United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 10-374**
	)	**Issued: August 17, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 23, 2009 appellant filed a timely appeal from an October 20, 2009 merit decision denying modification of an August 3, 2009 merit decision that denied 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 that he sustained an injury in the performance of duty on October 1, 2008, causally related to his employment.

FACTUAL HISTORY

On June 17, 2009 appellant, a 47-year-old maintenance operations supervisor, filed a traumatic injury claim (Form CA-1) for "chronic bronchitis/emphysema," chronic obstructed restricted pulmonary disease (COPD), as well as a "clogged and damaged brachial passage." He attributed his condition to an October 1, 2008 incident when, while on the workroom floor, he was "exposed [to an] unknown substance." In a supplemental statement dated October 1, 2008,

appellant stated that he experienced an "irritated scratchy throat" and "some involuntary coughing."

Appellant submitted statements from coworkers and a report from a fire department's hazardous materials response team. These statements and reports indicated that a suspicious package was found at the employing establishment. Several individuals noted odors emitting from the package. The hazmat team inspected the package, but found that the contents consisted of rocks.

By decision dated August 3, 2009, the Office denied the claim because the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed injury.

On September 21, 2009 the Office received several medical reports from June 2009 medical evaluations. In a June 8, 2009 report, Dr. Joyce Shotwell, a Board-certified internist, noted that appellant was seen for follow up of his COPD. She noted that appellant had increasing shortness of breath, which had caused him to be off work. Dr. Shotwell noted that appellant was going to apply for VA and social security disability. Appellant's diagnoses were stated as: shortness of breath, cough, obstructive sleep apnea, tobacco use disorder, allergic rhinitis and obstructive chronic bronchitis. On June 12, 2009 Dr. Shotwell presented findings on examination and reported that a computerized axial tomography (CAT) scan of appellant's chest revealed no abnormality. By report dated June 12, 2009, Dr. Aathi Sankaran, a radiologist, diagnosed two nodular densities in appellant's right lung and a liver lesion.

Appellant submitted a statement from Dorrine Moore, nurse practioner, dated June 8, 2009 and additional statements from coworkers concerning the October 1, 2008 incident.

By decision dated October 20, 2009, the Office denied modification. It found that the medical evidence of record did not establish that appellant had sustained an injury causally related to the October 1, 2008 work-related incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[2] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[3] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[4] The weight

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[3] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[8]

ANALYSIS

The Office accepted that the October 1, 2008 employment incident occurred as alleged. Appellant's burden is to demonstrate that the established employment incident caused a medically-diagnosed injury. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence and thus lay opinion is not relevant.[9] The medical opinion evidence of record lacks the requisite reasoning to establish the causal relationship between appellant's condition and the identified employment incident. Accordingly, the Board finds appellant has not established that on October 1, 2008 he sustained an injury in the performance of duty causally related to his employment.

The medical opinion evidence of record consists of reports signed by Drs. Sankaran and Shotwell. These reports have little probative value on the issue of causal relationship because they lack an opinion explaining how the established employment incident caused a medically-

[5] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[7] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[8] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] 5 U.S.C. § 8101(2). *See Sheila Arbour* (*Victor E. Arbour*), 43 ECAB 779 (1992).

diagnosed injury.[10] Dr. Sankaran, a radiologist merely reported that appellant had nodular densities in his right lung. She offered no opinion regarding the cause of this condition. Dr. Shotwell reported that appellant was being followed for COPD, and that he had presented in June 2009 with shortness of breath, cough, sleep apnea, tobacco use disorder, allergic rhinitis and obstructive bronchitis. She also noted that appellant was unable to work due to increasing difficulty with breathing. Dr. Shotwell, however, did not causally relate any of appellant's diagnosed conditions or symptoms to the accepted employment incident. She in fact did not mention the accepted incident in appellant's history of injury. Thus, this evidence does not establish the causal relationship between the established employment incident and appellant's alleged condition.

An award of compensation may not be based on surmise, conjecture or speculation.[11] Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[12] The fact that a condition manifests itself or worsens during a period of employment[13] or that work activities produce symptoms revelatory of an underlying condition[14] does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the accepted employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

On appeal, appellant argues that the box of rocks had a note inside and that should have been the focus of the investigation. The incident has been accepted, however, so that argument is not relevant to the determination of whether the accepted incident caused a diagnosed condition.

Further, appellant argues that, although Ms. Moore was not a physician, all of her actions were approved or overseen by Dr. Shotwell. Nonetheless, the statute is very specific under 5 U.S.C. § 8101(2), as to what qualifies as a physician: "(2) 'physician' includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." As Ms. Moore is not a physician, her report is of no probative value.

[10] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[11] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[12] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[13] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[14] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

CONCLUSION

The Board finds appellant has not established that he sustained an injury in the performance of duty on October 1, 2008 causally related to his employment

ORDER

IT IS HEREBY ORDERED THAT the October 20 and August 3, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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