United States Department of Labor
Employees' Compensation Appeals Board

H.B., Appellant	)	
and	)	**Docket No. 09-351**
	)	**Issued: August 26, 2009**
U.S. POSTAL SERVICE, IRVING PARK ROAD P & DC, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 17, 2008 appellant, through counsel, filed a timely appeal from an October 6, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review that affirmed a March 12, 2008 decision denying his claim. 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 established a recurrence of disability on March 1, 2007 causally related to his accepted injury.

FACTUAL HISTORY

On January 20, 2005 appellant, a 50-year-old postal services maintenance laborer custodian, filed an occupational disease claim (Form CA-2) for fusion of his right little finger. He alleged that he first became aware of his condition and its relation to his federal employment on December 13, 2004. Appellant submitted medical evidence in support of his claim, and by

decision dated May 2, 2005, the Office accepted joint contracture in his right hand. He underwent treatment and received compensation.

On February 11, 2008 appellant filed a recurrence claim (Form CA-2a) alleging that on March 1, 2007 his accepted condition caused a recurrence of disability. He alleged that the pins which were surgically implanted in his finger for the accepted condition had contracted. Appellant attributed his recurrence of disability to using brooms and mops. He alleged that a pin had been removed because, while using a dust mop, the pin was bent loose. Appellant stopped work on March 1, 2007. The employing establishment controverted appellant's claim.

In a March 7, 2007 note from the Veterans Administration Chicago Health Care System,[1] a physician noted that appellant had recovered from his right hand injury and could return to work on March 7, 2007.

Appellant submitted a September 5, 2007 note signed by Dr. Emerito Cortez Natanawan, a Board-certified internist, who reported that appellant had been under his care and recommended light duty, left-hand work only, until October 16, 2007.

By report dated October 31, 2007, Dr. John D. Sonnenberg, a Board-certified orthopedic surgeon, stated that appellant sustained an injury for which he had a Hunter tendon rod implanted in his right fifth finger. He reported that this deteriorated quickly, and he was seen by Dr. Daniel Mass, a Board-certified orthopedic surgeon, who opined that the type of work appellant was doing caused his condition. Dr. Mass performed surgery to salvage the failed tendon rod and graft in 2005. He also performed a fusion of the right 5th proximal interphalangeal (PIP) and distal interphalangeal (DIP) joints. Dr. Sonnenberg also noted that, because of the type of work appellant did, grasping small objects had become very difficult, to the point that appellant believed his finger was contracting down more. Examination of the right fifth finger revealed fused PIP and DIP joints. Dr. Sonnenberg observed tenderness over the dorsal aspect of the middle phalanx of the right fifth finger, but there was no dramatic swelling over this area. He observed that appellant had gripping ability but could not flex at the metacarpophalangeal (MCP) joint of the fifth finger. X-rays taken in August revealed that the pin from the PIP joint had been removed completely, but that there was an adequate fusion of the PIP joint. The pin from the DIP joint was still in place, and the DIP joint was solid. Dr. Sonnenberg reported that he took x-rays which revealed an adequate fusion of the PIP joint of the right fifth finger and the DIP joint looked fused, but that the pin, an Acutrack screw, was still in place. He observed no evidence that this screw was cutting out. Dr. Sonnenberg opined that the sensation appellant was feeling was due to stretching of the soft tissues when he tried to grip small diameter objects such as a mop or a broom. He opined that the solution was to restrict appellant to gripping larger diameter objects or to place a diameter extender on his mops and brooms. Dr. Sonnenberg opined that appellant did not need any further care at this time and no surgical intervention was necessary.

Appellant also submitted two January 7, 2008 notes signed by Dr. Harold T. Pye prescribing Celebrex and reporting that appellant had sufficiently recovered and could return to work with restrictions. In a January 7, 2008 attending physician's report (Form CA-20), Dr. Pye noted appellant's medical history included a fracture with flexion tendon injuries to his small

[1] The physician's signature is illegible but appears to be JLR Mel.

right finger while working as a custodian at work. He stated a diagnosis of aggravation of the right small finger flexion contracture. Dr. Pye checked the "yes" box, that the condition was related to his employment activities. He also checked the "yes" box that he had advised appellant that he could return to work. Dr. Pye indicated that appellant had been partially disabled from May 7, 2007 until January 30, 2008.

By decision dated March 12, 2008, the Office denied appellant's recurrence claim because the evidence of record did not establish that his claimed disability beginning March 1, 2007 was due to his accepted injury.

Appellant disagreed and requested an oral hearing. A hearing was conducted on July 16, 2008 and appellant was present. Appellant testified that in May 2004 he underwent surgery that implanted pins designed to fuse the bones in his finger. He testified that, after the fusion, it was straight and could not be bent. Appellant testified that when he returned to work he made them aware of his condition and he suggested that they get him a specially made grip for the broom that was larger and easier on his hand. He testified that his supervisor knew he was not supposed to be performing work duties requiring the grasping of anything skinny because of the pins that he had implanted in each joint of his finger. Appellant alleged that when he returned to work he was assigned to moving boxed objects and, using a broom, sweeping a 50- to 75-foot diameter area. He alleged that the sweeping jarred loose the pins in his finger. In March 2005, appellant alleged that his physician had to surgically remove the implanted pins because they had contracted. One of the pins could not be removed because it had fused to the surrounding bone.

Appellant testified that the remaining pin is the source of his problem. He alleged that gripping a broom placed pressure on this pin and produced inflammation and swelling. Appellant alleged that he experienced very serious problems with swelling for a long time and notified his supervisor of this condition. He alleged that his supervisor kept assigning him to the same detail. Appellant asserted that the employing establishment should have offered him a different job or put him in a field where he did not have to use his hand or perform tasks requiring him to squeeze his hand.

The employing establishment terminated appellant's employment effective May 6, 2005. Appellant testified that his termination was the result of a disciplinary action taken by the employing establishment for missing work. He testified that he went back to work for the employing establishment in January 2007.

Appellant submitted no additional evidence in support of his claim, and by decision dated October 6, 2008, the hearing representative affirmed the Office's March 12, 2008 decision.[2]

[2] On appeal, appellant submitted additional medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision). As this evidence was not part of the record when the Office issued either of its previous decisions, the Board may not consider it for the first time as part of appellant's appeal.

LEGAL PRECEDENT

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[3] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[4] Where no such rationale is present, medical evidence is of diminished probative value.[5]

ANALYSIS

Appellant claimed a recurrence of disability commencing March 1, 2007. The Board finds the evidence of record insufficient to accomplish this task and, therefore, appellant has not established that his March 1, 2007 disability is causally related to his December 13, 2004 accepted injury.

The most contemporaneous medical evidence submitted was a March 7, 2007 note from the Chicago Veterans Administration Health Center which indicated that appellant had recovered from his right hand injury and could return to work as of the date of the examination, March 7, 2007. This note did not indicate that appellant had been disabled commencing March 1, 2007 and was silent as to any specific period of disability.

The relevant medical evidence included medical notes signed by Drs. Sonnenburg, Pye and Natanawan. Taken together, the medical notes and reports signed by these physicians are of limited probative value because they proffered no opinion concerning the causal relationship between appellant's alleged disability and his December 13, 2004 accepted injury. The Board has consistently held that medical reports and notes lacking an opinion on causal relationship are of limited probative value.[6]

In his October 31, 2007 report, Dr. Sonnenburg provided an extensive history of appellant's right hand injury, but he did not address whether appellant had been disabled due to this condition as of March 1, 2007.

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[3] *R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008)*; Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[5] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[6] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

Because Dr. Pye's January 7, 2008 notes, which reported that appellant had sufficiently recovered and could return to work with restrictions, proffered no opinion concerning appellant's period of disability and causal relationship, they are of limited probative value.

In his January 7, 2008 report, Dr. Pye proffered a diagnosis and checked a box "yes" on causal relationship. This is not sufficient because he did not provide any history of injury or medical rationale to support his opinion on causal relationship. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[7] Therefore, Dr. Pye's report is of limited probative value.

Dr. Natanawan, in his September 5, 2007 note, reported that appellant had been under his care and recommended appellant for light duty, left-hand work only, until October 16, 2007. However, he did not provide any explanation regarding the cause of the condition or disability or relate it in any way to the December 13, 2004 employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[8] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[10] The record in this case does not contain medical evidence establishing that he is disabled. Also missing from the record is a medical report containing a rationalized medical opinion that appellant's claimed recurrence of disability was caused by the accepted injury.[11] As he did not submit sufficient medical evidence, he did not meet his burden of proof to establish that he sustained a recurrence of disability. The Office properly denied appellant's claim.[12]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on March 1, 2007 causally related to his accepted injury.

[7] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[8] *Tammy L. Medley*, 55 ECAB 182 (2003).

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

[10] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979). *See also Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[11] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[12] *Tammy L. Medley*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the October 6 and March 12, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 26, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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