United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 07-2443**
	)	**Issued: March 10, 2008**
U.S. POSTAL SERVICE, SCRANTON POST OFFICE, Scranton, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 September 27, 2007 appellant, through his attorney, filed an appeal from January 23 and March 15, 2007 merit decisions of the Office of Workers' Compensation Programs and an August 31, 2007 hearing representative's decision denying his claim for disability compensation. 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 was disabled from July 29, 2006 through April 22, 2007 due to his accepted employment injury.

FACTUAL HISTORY

On May 8, 2002 appellant, then a 41-year-old letter carrier, filed an occupational disease claim alleging that he sustained a ruptured disc in his neck due to factors of his federal employment. He became aware of his condition on October 2, 2001. The Office accepted the

claim, assigned file number 032008039, for neck sprain and displacement of a cervical intervertebral disc.[1] The Office authorized an anterior cervical fusion at C4-5 and C5-6.

Appellant returned to work with restrictions in July 2003. On June 23, 2006 he filed a recurrence of disability claim on June 15, 2006 causally related to an October 2001 injury.

On July 25, 2006 Dr. Kenneth W. Gentilezza, a Board-certified physiatrist, evaluated appellant for recurrent right arm and neck pain. He noted that a June 20, 2006 electromyogram (EMG) and nerve condition study (NCS) revealed right-sided active nerve root irritation and magnetic resonance imaging (MRI) scan studies showed progressive abnormalities. Dr. Gentilezza listed findings of a mildly positive Spurling's maneuver and restricted cervical movement. He related, "At this point it appears that [appellant] is having [a] recurrence of his previous neck injury which at the very least seems to have affected the C5-6 level and his problem with the C4-5 level in the past, but his examination, MRI scan findings, and EMG/NCS seems to indicate more of a C5-6 issue." Dr. Gentilezza opined that appellant could continue working with restrictions and referred him to Dr. Walter C. Peppelman, an osteopath, for a surgical consultation. In progress reports dated August and September 2006, Dr. Gentilezza found that appellant was totally disabled from employment.

In a report dated August 1, 2006, Dr. Samuel A. Valenti, a Board-certified internist, found intact sensation of the right upper extremity, decreased grip strength and mildly restricted cervical range of motion. He diagnosed right upper extremity paresthesia and increased cervical pain. Dr. Valenti opined that appellant should remain off work for the next two days.

On August 3, 2006 Dr. Peppelman discussed appellant's complaints of increased right shoulder pain, stabbing pain and weakness of the right arm and dysesthetic right hand movements. He noted that an MRI scan study revealed a disc bulge at C6-7 and an EMG revealed chronic C5-6 radiculopathy with mild acute nerve irritation. Dr. Peppelman was unable to diagnose the source of appellant's complaints and recommended conservative treatment.[2]

On October 6, 2006 the Office accepted that appellant sustained a recurrence of disability on June 15, 2006.[3] Appellant filed a claim for compensation beginning October 28, 2006.

An EMG obtained on October 9, 2006 revealed acute brachial plexopathy of the lower trunk of the right brachial plexus with "associated denervation and motor and sensory axon loss." In a report dated November 28, 2006, Dr. Gentilezza diagnosed C5-7 radiculopathy on the right side and brachial plexopathy on the right consistent with Parsonage Turner syndrome. He indicated that he was unfamiliar with appellant's previous work-related condition as he had only treated him since July 2006. Dr. Gentilezza stated, "It [is] my opinion with a reasonable degree

[1] Appellant has a claim accepted for a right shoulder condition in file number 03208732.

[2] On August 8, 2006 Dr. Gentilezza recommended epidural steroid injections at C5-6.

[3] On October 3, 2006 an Office medical adviser determined that the Office should not approve physical therapy for the right shoulder as appellant's pain may be due to his cervical spine condition. He noted that an MRI scan obtained April 7, 2004 revealed a stable fusion from C4 to C6 but a disc protrusion at C6-7.

of medical certainty that there has not been an aggravation of that previous condition but a recurrence of that previous condition for the most part." He asserted that the etiology of the brachial plexopathy and its relationship to appellant's work injury was unclear. Dr. Gentilezza found that appellant was currently unemployable due to his right upper extremity brachial plexopathy.[4]

By decision dated January 23, 2007, the Office denied appellant's claim for compensation from October 6 to November 24, 2006.

In a January 16, 2007 report, received by the Office on January 29, 2007, Dr. Gentilezza noted that the Office had accepted an anterior C4-5 and C5-6 cervical fusion as related to the employment injury. He was uncertain how appellant's Parsonage Turner syndrome was related to the 2001 work injury and noted that the diagnosis was not consistent with a fusion.

By decision dated March 15, 2007, the Office denied appellant's claim for compensation from December 9, 2006 to February 2, 2007.

On March 25, 2007 appellant, through counsel, requested an oral hearing. He submitted a March 6, 2007 report from Dr. Gentilezza who opined that appellant's condition was due to his accepted employment injury and constituted "a recurrence of that work injury and not a new event or work accident." Dr. Gentilezza based his conclusion on clinical findings and symptoms.

On April 17, 2007 Dr. Gentilezza noted that appellant continued to have left arm symptoms such that he was only capable of sedentary activity. He indicated that his right arm weakness had not progressed and that he was interested in resuming sedentary employment. Dr. Gentilezza reviewed the medical history and related that appellant's neck pain and arm symptoms never fully resolved following his cervical fusion at C4-5 and C5-6 in 2003. When appellant returned to work he attempted to carry his mailbag on his right shoulder but experienced radiating numbness and paresthesias through the right arm. Dr. Gentilezza noted that one EMG showed radiculopathy at C5-6 and another obtained a short time later revealed a brachial plexopathy at C5-6. He found that, based on appellant's history, repeated clinical examinations and MRI scan studies, he sustained a brachial plexus lesion at the time of his original work injury. Dr. Gentilezza opined that his brachial plexus lesion never resolved and that his wearing a mail sack on his right shoulder caused increased symptoms. He asserted:

> "Therefore, it makes most sense to me that as a result of his ongoing continuation of work as a mail carrier he has had a slow yet progressive recurrence of his October 2001 work injury that subsequently required surgery in 2003 at C4-5 and C5-6, but additionally likely had a brachial plexus lesion dating back to the 2001 injury as well that never improved and was only discovered as time [went] on. Thus, it is my opinion, with a reasonable degree of medical certainty that at this point in time [appellant's] impairment and disability is directly related to his 2001 work injury and seems to be most consistent with a recurrence of that injury.…"

[4] In a progress report dated November 28, 2006, Dr. Avner Griver, a Board-certified physiatrist, diagnosed right upper extremity pain and right hand pain with nerve intervention. He recommended pain medication.

Dr. Gentilezza diagnosed right arm and neck radiculopathy and right brachial plexopathy due to appellant's accepted employment injury. He noted that there may have been an aggravation of his condition due to his work as a mail handler subsequent to his surgery. Dr. Gentilezza released appellant for a trial of sedentary employment.

By decision dated August 31, 2007, the Office hearing representative affirmed the January 23 and March 15, 2007 decisions. She noted that appellant stopped work on July 29, 2006 and returned to work on April 23, 2007. Appellant used sick and annual leave until October 16, 2006. The hearing representative found that the medical evidence did not support a recurrence of disability as Dr. Gentilezza opined that appellant's condition may be due to work duties performed following his cervical fusion.

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act[5] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[6] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[7] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[8] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] 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.[11] The opinion of the physician must be based on a complete factual and medical background of the claimant,[12] must be one of reasonable medical certainty[13]

[5] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[6] *Sean O'Connell*, 56 ECAB 195 (2004).

[7] *Paul E. Thams*, 56 ECAB 503 (2005).

[8] *Id*.

[9] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[10] *John J. Montoya*, 54 ECAB 306 (2003).

[11] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[13] *John W. Montoya*, *supra* note 10.

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[15]

ANALYSIS

The Office accepted that appellant sustained neck sprain and displacement of a cervical intervertebral disc due to factors of his federal employment. He underwent an anterior cervical fusion at C4-5 and C5-6. Appellant returned to work with restrictions in July 2003. He filed a claim for compensation for total disability beginning October 6, 2006. At the hearing, appellant specified that he stopped work on July 29, 2006.

In a report dated July 25, 2006, Dr. Gentilezza noted that diagnostic tests showed active nerve root irritation on the right side and MRI scan studies showed progressive abnormalities. He diagnosed a recurrence of appellant's prior neck injury and opined that he could continue working with restrictions. In progress reports dated August and September 2006, Dr. Gentilezza found that appellant was totally disabled from employment.

In a report dated November 28, 2006, Dr. Gentilezza diagnosed C5-7 radiculopathy on the right side and brachial plexopathy on the right consistent with Parsonage Turner syndrome. He asserted that the etiology of the brachial plexopathy was uncertain. Dr. Gentilezza found that appellant was disabled from employment. On March 6, 2007 he attributed appellant's condition to his accepted employment injury rather than a "new event or work accident."

On April 17, 2007 Dr. Gentilezza opined that, based on appellant's history, repeated clinical examinations and MRI scan studies, he sustained a brachial plexus lesion at the time of his original work injury. He opined that the brachial plexus lesion did not resolve and that he sustained increased symptoms due to carrying his mail sack. Dr. Gentilezza diagnosed right arm and neck radiculopathy and right brachial plexopathy due to his accepted employment injury. He concluded that appellant's neck and right arm symptoms were a recurrence of his employment injury and the result of cumulative trauma from his employment duties.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[16] The Board finds that, although the reports of Dr. Gentilezza are insufficiently rationalized to meet appellant's burden of proof to establish that he sustained brachial plexopathy due to the accepted work factors, they stand uncontroverted in the record and raise an inference of causal

[14] *Judy C. Rogers*, 54 ECAB 693 (2003).

[15] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[16] *Phillip L. Barnes*, 55 ECAB 426 (2004).

relationship sufficient to require further development by the Office.[17] Accordingly, the Board finds that the case must be remanded to the Office. On remand, the Office should further develop the medical record to determine whether appellant's brachial plexopathy was related to his employment and, if so, any periods of disability. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 31, March 15 and January 23, 2007 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 10, 2008
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

[17] *Id*.