairer, filed a traumatic injury claim alleging that on that date as he was compacting trash, a fellow employee turned the machine on and he caught his left arm in the machine. He alleged that his left elbow and left wrist were injured. Appellant did not stop work.

In support of his claim, appellant submitted an August 29, 2003 dispensary permit completed by Dr. Larry L. Grabhorn, an employing establishment physician Board-certified in aerospace and general preventive medicine, which noted the circumstances as "left wrist" and that appellant was returned to work with activity restrictions for one week. The restrictions were noted as no pushing, pulling, lifting, twisting or grasping more than 10 pounds for one week.

An August 29, 2003 progress note from Dr. Grabhorn noted that appellant "had the switch turned off the trash compactor and was doing something inside when a fellow employee turned it on, catching his left forearm as he hurriedly withdrew it." He noted the incident "occurred an hour ago." Examination revealed redness, swelling, tenderness and localized pain with digital flexion of the left hand, a two by two and one half area of erythemia on the midline flexor surface of the left distal forearm, tenderness, and complaints of pain with gripping. Dr. Grabhorn examined appellant's right groin secondary to complaints of pain since injury on August 26, 2003 when he attempted to prevent a 400-pound tool from falling. He diagnosed right groin strain and contusion of the left wrist.

A September 8, 2003 illegibly signed form report noted August 28, 2003 as the date of injury, noted the nature of injury as left elbow/wrist, and indicated that appellant stated that there was "no new injury reported this date -- patient came to dispensary on this date for follow-up care for cut to right third digit." The person signing the form for Dr. Grabhorn noted that, in his opinion, the history as stated by the patient was not consistent with the physical findings.

Appellant also submitted a September 16, 2003 unsigned report from Dr. Savvas Poulos, a Board-certified orthopedic hand surgeon, who reported that on August 26, 2003 appellant claimed he lacerated his right third finger when he tried to reach for a falling transmission. Appellant also complained that on August 26, 2003 he sustained a pull in his left groin area with pain and swelling. Dr. Poulos noted that appellant was seen in the dispensary and was put on light duty. He noted that, two days later, on August 28, 2003 appellant claimed that he was injured with a trash compactor on the back of his left elbow and wrist. Since that time appellant complained of left elbow pain and wrist pain with clicking and popping and pain in the medial aspect of the elbow. Dr. Poulos reported appellant's physical examination results including losses in ranges of motion and grip strength, stiffness and tingling, pain and tenderness, and he noted that appellant's lateral epicondyle was tender to palpation with some ulnar area subluxation of the edge of the fascia. He noted that appellant's triceps clicked when he flexed and extended his elbow. Dr. Poulos diagnosed left wrist pain and noted that "he may have a left wrist sprain with possibly some partial ligament tears." He opined that appellant's left elbow had some lateral epicondylitis and some soft tissue synovitis with medial and lateral pain, and that the third finger had some stiffness with a healed laceration. Dr. Poulos opined that appellant had a contusion of the elbow region which caused some synovitis in that area and possibly some lateral epicondylitis. He noted that appellant appeared to have some type of internal derangement in the wrist and also noted some right third finger stiffness post laceration.

Appellant submitted a Texas workers' compensation work status report dated September 16, 2003, signed by Dr. Poulos, which noted the injured area as right wrist and middle

finger, left wrist and elbow and that the date of injury was August 28, 2003. The form indicated that appellant could return to work on September 18, 2003.

Unsigned radiology reports of magnetic resonance imaging (MRI) scans of appellant's left elbow and wrist obtained on October 1, 2003 were reported as demonstrating a partial thickness tear in the common extensor tendon and common flexor tendon, muscle strain in the common extensor tendon adjacent to the lateral epicondyle of the distal humerus, mild joint effusion, increased fluid collection at three sites consistent with synovitis and a small cyst in the triquetrum bone. There was no evidence of a tear in the triangular fibrocartilage, flexor and extensor tendons. The name reflected on these reports was Dr. L.M. Forolan, a Board-certified radiologist.

On October 2, 2003 the employing establishment controverted appellant's claim, noting the discrepancy in dates of injury. The compensation specialist noted that appellant claimed that the incident happened on August 28, 2003 but the evidence of record supported that it occurred on August 29, 2003 based on his visit to the employing establishment's health clinic.

By letter dated December 19, 2003, the Office advised appellant that the factual and medical evidence submitted was insufficient to establish his claim, and it requested a physician's opinion explaining how his condition resulted from the employment incident alleged.

In response appellant provided answers to some of the Office's questions, noting "I was taking trash out to the trash dumpster at approximately 2:00 p.m. on August 28, 2003 and Tim Warlock was also taking trash. I turned off the emergency on/off button from the trash compactor to rearrange some boxes that were interfering, so half of my (top half) body was inside the trash compactor when Mr. Warlock press the button on and off (horseplaying) and the metal crusher jerked forward hitting my left elbow extremely hard and as I jerked my body out, my left wrist hit the top of the metal trash compactor." Appellant claimed that he went to the dispensary and they gave him some pills.

On January 26, 2004 the Office received an October 9, 2003 unsigned medical report from Dr. Poulos noting that appellant was seen for follow-up for his left elbow and left wrist. He noted that appellant still complained of pain and tenderness over the epicondylar region and the wrist, and indicated that MRI scans showed some synovitis in the small recesses towards the radial side, but no evidence of tears in the scapholunate or lunotriquetral fibrocartilage region, no avascular necrosis or bone marrow edema. Some mild inflammation around the elbow was noted with effusion with a partial thickness tear in the common extensor tendon in the place of maximal tenderness with muscular strain adjacent to the lateral epicondyle. Dr. Poulos diagnosed left elbow pain, epicondylitis and synovitis, and left wrist pain with synovitis. He indicated that appellant was injected with a steroid and a pain medication.

By decision dated February 4, 2004, the Office rejected appellant's claim finding that the evidence of record failed to establish that the claimed conditions resulted from the "accepted" employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his 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, 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] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[5]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment.[6] As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.[7] The mere fact that a disease 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 disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[8]

ANALYSIS

The Office has accepted that the August 28, 2003 incident occurred as alleged. Appellant alleged that the conditions diagnosed upon examination, those of left elbow pain, epicondylitis and synovitis, and left wrist pain with synovitis, were causally related to the trash compactor

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling,* 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143 1145 (1989).

[3] *See Ronald K. White*, 37 ECAB 176, 178 (1985); *see also Gary J. Watling, supra* note 2.

[4] *Gary J. Watling, supra* note 2.

[5] *Id.*

[6] *John Polito*, 50 ECAB 347 (1999).

[7] *Claudia L. Yantis*, 48 ECAB 495 (1997); *Robert G. Morris,* 48 ECAB 238 (1996).

[8] *Id.*

incident where a coworker turned it on as appellant was reaching inside. However, he failed to provide sufficient rationalized medical evidence explaining this causal relationship.

Appellant submitted a dispensary permit by Dr. Grabhorn dated August 29, 2003, the day after the alleged incident, which diagnosed "left wrist" but which did not contain any opinion on causal relationship with factors of his federal employment. As the permit indicated that appellant could be returned to duty with certain activity restrictions for one week, it did not support his claim of disability for work and did not support that the condition found upon examination was causally related to a specific employment incident.

By report of the same date, Dr. Grabhorn reported the trash compactor incident history as given by appellant. Dr. Grabhorn described his clinical findings upon examination, but he did not offer any opinion on causal relationship with the reported employment incident. As Dr. Grabhorn did not provide an opinion on causal relationship with the accepted incident, this report is insufficient to establish appellant's claim.

A September 8, 2003 form report contained an illegible signature and is of no probative value as the identity of the preparer cannot be established as that of a physician.[9] Similarly, as the September 16 and October 9, 2003 reports of Dr. Poulos were unsigned, they too are of no probative value as the preparer cannot be identified as that of a physician.[10]

The September 16, 2003 Texas workers' compensation work status report signed by Dr. Poulos provided a date of injury of August 26, 2003, provided no detail of any causation of a work-related injury, and provided no diagnosis related to any work incident. Accordingly, it does not support any causal relationship between any conditions found and the accepted incident.

The Board finds that none of the medical reports of record provide a fully rationalized opinion by a physician as to the causal relationship of the diagnosed conditions with the accepted work incident involving the trash compactor. Appellant has failed to provide evidence sufficient to establish his injury claim.

CONCLUSION

Appellant has failed to meet his burden of proof to establish that his diagnosed conditions are causally related to the August 28, 2003 employment incident.

[9] *See Merton J. Sills,* 39 ECAB 572 (1988); *see also Bradford L. Sutherland*, 33 ECAB 1568 (1982).

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 4, 2004 is affirmed.

Issued: December 3, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member