United States Department of Labor
Employees' Compensation Appeals Board

ROLANDO K. BONDOC, Appellant	)	
and	)	**Docket No. 04-647**
	)	**Issued: June 10, 2004**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA, Employer	)	

Appearances:
Max Gest, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 12, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 14, 2003, which affirmed denial of appellant's claim on the grounds that he was unable to establish fact of injury. 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 occupational injury on or around July 27, 2002, causally related to factors of his federal employment.

FACTUAL HISTORY

On July 27, 2002 appellant, then a 55-year-old immigration inspector, filed an occupational disease claim alleging that he developed right finger, hand, arm and shoulder conditions, causally related to use of his right upper extremity performing repetitive motion activities related to his job. Appellant stated that stamping passports and all kinds of forms and

conducting inspections caused right-sided numbness, loss of strength and a pinched nerve in his right upper extremity, of which he became aware on July 25, 2002 and related it to his employment. Appellant stopped work on July 27, 2002 and did not return.

In a July 27, 2002 narrative statement, appellant claimed that sometime in July 2002, he began to feel minor aches and pains of muscles and joints in his right fingers, right wrist and right elbow and that he pinched a nerve going through his upper right shoulder. Appellant described the nature of his work as including using admissions stamps, a manual stapler, a computer keyboard, a passport reader machine and using a formica desk. He claimed that he had been doing inspections for 6 years, 90 percent of which were primary inspections examining or inspecting traveling passengers which required some sort of stamping of passports, customs declarations and two part I-94 forms. Appellant stated that every day he processed a minimum of 300 tourists, striking his stamps. He figured that the total number of strikes in 1 working day equaled about 1,200 strikes as 300 tourists required 4 stampings each.

In support of his claim appellant submitted a medical treatment progress note signed by a family nurse practitioner, but not cosigned by a physician. Two prescriptions signed by the nurse practitioner were also submitted.

By letter dated August 22, 2002, the Office requested further information regarding the factors of employment appellant implicated in the development of his condition and the resultant diagnoses.

Appellant also submitted a September 6, 2002 form report from Dr. Shad Groves, a chiropractor, who examined him and diagnosed radial nerve lesions of the upper limb, rotator cuff tendinitis of the shoulder, cervicobrachial syndrome and thoracic rib segment dysfunction. Dr. Groves noted that appellant had complaints of numbness in his right hand, pain in the right wrist, elbow, shoulder and neck and weakness of the right upper extremity. He treated appellant by cervical spine manipulation and decompression of the radial nerve. No subluxation was diagnosed.

In response to the Office's August 22, 2002 request appellant indicated that he had no relevant outside activities nor had he had significant right-sided orthopedic injuries in the preceding 30 years.

On September 23, 2002 the Office received a September 20, 2002 report from Dr. Groves which noted appellant's subjective complaints as including pain in his neck, right shoulder, elbow, forearm and wrist, with numbness and weakness in the extremity. He noted objective findings as including weak right triceps and wrist extension, loss of two point discrimination on the right dorsum of his arm, decreased range of motion of the second right rib and decreased range of motion of the C2 vertebra. Dr. Groves performed spinal manipulations and rib adjustments and "soft tissue rehabilitation," and he indicated that appellant could return to work on September 25, 2002.

In a letter dated November 6, 2002, the Office advised appellant that a chiropractor was not considered to be a physician under the Federal Employees' Compensation Act unless he

diagnosed a subluxation. It noted that Dr. Groves' services were reimbursable only to the extent that they consisted of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

By decision dated November 6, 2002, the Office rejected appellant's claim on the grounds that he was unable to establish fact of injury in his case. The Office indicated that appellant needed to be clear as to what employment factor caused his disability and that there must be a specific diagnosed condition that the medical evidence causally related to the employment factor implicated.

By letter dated November 18, 2002, appellant, through his representative, requested an oral hearing before an Office hearing representative on the rejection of his claim. In support of his request, appellant submitted a March 15, 2003 report from Dr. Groves which noted appellant's complaints of right-sided numbness, pain and weakness, noted the objective findings upon examination, which were multiple decreases in ranges of motion and noted that x-ray findings demonstrated cervical subluxations with retrolisthesis at C5-6, an anterolisthesis at C3-4 and thoracic subluxations noted with anterior wedging at T11-12 with multilevel osteophytic changes throughout the thoracic spine. Agenesis of the 12th left rib and right elbow osteophytic damage to the lateral epicondylar region were also noted. Dr. Groves recommended that appellant be allowed to wear an elbow brace to facilitate support of his elbow and he opined that appellant had minimal damage to his suprascapular nerve which innervated his supraspinatus and infraspinatus which provided stability for his shoulder, such that with repetitive strain appellant was subject to increased pain in his distal extremities.

Appellant also submitted a December 12, 2002, report from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, who noted that appellant reported carrying out extensive repetitive activities in the course of his employment for the employing establishment. Dr. Tauber noted that appellant was an inspector and carried out "extensive repetitive motion duties," but continued to have pain in his neck, right shoulder and right upper extremity. Dr. Tauber noted that appellant was tender at his cervical spine, along the suprascapular region of his right shoulder and the subacromial region and that he had positive impingement signs at his right shoulder. He noted that x-rays demonstrated a downsloping of the right acromion and degenerative disease at C5-6, that magnetic resonance imaging (MRI) scan demonstrated supraspinatus tendinisis and reactive bursitis, acromioclavicular degenerative disease and a downsloping acromion and degenerative changes of the glenohumeral joint and that record review suggested C5 radiculopathy versus suprascapular nerve involvement. Dr. Tauber noted that the MRI scan also showed central and foraminal stenosis at C5-6 and a central protrusion at C6-7 with central and right foraminal stenosis. He diagnosed cervical stenosis and radiculitis and right shoulder impingement syndrome with possible suprascapular nerve involvement. Dr. Tauber stated: "[Appellant] clearly has work-related conditions secondary to his repetitive motion duties which have aggravated his right shoulder and his underlying degenerative cervical spine."

On July 8, 2003 appellant changed his request to a review of the written record. By decision dated October 14, 2003, the Office hearing representative affirmed and modified the Office's decision dated November 6, 2002. The hearing representative found that Dr. Tauber

failed to include a statement or evidence that would indicated that he had any idea as to what repetitive motions or activities appellant performed in his job, how often they were performed or the duration of the performance of these activities and that without a clear understanding of appellant's actual work activities, his opinion on causal relation could not be well rationalized nor highly probative. The hearing representative changed the grounds for the Office's rejection of his claim and now found that the evidence identified specific conditions but did not demonstrate that appellant's conditions were causally related to factors of his employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of his or her 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]

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e*. "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e*. "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the 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 causal relationship, generally, is rationalized medical opinion

[1] 5 U.S.C. § 8101 *et seq.*

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e*., a physical impairment resulting in loss of wage-earning capacity. *See Prince E. Wallace*, 52 ECAB 357 (2001).

[4] *Solomen Polen*, 51 ECAB 341 (2000).

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 reasonable 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.[5] Medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim.[6] 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.[7]

To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[8] The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion.[9] The opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.[10]

Further, section 8101(2) of the Act[11] provides that the term "physician," as used therein, "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 and subject to regulation by the Secretary."[12] Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[13] Chiropractors constitute "physicians" under the Act only when providing treatment and opinions *within the scope of their practice as defined by State law*.[14] (Emphasis added.) Likewise, a nursing report is of no probative value in establishing fact

[5] *Calvin E. King*, 51 ECAB 394 (2000).

[6] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Annie L. Billingsley*, 50 ECAB 210 (1998).

[9] *Anna C. Leanza*, 48 ECAB 115 (1996).

[10] *See Manuel Gill*, 52 ECAB 282 (2001).

[11] 5 U.S.C. § 8101(2).

[12] *See* 20 C.F.R. §10.311.

[13] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[14] *Cheryl L. Veale*, 47 ECAB 607 (1996).

of injury, as opposed to the fact of incident occurrence, as the diagnosis of an injury is a medical determination and a nurse is not a physician under the Act.[15]

ANALYSIS

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged. Appellant has alleged that his stamping and other repetitive employment duties aggravated his right upper extremity condition. In support he submitted nurse's notes which have no probative value as a nurse is not a physician under the Act.[16] Appellant also submitted reports from his chiropractor, Dr. Groves. Initially, Dr. Groves offered diagnoses but did not take x-rays or diagnose a subluxation as demonstrated by x-ray to exist, in his two September 2002 reports. Therefore, the reports have no probative medical value in establishing appellant's claim. However, thereafter on March 15, 2003 Dr. Groves diagnosed cervical subluxations and retrolisthesis by x-ray. He diagnosed thoracic subluxations and noted anterior wedging at T11-12 with multilevel osteophytic changes throughout the thoracic spine. He also provided some nonspinal diagnoses including agenesis of the 12th rib, right elbow osteophytic damage to the lateral epicondylar region and minimal damage to his suprascapular nerve, but he did not discuss causal relation of the spinal subluxations or the other diagnosed conditions, or relate them to appellant's employment. In fact, Dr. Groves did not provide any opinion as to causation of his diagnosed spinal subluxations. His reports, therefore, are not medically probative on the issue of whether appellant sustained an occupational injury. Further, a chiropractor providing opinions as to conditions other than subluxations of the spine, is not considered to be a physician under the Act.[17]

Appellant also provided a detailed report from Dr. Tauber which noted that appellant developed right-sided pain in his neck, right shoulder and right upper extremity. The physician related the onset of these conditions to "extensive repetitive motion duties," but he did not discuss what these extensive duties were or how repetitive they were. He noted that appellant had a positive impingement sign at his right shoulder and noted that x-rays and an MRI scan demonstrated a downsloping right acromion, degenerative disease at C5-6 and supraspinatus tendinisis with reactive bursitis and acromioclavicular degenerative disease, foraminal stenosis at C5-6 and a central protrusiuon at C6-7 with central and right foraminal stenosis, but he opined that appellant had a work-related condition secondary to his repetitive motion duties without going into what the duties were or how repetitive they were or how long appellant had been performing them.

The Office found and the Board finds that Dr. Tauber's reports are not based on an accurate factual history, as he failed to provide a statement or evidence that would indicate that he had any idea as to what repetitive motions or activities appellant performed in his job, how

[15] *See Vicky L. Hannis*, 48 ECAB 538 (1997); *Joseph N. Fassi*, 42 ECAB 231 (1991); *Joseph . Bennett*, 38 ECAB 484 (1987).

[16] *Id.*

[17] *Jay K. Tomokiyo, supra* note 13.

often they were performed or their duration of performance. Without a clear understanding of appellant's actual work activities, the physician's opinion on causal relation was not well rationalized and was insufficient to establish appellant's claim. Accordingly, appellant has failed to establish his claim, as no other probative medical evidence identifying the activities performed and the conditions caused was submitted.

CONCLUSION

As appellant submitted insufficient medical evidence to establish that his condition was caused by employment factors, he did not meet his burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2003 be and is affirmed.

Issued: June 10, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member