United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
	)	**Docket No. 07-404**
and	)	**Issued: May 3, 2007**
	)	
DEPARTMENT OF AGRICULTURE, FSIS INSPECTION OPERATION PROGRAM, Wallula, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated June 15, 2006 which denied his claim for an occupational disease. He also appealed an August 23, 2006 decision which denied merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions.

ISSUES

The issues on appeal are: (1) whether appellant has met his burden of proof in establishing that he developed a ganglion cyst on his left wrist in the performance of duty; and (2) whether the Office properly denied his request for reconsideration.

FACTUAL HISTORY

On April 17, 2006 appellant, then a 53-year-old food inspector, filed an occupational disease claim alleging that he developed a ganglion cyst on his left wrist while performing work duties. He became aware of his condition on March 22, 2006. Appellant did not stop work.

Appellant submitted a statement indicating that his job as a meat inspector required him to perform repetitive duties using his left wrist. He developed a ganglion cyst on his left wrist and his physician recommended surgery to remove it. Appellant submitted an April 14, 2006 attending physician's report from Dr. Stanley Ling, a Board-certified internist, who diagnosed a ganglion cyst on the left dorsal wrist and indicated with a checkmark "yes" that the condition was caused or aggravated by employment activity.

By letter dated May 3, 2006, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. In a letter of the same date, the Office requested that the employing establishment address appellant's claim.

Appellant submitted a statement advising that he worked for the employing establishment since 1985 and his duties included inspecting organs of slaughtered cattle. He developed a ganglion cyst on his wrist with painful numbness in the area. Appellant submitted a report from Dr. Ling dated April 14, 2006, who noted that he presented with increased pain in his left wrist and diagnosed ganglion cyst. Dr. Ling indicated that a trial of decompression of the ganglion cyst was not successful and referred appellant to a surgeon. Appellant submitted a May 1, 2006 attending physician's report from Dr. David W. Fischer, a Board-certified orthopedist, who noted that appellant developed a left dorsal wrist mass on March 22, 2006. Dr. Fischer diagnosed ganglion cyst and noted with a checkmark "yes" that the condition was caused or aggravated by a work activity. He recommended an excisional biopsy of the ganglion cyst. In reports dated May 1 and 8, 2006, Dr. Fischer noted that appellant presented with a left wrist dorsal mass which developed on March 22, 2006. He advised that appellant would be off work pending authorization for surgery. On June 2, 2006 appellant reported to Dr. Fischer that he performed no activities outside of work which placed stress on his wrist. Dr. Fischer advised that appellant had been off work for one month with no improvement in his symptoms. He opined that "more probable than not" appellant's condition was related to his work and should be accepted by the Office as work related.

In a decision dated June 15, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by his employment duties.

On July 8, 2006 appellant requested reconsideration. He submitted a June 13, 2006 report from Dr. Fischer noting that he was awaiting surgical authorization. Appellant reported that any repetitive use of the wrist at work caused pain and asserted that none of his activities at home caused wrist irritation. In an operative report dated July 6, 2006, Dr. Fischer performed a repair of an acromioclavicular (AC) ligament and removed the left wrist mass.

By decision dated August 23, 2006, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions, nor included new and relevant evidence and was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act 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 the 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1]

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) factual statement identifying 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 claimant. The medical evidence required to establish causal relationship is generally 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 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.[2]

ANALYSIS -- ISSUE 1

It is not disputed that appellant's duties as a meat inspector included performing repetitive activities using his hands and arms. However, he has not submitted sufficient medical evidence to support that his left ganglion cyst of the wrist was caused by the implicated employment factors. On May 3, 2006 the Office advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted an April 14, 2006 attending physician's report from Dr. Ling who diagnosed ganglion cyst on the left dorsal wrist and indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity. However, the Board has held

[1] *Gary J. Watling*, 52 ECAB 357 (2001).

[2] *Solomon Polen*, 51 ECAB 341 (2000).

that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[3] In an April 14, 2006 note, Dr. Ling also noted that he presented with left wrist increased pain and diagnosed ganglion cyst. He recommended surgery. However, Dr. Ling did not provide a history of injury or provide a rationalized opinion regarding the causal relationship between appellant's diagnosed ganglion cyst and the factors of employment believed to have caused or contributed to such condition.[4] Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted an attending physician's report from Dr. Fischer dated May 1, 2006. Dr. Fischer noted that appellant developed a left dorsal wrist mass on March 22, 2006 and diagnosed ganglion cyst. He noted with a checkmark "yes" that the condition was caused or aggravated by a work activity and recommended an excisional biopsy of the mass. As noted, however, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[5] In reports dated May 1 and 8, 2006, Dr. Fischer noted that appellant presented with a left wrist dorsal mass which developed on March 22, 2006 and recommended an excisional biopsy of the soft tissue mass. On June 2, 2006 appellant reported that he performed no activities outside of work which placed stress on his wrist. Dr. Fischer opined that it was more probable than not that appellant's condition was related to his work and advised that it should be accepted as work related. Although he noted that it was "more probable than not" that appellant's condition was related to his work, he provided insufficient medical rationale to explain the basis for his conclusion. Dr. Fischer did not discuss how appellant's work duties would cause or contribute to the development of a ganglion cyst. Therefore, these reports are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[6] Appellant failed to submit such evidence and the Office, therefore, properly denied his claim for compensation.

[3] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

[4] *Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[5] *Lucrecia M. Nielson, supra* note 4.

[6] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[7] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,[8] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [Office] erroneously applied or interpreted a specific point of law; or
>
> (ii) Advances a relevant legal argument not previously considered by the (Office); or
>
> (iii) Constitutes relevant and pertinent new evidence not previously considered by [Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[9]

ANALYSIS -- ISSUE 2

Appellant's July 8, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted June 13 and July 6, 2006 reports from Dr. Fischer. In a report dated June 13, 2006, Dr. Fischer noted that appellant was awaiting authorization for a mass excision. Appellant reported that any repetitive use of his wrist at work caused pain and asserted that none of his activities at home would cause irritation of the left wrist. In an operative report dated July 6, 2006, Dr. Fischer performed a repair of an AC ligament and removal of the left wrist mass. However, these reports are not relevant as they do not address the issue of causal relationship and they are similar to Dr. Fischer's previously submitted reports which were considered by the Office in its decision dated June 15, 2006 and found deficient. Evidence that repeats or duplicates evidence already in the case record has no

[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.606(b).

[9] 20 C.F.R. § 10.608(b).

evidentiary value and does not constitute a basis for reopening a case.[10] Therefore, these reports are insufficient to require the Office to reopen the claim for a merit review.

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."[11] Consequently, appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2).

CONCLUSION

The Board, therefore, finds that, as medical evidence does not establish that appellant developed an employment-related injury in the performance of duty, he failed to meet his burden of proof. The Board further finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the August 23 and June 15, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 3, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[10] *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[11] 20 C.F.R. § 10.606(b).