United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 08-297**
	)	**Issued: May 23, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Cordova, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 2, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 24 and April 27, 2007. Under 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 has met his burden of proof in establishing that his claimed neck condition was sustained in the performance of duty.

FACTUAL HISTORY

On March 6, 2007 appellant, a 38-year-old distribution window clerk, filed a Form CA-2 claim for benefits, alleging that he developed a neck condition caused by factors of his employment.

By letter dated March 19, 2007, the Office advised appellant that it required additional information to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from a treating physician describing his

symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a report dated January 9, 2007, Dr. Carlos E. Rivera-Tavarez, a specialist in orthopedic surgery, stated:

> "[Appellant] is a 38[-]year-old male who I saw last week. He was complaining of pain in the neck down to the shoulders and mostly in the right upper extremity as well as pain in the back and the lower extremities. This pain has been going on for about a month now and has not responded to medications.... [Appellant] says that he is now having severe pain in the right shoulder area. He says that the only way he can tolerate the pain is by leaving the arm to his side. [Appellant] says that moving the left shoulder causes pain all the way down to the hand. He is not having pain down to the left upper extremity."

Dr. Rivera-Tavarez noted on physical examination that appellant seemed to be in acute pain and was unable to move his right shoulder because of severe pain. He noted that appellant's neck motion was within functional limits with increased the pain on the left side. Appellant had full left shoulder range of motion but had pain on the right side. Dr. Rivera-Tavarez advised that appellant had right shoulder, neck and arm pain and diagnosed possible cervical radiculitis and with a possible but less likely etiology of pain emanating from the shoulder area. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan to ascertain the source of his complaints.

In a February 8, 2007 report, Dr. Rivera-Tavarez noted that appellant was feeling 50 percent better after receiving a cervical epidural steroid injection. Appellant related that he felt even better that day, but that the pain became aggravated toward the end of the day. Dr. Rivera-Tavarez advised that appellant's right upper extremity was significantly better, although he was having some discomfort in the neck and left shoulder. He noted full shoulder range of motion and stated that appellant had a history of a prior C6-7 right posterolateral disc herniation, C7 radiculopathy with pain, gradually becoming controlled and possible lumbar radiculitis. Dr. Rivera-Tavarez reiterated that he might have appellant undergo an MRI scan if his leg pain worsened.

In a report dated February 26, 2007, Dr. Rivera-Tavarez stated:

> "[Appellant] comes in today for follow-up evaluation. I saw him the last time on February 8[, 2007] after C7-T1 interlaminar injection on January 24[, 2007]. He was doing better. [Appellant] was having on and off soreness but it is under control. He went back to work on Friday but then Saturday morning, he woke up with severe pain. This pain was not only in the neck but he was hurting down to the left upper extremity like he was hurting down the right upper extremity before the injection. [Appellant] said he had been having some soreness and some discomfort in the right arm but not nearly as bad as on the left side.

> "[Appellant] seems to be in acute pain. He seems very anxious. Moving the shoulders increases the pain. Moving the neck increases the pain. [Appellant] has a lot of guarding today.... I am unable to test motor strength today because of pain."

Dr. Rivera-Tavarez reiterated that appellant had a history of C6-7 right posterolateral disc herniation, C7 radiculopathy on the right side, with a flare-up of pain on the left side.

In a report dated February 28, 2007, Dr. Raymond J. Gardocki, a specialist in orthopedic surgery, stated:

> "[Appellant] has had neck and upper extremity pain since December 2006. He initially had a cervical epidural injection on January 24, 2007 after an MRI [scan] showed a right sided C6-7 herniated disc and he improved. [Appellant] got a lot better. He still had some pain but the pain was much more bearable but about three weeks ago he started having increasing neck pain that started going to the left arm. It was going to the lateral part of the left shoulder and into the left hand. [Appellant's] whole hand was going numb from time to time. He still had some pain shooting down the right arm with numbness in the right hand as well. [Appellant] has pain with any sort of neck range of motion and he is very guarded. He rates his pain 6 out of 10, achy in nature in the back of the head and neck and into the shoulders and going down with numbness into the hands."

Dr. Gardocki noted that x-rays of the cervical spine "really looked good." The MRI scan of the cervical spine done in January 11, 1007 showed really well preserved disc space heights and good disc space signal although it also showed a right-sided posterolateral disc herniation at C6-7. He stated:

> "All of the other discs and the rest of the spinal canal look good and patent. It is just this posterolateral herniation on the right which initially explained his right arm pain very well but now he has new left arm pain. It is worse than the right side and [appellant] had worsening of his neck pain. Something else is going on. Either he has herniated an adjacent level disc or this C6-7 disc herniation has gotten worse. [Appellant] is set up for an epidural injection with Dr. Rivera[-Tavarez] and I am going to recommend he stick with that but in the meantime, since his symptoms are completely different, I am going to recommend a new MRI [scan], I would like to see him back after that. If the MRI [scan] looks the same, we are going to go ahead and order an electromyelogram [EMG] and nerve conduction studies. If it looks different, we are going to treat whatever is there."

Dr. Rivera-Tavarez administered a C7-T1 interlaminar epidural steroid injection to ameliorate pain stemming from appellant's cervical disc herniation on March 6, 2007.

In a March 14, 2007 report, Dr. Gardocki stated:

> "[Appellant] returns to the clinic today on March 14, 2007. He has had a cervical MRI [scan] on March 7, 2007 that looks very similar to the one that was done in January [11, 2007.] The radiologist felt it looked the same. I think the disc

herniation at C6-7 is on the right, central to the right side. It is a little bit worse actually than the previous one. It is a little bit bigger. So that is a reasonable explanation for him to have bilateral C7 symptoms -- pain going into the whole hand."

Dr. Gardocki noted some weakness in appellant's upper extremities which he believed stemmed from the C6-7 area.

In a letter dated April 10, 2007, appellant described the employment-related activities which he believed contributed to his claimed conditions. He stated:

"For approximately six months I worked parcels [from] 2[:00] or 3[:00] a.m. [until] 9[:00] to 9:30 a.m. After completion, I began [working at] letters/flats [from] 9:45 a.m. until 11:45 a.m. Within two Mondays in December I sorted parcels for 10 [to] 11 hours straight. Several hours within the months of October/November I broke down third class mail after completion of first class.... Also, during December 2006 three times I sorted 10 [to] 13 pallets, many [of which] were tall which caused reaching and stretching. [This activity began] at 2[:00] a.m. [and ended at] 7[:00] a.m. Afterwards I assisted with the remains of distribution."

By decision dated April 27, 2007, the Office denied appellant's claim, finding that he failed to submit sufficient medical evidence to establish that his claimed neck condition was sustained in the performance of duty.

On April 30, 2007 appellant requested an oral hearing, which was held on August 23, 2007. He did not submit any additional medical evidence.

By decision dated October 24, 2007, an Office hearing representative affirmed the April 27, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed neck condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[5]

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[6]

ANALYSIS

The Board finds that appellant has failed to submit sufficient medical evidence to establish that his neck condition is related factors of his federal employment. For this reason, he has not discharged his burden of proof.

Appellant submitted reports from Drs. Rivera-Tavarez and Gardocki. However, the reports of these physicians did not provide a probative, rationalized medical opinion that the claimed condition was causally related to employment factors. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[7] In a January 9, 2007 report, Dr. Rivera-Tavarez related appellant's complaints of neck pain radiating down to the shoulders, mostly in the right upper extremity, in addition to back and lower

[4] *Id.*

[5] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *See Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] *See Anna C. Leanza*, 48 ECAB 115 (1996).

extremity pain. He stated that the pain in appellant's right shoulder was so severe that he was unable to move his right shoulder. Dr. Rivera-Tavarez stated that appellant had been experiencing this pain for approximately one month and noted that medication had not ameliorated his condition. He diagnosed possible cervical radiculitis and recommended that appellant undergo an MRI scan to locate the source of his complaints. Dr. Rivera-Tavarez subsequently was able to reduce appellant's pain by 50 percent by injecting him with a cervical epidural steroid, though his pain worsened toward the end of the day. He noted that appellant's right upper extremity was significantly better, although he was having some discomfort in the neck and left shoulder. Dr. Rivera-Tavarez diagnosed a history of C6-7 right posterolateral disc herniation, C7 radiculopathy with pain, gradually becoming controlled and possible lumbar radiculitis. In his February 26, 2007 report, Dr. Rivera-Tavarez advised that, although appellant's condition had improved following his steroid epidural injection, he had recently awakened on a Saturday morning with severe neck and left upper extremity pain, similar to the pain he felt in his right upper extremity prior to the injection, after having returned to work the day before.

Appellant was referred to Dr. Gardocki, who stated in a February 28, 2007 report that he had experienced neck and upper extremity pain since December 2006 which had improved since his cervical epidural injection but had been reaggravated about three weeks ago. Dr. Gardocki noted that appellant began having increasing neck pain which started in the left arm and radiated to the lateral part of the left shoulder and into the left hand. He related that appellant experienced periodic numbness in his hands and felt pain while attempting any form of neck range of motion. Dr. Gardocki advised that cervical x-rays were normal and a cervical MRI scan showed well preserved disc space heights and good disc space signal, though it also showed right-sided posterolateral disc herniation at C6-7. He opined that appellant had posterolateral herniation on the right which initially explained his right arm pain, but that he now was also experiencing left arm pain which was worse than the pain on the right side, with worsening neck pain. Dr. Gardocki believed that appellant had an additional problem, which he considered either a worsening of his C6-7 disc herniation or herniation of an adjacent disc. He recommended that appellant undergo a new MRI scan and possibly EMG and nerve conduction studies, after which he would review the results and treat appellant's condition as needed. In his March 14, 2007 report, Dr. Gardocki stated that the results of the March 7, 2007 MRI scan, which showed disc herniation at C6-7 on the right, looked very similar to the MRI scan appellant underwent in January 2007, though perhaps the herniation was a little bigger and somewhat worse. He advised that these MRI scan results provided a reasonable explanation for appellant's bilateral C7 symptoms, including the fact that his pain was radiating into his hands and indicated some weakness in appellant's upper extremities.

The reports from Drs. Rivera-Tavarez and Gardocki did not describe appellant's job duties or explain the medical process in which his duties would have been competent to cause or contribute to his disability for work. Appellant was noted to have a preexisting cervical condition. However, the medical evidence does not adequately address how appellant's work as a mail clerk aggravated this condition. These reports, therefore, are of limited probative value as they do not contain sufficient medical rationale explaining how or why appellant's neck condition was caused by or related to factors of his federal employment. Appellant failed to provide a rationalized, probative medical opinion relating his current condition to any factors of his employment. He failed to submit medical evidence sufficient to establish that his cervical condition was contributed to by his employment.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establish that his neck condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 24 and April 27, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 23, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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