

By letter dated November 13, 2006, the Office requested additional factual and medical information, including a detailed medical report from his attending physician addressing the causal relationship between any diagnosed condition and the identified employment factors. Appellant submitted clinic notes from the employing establishment dated March 11, 1998 through October 25, 2005. The clinic notes established that he sustained an injury to his left hand in March 1998 and an injury to his left shoulder in April 1998. In June 1998, appellant injured a finger on his left hand. In a report dated May 10, 1999, Dr. Jeffrey T. DeHaan, a Board-certified orthopedic surgeon, noted that appellant had undergone rotator cuff surgery on the left arm. On March 13, 2000 a physician at the employing establishment's clinic indicated that he had surgery on his right wrist and also required a follow-up on his shoulder. On June 26, 2000 appellant received treatment at the clinic for an injury to a finger on his left hand. On August 25, 2003 he sought treatment at the employing establishment's clinic for a pulled right arm. Dr. Patricio Andres, who specializes in family practice, diagnosed a right biceps strain and found that appellant should work with restrictions for four days. On October 25, 2005 he provided follow-up care for the index finger of the left hand.

On November 9, 2005 George T. Lawless, a physician's assistant working for the employing establishment, treated appellant for a hand contusion sustained at work while using hand tools.

In a report dated January 25, 2006, Dr. Andres noted a history of "mid-joint swelling of [the] left index finger" and counseled him "regarding job hazards in accordance with job duties."

In a report dated October 16, 2006, Carroll E. McDonough, a physician's assistant, evaluated appellant for right and left arm pain after he used an air hammer and air gun. He diagnosed a right wrist and left upper limb sprain and noted that appellant sustained physical trauma at work. Mr. McDonough referred him to a medical officer.

By decision dated January 11, 2007, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish a diagnosed condition due to the identified employment factors. It noted that it had accepted that he sustained a traumatic injury to his shoulder in 1988 under file number xxxxxx986.

On January 10, 2007 Dr. DeHaan evaluated appellant for problems with his bilateral shoulders and upper extremities. He stated, "[Appellant] was working in Kuwait using his arms quite a bit and noticed that he started having quite a bit of difficulty with his arms, primarily with pain around the shoulder region, but also both his hands and arms going numb on him." Dr. DeHaan noted that appellant attributed his condition to his use of "whatever working devices he uses...." A handwritten note on the report indicated that appellant was using a jackhammer "and [the] vibration hurt him." Dr. DeHaan found that x-rays suggested "some rotator cuff pathology" and referred him for further diagnostic studies.¹

¹ On March 23, 2007 appellant underwent a diagnostic arthroscopy with labral debridement and a subacromial decompression of the right upper extremity. On August 9, 2007 Dr. Chris Alkire, a Board-certified orthopedic surgeon, provided follow-up care after a left carpal tunnel release.

On October 24, 2007 appellant requested reconsideration. By decision dated February 13, 2008, the Office modified its January 11, 2007 decision to reflect that he established fact of injury but denied the claim as the medical evidence failed to show causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 filed within the applicable time limitation; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing 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.⁷

The medical evidence required to establish causal relationship generally is 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the

² 5 U.S.C. §§ 8101-8193.

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

Appellant attributed his bilateral arm condition to working with a jackhammer in the course of his federal employment. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.¹²

Appellant submitted notes from the employing establishment's clinic dated 1998 to 2005. The clinic notes support that he sustained various traumatic injuries but fail to address the relevant issue of whether he sustained a bilateral arm condition due to the identified work factors.

Mr. Lawless, a physician's assistant, treated appellant on November 9, 2005 for a hand contusion. On October 16, 2006 Mr. McDonough, a physician's assistant, evaluated appellant for right and left arm pain after using an air hammer and air gun. The reports of a physician's assistant are entitled to no medical weight as a physician's assistant is not a "physician" as defined by section 8101(2) of the Act.¹³

On January 10, 2007 Dr. DeHaan evaluated appellant for problems with his bilateral shoulders and upper extremities. He stated, "[Appellant] was working in Kuwait using his arms quite a bit and noticed that he started having quite a bit of difficulty with his arms, primarily with pain around the shoulder region, but also both his hands and arms going numb on him." Dr. DeHaan noted that he attributed his condition to his use of "whatever working devices he uses...." A note on the report indicated that appellant used a jackhammer and was injured from the vibration. Dr. DeHaan did not, however, provide a diagnosis or specifically relate appellant's bilateral arm symptoms to the identified employment factor of using a jackhammer while working for the employing establishment. Without a firm diagnosis and an opinion on causal relationship supported by medical rationale, his report is of little probative value.¹⁴

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² In its February 13, 2008 decision, the Office indicated that it was modifying its prior decision to show that appellant had established fact of injury but not a causal relationship between the diagnosed condition and work factors. The Board notes, however, that to establish fact of injury in an occupational disease claim appellant must show that he experienced the identified employment factors and that the factors resulted in a diagnosed condition. See *Gregory J. Reser*, 57 ECAB 277 (2005).

¹³ See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁴ See *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹⁵ Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁶ He failed to submit such evidence and therefore failed to discharge his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a bilateral arm condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2008 is affirmed.

Issued: April 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁶ *Robert Broome*, 55 ECAB 339 (2004).