United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 09-1995**
	)	**Issued: May 11, 2010**
DEPARTMENT OF THE ARMY, CPAC-FORT MEYER, Fort Meyer, VA, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 3, 2009 appellant filed a timely appeal from a June 17, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on October 18, 2008 causally related to his employment.

FACTUAL HISTORY

On October 21, 2008 appellant, a 55-year-old fire protection inspector, filed a traumatic injury claim (Form CA-1) alleging that, on October 18, 2008, while working as the dispatcher in the fire department's watch office, he experienced chest pains, which he attributes to a heart

[1] An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e).

attack. He stated that on the day in question he experienced chest pain after he lifted several children on and off a fire truck and rushed to answer telephone calls.

Following admission to the hospital on October 18, 2008 Dr. Antonio R. Parente, a Board-certified internist, reviewed appellant's medical history, presented findings on examination and diagnosed ST elevation myocardial infarction, coronary artery disease, hyperlipidemia, diabetes mellitus and morbid obesity. He noted in his history section that appellant had a long history of coronary artery disease, dyslipidemia and diabetes who had undergone three-vessel bypass surgery in 1992. Dr. Parente also stated that appellant had been doing well until he experienced substernal chest pain with shortness of breath an hour and a half prior to admission.

On October 18, 2008 Dr. Kimberlee Overdeck, a Board-certified diagnostic radiologist, reported that a portable chest anteroposterior radiograph revealed hypoventiatory changes without acute cardiopulmonary disease. Appellant sought treatment from Dr. John W. Rhee, a Board-certified general surgeon, who, in an October 18, 2008 report, reviewed appellant's medical history, presented findings on examination and diagnosed ST elevation myocardial infarction, coronary artery disease, obesity, noninsulin-dependent diabetes, elevated cholesterol, hypertension and premature ventricular complexes.

On October 18, 2008 Dr. Parente diagnosed three-vessel coronary artery disease with degeneration of both vein grafts. He noted that appellant has a history of coronary disease for which, in 1992, he underwent a three-vessel bypass surgery. Appellant underwent percutaneous coronary intervention of the saphenous vein graft on his right coronary artery using a drug eluding stent.

Appellant underwent additional cardiac-related medical treatment, including a sternotomy and cardiac artery bypass graft, performed October 22, 2008 by Dr. Rhee. On October 22, 2008 Dr. Claude Raphael, a Board-certified diagnostic radiologist, reported that a frontal chest radiograph revealed no significant changes to appellant's heart or lungs. Dr. John Vance, a diagnostic radiologist, reported that a portable chest radiograph revealed hypoinflation of appellant's lungs, cardiomegaly with pulmonary congestion and left pleural effusion layered posteriorly.

On October 23, 2008 Dr. Frederick Schwab, a Board-certified diagnostic radiologist, reported that a portable chest radiograph revealed cardiomegaly, congestive heart failure and possible pleural effusion.

Appellant submitted reports concerning additional diagnostic tests. On October 28, 2008 Dr. John R. Garrett, a Board-certified general surgeon, diagnosed coronary heart disease.

Appellant submitted a report (Form CA-17), dated November 10, 2008, in which Dr. Garrett released him to light-duty work as of December 4, 2008 and provided specific restrictions. Dr. Garrett opined that appellant could return to full-duty work as of January 22, 2009.

By decision dated December 4, 2008, the Office denied the claim, finding that the evidence of record did not demonstrate that the established employment-related event caused appellant's cardiac condition.

On January 2, 2009 appellant requested an oral hearing.

Appellant submitted a May 2, 2009 note, in which Bruce D. Surette, Assistant Fire Chief, related that, on October 18, 2008, appellant, while working as the station's dispatch office, suffered "what they have said to be a mild heart attack." A family came to the station and appellant showed them the station's trucks and some of its equipment. Assistant Chief Surette reported that appellant told him that he began experiencing chest pains after lifting one of the family's children in and out of the trucks.

Appellant submitted articles concerning heart conditions and cardiac issues in firefighters. In an undated note, he described the events of October 18, 2008. Appellant noted that his chest pains subsided, to a degree, after resting for a period, after he lifted children on and off a fire truck. As he rushed to answer the telephone in the dispatch office, he again experienced chest pains, though this time they were stronger.

By decision dated June 17, 2009, the Office, affirming its December 4, 2008 decision, found that the evidence of record did not demonstrate that appellant's cardiac condition was causally related to the identified employment incident.[2]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[4] 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.[5] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the

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[2] Appellant submitted additional evidence on appeal. 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).

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P. supra* note 1; *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

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

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

care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

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.[8] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

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.[10]

ANALYSIS

The Office hearing representative accepted that on October 18, 2008 appellant was working in the fire department's dispatch office and that he experienced chest pain while lifting children on and off a fire truck and while rushing to answer to a telephone. Appellant's burden is to demonstrate that the identified employment incidents caused a medically-diagnosed condition or injury. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence. As noted above, rationalized medical opinion evidence is evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[11] Appellant has not submitted sufficient medical opinion evidence and therefore the Board finds

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

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

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

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

[11] *Id.*

that he has not established that he sustained an injury in the performance of duty on October 18, 2008 causally related to his employment.[12]

Appellant submitted no probative medical opinion evidence causally relating his cardiac condition to the October 18, 2008 employment incident. Internet research, newspaper clippings, medical texts, excerpts from publications and the like are, at best, of general application and have no evidentiary value in establishing the causal relationship in his claim to workers' compensation benefits.[13] Appellant must submit a well-reasoned opinion from a physician addressing his particular circumstances. The physicians of record diagnosed several cardiac conditions and described and document his course of treatment. However, none associated appellant's medical condition with the identified October 18, 2008 employment incidents.

On appeal, appellant argues that Dr. Parente's reports establish that performance of his duties as a fire fighter on October 18, 2008 caused his heart attack. While Dr. Parente reports that appellant's chest pains and shortness of breath developed an hour and a half prior to his admission to the hospital on October 18, 2008, his opinion is not sufficiently rationalized such that it establishes the requisite causal relationship. As noted above, a rationalized medical opinion 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.[14] Dr. Parente did not describe the events of October 18, 2008 or explain how these incidents caused appellant his current cardiac condition, given his longstanding history of coronary artery disease. Because he did not explain the nature of the relationship between appellant's cardiac condition and the events of October 18, 2008, his opinion has little probative value on the issue of causal relationship and his reports are insufficient to establish appellant's claim.[15]

Because appellant has failed to submit a well-reasoned medical opinion establishing a causal relationship between what happened on October 18, 2008 and his medically-diagnosed cardiac condition, the Board finds that he has not met his burden of proof. The Board will therefore affirm the Office's June 17, 2009 decision affirming the denial of his claim for compensation.

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[12] Appellant submitted reports signed by a nurse practioner. Because healthcare providers such as nurses, acupuncturists, physicians assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence for purposes of determining disability or entitlement to benefits. *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[13] *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

[14] *Supra* note 10.

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

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on October 18, 2008 causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board