U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL V. AUDIBERT and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, New Orleans, La.

Docket No. 96-2556; Submitted on the Record;
Issued October 28, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that his right elbow condition is causally related to his accepted August 28, 1981 employment injury.

The Board has duly reviewed the case record and concludes that appellant has not established that his right elbow condition is causally related to his August 28, 1981 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant sustained a fractured right humeral neck, fractured left lateral malleolus, fractured left radius, fractured left fourth and fifth metatarsals, avulsion of the left index finger tip and multiple lacerations as a result of a motor vehicle accident that occurred in the performance of duty on August 28, 1981. Appellant stopped work on the date of the accident and returned to regular duty on October 5, 1981. Surgical repair of the fractures was approved and all appropriate compensation benefits were paid. On December 2, 1994 appellant filed a notice of recurrence of disability, Form CA-2a.[1] Appellant did not indicate that he had stopped work, but

[1] Appellant has filed several prior claims relating to his August 28, 1981 injury. Appellant filed for, and on December 21, 1982, was awarded, a schedule award for a 13 percent permanent impairment of the left arm. On May 21, 1987 appellant filed a claim for recurrence of disability alleging that he had developed continuous pain and stiffness in his hands. The Office denied appellant's claim by decision dated December 11, 1987. Appellant requested reconsideration and on August 9, 1988 the Office denied appellant's request on the grounds that the evidence submitted was insufficient to warrant a merit review of the case. Appellant again filed a request for reconsideration on September 20, 1990, specifically requesting that his schedule award be increased, and that his medical benefits be reinstated. In a decision dated October 29, 1990, the Office modified the prior decision to reinstate appellant's medical benefits for treatment of residuals of his accepted left wrist and arm conditions. On December 17, 1991 the Office granted appellant a schedule award for an 11 percent permanent impairment of his left leg. By letter dated June 19, 1993, appellant again requested reconsideration in which he stated that he agrees with the award granted for his left foot condition, but still sought an additional award for his left arm. After a period of additional medical development, the Office issued a decision dated September 7, 1993 in which it denied appellant's request for an additional schedule award for his left upper extremity. On December 2, 1994 appellant filed the instant claim.

alleged that on or around June 1, 1994 he began to experience steadily increasing pain, stiffness and a grinding noise in his right elbow, arm and shoulder. Appellant submitted several medical reports in support of his claim.

By decision dated April 26, 1995, the Office denied appellant's notice of recurrence of disability on the grounds that the evidence of record failed to demonstrate a causal relationship between the August 28, 1981 employment injury and appellant's current right elbow condition. The Office further terminated appellant's entitlement to medical benefits.

By letter dated March 30, 1996, appellant requested reconsideration of the Office's April 26, 1995 decision and submitted additional medical evidence in support of his claim.

In a decision dated April 26, 1996, the Office modified its prior decision to allow for continuing medical treatment of appellant's accepted employment-related conditions, but found the evidence insufficient to establish that appellant sustained a right elbow condition as a result of his August 28, 1981 employment injury.

In support of his notice of recurrence of disability, appellant submitted, in pertinent part, medical reports dated November 30 and December 29, 1994, and January 27 and December 8, 1995 from Dr. Roch Hontas, an orthopedic surgeon and appellant's treating physician, and a right elbow magnetic resonance imaging (MRI) report dated January 16, 1995. In his November 30, 1994 report, Dr. Hontas noted appellant's history of severe automobile accident with multiple injuries, and stated that appellant was doing reasonably well until approximately June 1994 when he began experiencing right elbow pain and cracking as well as occasional numbness extending into his forearm and hand. Dr. Hontas stated that he could not detect any definite crepitation or swelling, or abnormal motor or sensory findings, but recommended that MRI and electrodiagnostic testing be performed. In his follow-up report dated December 29, 1994, Dr. Hontas noted that electrodiagnostic testing had revealed a moderate to severe delay across the right ulnar nerve representative of ulnar nerve entrapment at the elbow, as well as carpal tunnel syndrome that is not very symptomatic. In his report dated January 27, 1995, Dr. Hontas noted that the MRI was essentially negative but that appellant still complained of pain and a cracking sensation within his elbow particularly with activities such as push-ups, as well as nighttime numbness in his wrist and pain and numbness when he wrote or used a computer for prolonged periods of time. He noted that appellant did not describe any consistent findings related to the delay of the ulnar nerve at the elbow seen on the nerve conduction studies. Dr. Hontas concluded that appellant "may be experiencing early osteoarthritis of his elbow as a consequence of his motor vehicle accident in 1981." In his final report of record dated December 8, 1995, Dr. Hontas noted that appellant had returned with complaints of right elbow pain and reported that the characteristics of appellant's symptoms had recently changed following an inadvertent

bump to the proximal ulna aspect of his forearm. Following his physical examination of appellant, Dr. Hontas stated:

> "At this point, it appears that [appellant] is experiencing symptoms and has findings consistent with ulnar nerve neuropathy at the elbow. It is my feeling that these symptoms and findings have a cause and effect relationship from the motor vehicle accident in 1981. As far as the carpal tunnel syndrome is concerned, I do not feel that this is necessarily related to his motor vehicle accident but I feel that this is a consequence of the repetitive use that is required with his work activities."

An employee seeking benefits under the Federal Employees' Compensation Act 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.[2] These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

There is no dispute that appellant is a federal employee and that he timely filed his claim for compensation benefits. However, the medical evidence is insufficient to establish that appellant's right elbow condition developed as a result of his August 28, 1981 employment accident because it does not contain a rationalized medical opinion explaining how appellant's elbow condition was caused or aggravated by his employment duties.[4] While Dr. Hontas ultimately concluded that appellant's right elbow condition had a "cause and effect" relationship with the 1981 motor vehicle accident, the physician did not explain, with medical rationale, how the employment accident caused the right elbow condition he diagnosed approximately thirteen years later. In addition, the Board has previously held that when diagnostic testing is delayed, the uncertainty mounts regarding the cause of the diagnosed condition, and a question arises as to whether that testing in fact documents the injury claimed by the employee.[5] Therefore,

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[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15)(16).

[4] Part of a claimant's burden of proof includes the submission of rationalized medical evidence; *see Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985). 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 claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant. *Ern Reynolds*, 45 ECAB 690 (1994).

[5] *Linda L. Mendenhall*, 41 ECAB 532 (1990).

Dr. Hontas' cursory statements that appellant's right elbow condition is causally related to his employment accident are of little probative value in establishing causal relationship.

As appellant has not submitted the necessary rationalized medical evidence to substantiate that his right elbow condition is causally related to the August 28, 1981 employment accident, appellant has not met his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated April 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 28, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member