United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant **and** **DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, Employer**	))))))))	**Docket No. 11-1712** **Issued: March 1, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2011 appellant filed a timely appeal from March 3 and June 27, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] and 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 sustained an injury in the performance of duty.

FACTUAL HISTORY

On September 23, 2009 appellant, then a 46-year-old heavy mobile equipment mechanic, filed an occupational disease claim alleging that he developed neck and shoulder problems due to repetitive use of heavy equipment. He submitted a job description for his position as a heavy mobile equipment mechanic.

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[1] 5 U.S.C. § 8101 *et seq.*

The record contains the last page of a January 12, 2009 report from Dr. Austin W. Gleason, a Board-certified orthopedic surgeon. Examination revealed good range of motion in the neck (approximately 60 percent of normal) and "some stiffness-with-the extremes." Range of motion in the back was about 50 percent of normal, with some pain with extremes of motion. Neurological examination reflected 1+ equal and symmetrical reflexes at the triceps, biceps and brachioradialis bilaterally, with a mild positive Tinel's sign over the right elbow over the ulnar nerve. Appellant described numbness down into his right hand that was localized over the dorsum of the hand. X-rays of the cervical spine and of the upper thoracic revealed some moderate degenerative disc changes at C5-6. There was no evidence of instability. X-rays of the thoracic spine appeared to be normal for a 46-year-old. X-rays of the lumbar spine revealed postoperative changes on the right at L4-5 with grade 1 degenerative spondylolisthesis at that level and degenerative disc changes at T11-12. An electromyogram/nerve conduction study (EMG-NCS) performed on that date by Dr. David Adams, a Board-certified physiatrist, revealed some moderate tardy ulnar nerve palsy changes in the right hand and upper extremity.[2] A magnetic resonance imaging (MRI) scan of the cervical spine revealed a degenerative disc at C5-6 with no evidence of spinal stenosis. Dr. Gleason diagnosed chronic back syndrome, postoperative discectomy L4-5; degenerative spondylolisthesis at L4-5; mild degenerative disc disease at C5-6; and tardy ulnar nerve palsy on the right. He recommended against surgery.

In a January 12, 2009 report, Dr. Adams reviewed a history of injury and treatment, noting a several-month history of severe pain beginning in appellant's hand and shooting up his right upper extremity and into his shoulder. Appellant noted numbness of the right small fingers and numbness of his entire right lower extremities when driving. On examination, motor strength was 5/5 in both upper extremities, except for pain-inhibited weakness about the right shoulder. Sensation was decreased with pinprick in the right small finger. Electrodiagnostic examination revealed localized neuropathy of the right ulnar nerve across the elbow, moderate. There was no electrodiagnostic evidence of radiculopathy or carpal tunnel syndrome in the right upper extremity.

On September 28, 2009 Ann Harman, an injury compensation program administrator for the employing establishment, controverted appellant's claim contending that he had not submitted sufficient medical evidence to establish a causal relationship between factors of employment and his claimed medical condition. She noted that he had undergone surgery earlier in the year but had not advised his employer that it was work related.

Appellant submitted a November 18, 2009 report of an MRI scan of the cervical spine from Dr. William R. Brown, a Board-certified radiologist. Findings included a small to moderate peterolateral extradural defect encroaching on nerve root canal and anterior lateral ventral thecal sac consistent with bony spurring or possible disc prolapse.

On October 26, 2009 OWCP requested additional evidence, including a comprehensive medical report containing a diagnosis, description of symptoms, the results of examinations and tests and medical rationale explaining how appellant's diagnosed condition was causally related to specific factors of his employment.

[2] The record contains a January 12, 2009 report of an EMG/NCS performed by Dr. Adams.

By decision dated December 22, 2009, OWCP denied appellant's claim. It found that the evidence supported that the employment exposures occurred as alleged, but denied the claim on the grounds that the medical evidence was insufficient to establish that he sustained a cervical or upper extremity condition as a result of established employment activities.

On July 13, 2010 appellant requested reconsideration.

The record contains a June 3, 2010 letter from the Social Security Administration reflecting its denial of appellant's claim for disability compensation. It found that his back and shoulder conditions were not severe enough to disable him from work.

In a decision dated October 14, 2010, OWCP found that appellant had failed to establish a causal relationship between the established work events and his claimed conditions.

In a January 15, 2010 letter, the Office of Personnel Management found that appellant was disabled from his position as heavy mobile equipment operator due to his chronic back syndrome and ulnar nerve palsy conditions.

On February 18, 2011 appellant again requested reconsideration.

Appellant submitted a February 8, 2011 report from Dr. E. Timothy Kelley, a Board-certified orthopedic surgeon, who noted that appellant retired on disability from his position as a heavy mobile equipment mechanic because of chronic back pain, chronic neck pain and an "apparent" work-related shoulder injury which occurred on February 2, 2009. Due to the February 2, 2009 injury, he had recurrent pain in the neck and shoulder, which rendered him unable to perform his duties as a heavy mobile equipment mechanic.

By decision dated March 3, 2011, OWCP denied modification of its prior decisions, finding that there was no rationalized medical evidence of record supporting a causal relationship between appellant's federal employment and his claimed conditions.

The record contains a copy of a letter from Dr. Kelley reflecting that he was terminating his treatment of appellant due to inappropriate conduct in his offices. He stated that he provided appellant with an authorization to release medical records, which he was asked to complete and return.

On May 2, 2011 appellant requested reconsideration of the March 3, 2011 decision.

In a February 2, 2009 progress report, Dr. Gleason related appellant's continued symptoms of right shoulder pain, as well as pain, numbness and tingling from his elbow ulnar aspect all the way down to his 4th and 5th fingers, which he described as classical for a tardy ulnar nerve palsy diagnosis. On examination of the shoulder, appellant had pain in passive and active rotator abduction and external rotation. He showed a decreased sensation over the ulnar nerve distribution out into the right fingers. Appellant had a positive Tinel's sign over the ulnar nerve at the elbow on the right. Dr. Gleason diagnosed rotator cuff syndrome of the right shoulder and recommended a right shoulder MRI scan.

In an April 25, 2011 report, Dr. David B. Morris, a Board-certified family practitioner, stated that he treated appellant at Ellington Memorial Clinic until 14 months ago, when he stopped work at the clinic. He noted that appellant was currently retired and unable to work due to an injury he sustained at work in 2009 with a pneumatic air gun, which caused him to experience acute shoulder pain. Dr. Morris did not currently have access to appellant's medical records.

In an undated statement, appellant indicated that, on February 2, 2009 he was working on a starter, using a pneumatic air gun or wrench when he heard his shoulder pop. He stated that Dr. Morris did not have access to his medical records because the clinic will not release them.

On May 31, 2011 appellant stated that he had reported the February 2, 2009 shoulder injury to Dr. Morris and described his work history for the previous seven years. He was treated by Dr. Gleason and Dr. Bundrick, who reportedly performed shoulder surgery on July 30, 2009 for tendi and impingement syndrome of the right shoulder.[3] Appellant stated that he was unable to obtain his medical records from Atlantic clinic.

The record contains the first page of a January 12, 2009 report from Dr. Gleason, who provided a description of appellant's job duties as related by his patient. Appellant's duties reportedly required him to prepare boxes weighing up to 85 pounds to be lifted by cranes and to look up and down constantly for 10 to 12 hours a day. He reported that he had back surgery in 2002; however, he has no records to verify the surgery. On examination of the cervical spine, appellant exhibited pain at the right and left paraspinals with some radiation down into the upper thoracic region, posterior midline.

By decision dated June 27, 2011, OWCP denied modification of its March 3, 2011 decision on the grounds that the medical evidence of record was insufficient to establish a causal relationship between appellant's federal employment and his diagnosed conditions.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[4] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical 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

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[3] The record does not contain any medical reports relating to appellant's shoulder surgery.

[4] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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.[5]

An award of compensation may not be based on surmise, conjecture or speculation. 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.[6]

ANALYSIS

OWCP accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace events occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment activities caused an injury. The Board finds that the medical evidence of record is insufficient to establish a causal relationship between the established employment activities and a diagnosed condition.

On January 12, 2009 Dr. Gleason provided examination findings and diagnosed chronic back syndrome, postoperative discectomy L4-5; degenerative spondylolisthesis at L4-5; mild degenerative disc disease at C5-6; and tardy ulnar nerve palsy on the right. He described appellant's job duties as related by his patient, noting that he had reportedly undergone back surgery in 2002. Dr. Gleason did not, however, provide any opinion as to the cause of appellant's diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7]

On February 2, 2009 Dr. Gleason provided examination findings, which included pain in passive and active rotator abduction and external rotation of the right shoulder, as well as decreased sensation over the ulnar nerve distribution out into the right fingers and a positive Tinel's sign over the ulnar nerve at the elbow on the right. He diagnosed rotator cuff syndrome of the right shoulder and tardy ulnar nerve palsy on the right. As Dr. Gleason's report does not contain a discussion of appellant's employment duties as they relate to his diagnosed conditions or an opinion on the cause of those conditions, it is of limited probative value.

In a January 12, 2009 report, Dr. Adams provided a history of injury and treatment and discussed the results of an EMG/NCS performed on that date. Examination revealed pain-inhibited weakness about the right shoulder and decreased sensation with pinprick in the right small finger. Electrodiagnostic examination revealed localized moderate neuropathy of the right ulnar nerve across the elbow. Dr. Adams found no electrodiagnostic evidence of radiculopathy or carpal tunnel syndrome in the right upper extremity. Absent any opinion regarding the cause

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[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *D.I.,* 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

of appellant's diagnosed condition, his report is of limited probative value in establishing the required causal relationship.

Dr. Kelley's February 8, 2011 report is also insufficient to establish appellant's claim. He noted that appellant retired on disability from his position as a heavy mobile equipment mechanic because of chronic back pain, chronic neck pain and an "apparent" work-related shoulder injury which occurred on February 2, 2009. Dr. Kelley stated that, due to the February 2, 2009 injury, appellant had recurrent pain in the neck and shoulder, which rendered him unable to perform his duties as a heavy mobile equipment mechanic. He did not provide a definitive diagnosis,[8] examination findings or a complete and accurate factual and medical history. Dr. Kelley's opinion that appellant's condition was apparently due to his February 2, 2009 work injury was vague and speculative. He did not describe appellant's job duties or explain the medical process through which such duties would be competent to cause or contribute to the claimed conditions. Medical conclusions unsupported by rationale are of little probative value.[9]

In an April 25, 2011 report, Dr. Morris stated that he treated appellant until approximately February 2010, when he stopped working at Ellington Memorial Clinic. He noted that appellant was currently retired and unable to work due to an injury sustained at work in 2009 with a pneumatic air gun, which caused him to experience acute shoulder pain. Dr. Morris' report is devoid of examination findings or a definitive diagnosis. More significantly, it does not explain how appellant's employment activities caused or exacerbated his cervical or upper extremity conditions. The Board notes that he alleged in his Form CA-2 that repetitive employment activities were responsible for his claimed neck and shoulder injuries. Dr. Morris did not reference any repetitive activities, nor did he describe in sufficient detail how working with a pneumatic air gun contributed to appellant's condition. For these reasons, his report is of diminished probative value.

Appellant stated that Dr. Morris did not have access to his medical records because the clinic would not release them. The burden of obtaining medical reports from his treating physician, however, rests on appellant.[10] The Board also notes that on March 14, 2011 Dr. Kelley provided appellant with an authorization to release medical records, which he was asked to complete and return. Therefore, appellant had the opportunity to obtain his records.

The remaining medical evidence of record, including MRI scan and EMG/NCS reports, which do not contain an opinion on causal relationship, are of limited probative value and are insufficient to establish appellant's claim.

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[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[9] *Willa M. Frazier*, 55 ECAB 379 (2004).

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.6(d) (January 2004) (The claims examiner should request medical evidence which is in the possession of federal medical officers or hospitals maintained by a doctor who attends the claimant though authorization by OWCP. The claimant is responsible for obtaining the medical reports in all other situations).

Appellant expressed his belief that his claimed condition resulted from his duties as a heavy mobile equipment mechanic. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[11] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused nor aggravated by employment factors nor incidents, is sufficient to establish causal relationship.[12] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related injury is not determinative.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how his claimed conditions were caused or aggravated by his employment, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 27 and March 3, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 1, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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