

**United States Department of Labor
Employees' Compensation Appeals Board**

G.C., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Dallas, TX, Employer**)

**Docket No. 09-971
Issued: December 3, 2009**

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 March 3, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 18, 2008, affirming an Office decision denying his claim for a traumatic injury. 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 has met his burden of proof in establishing that he sustained a right shoulder, arm, neck and lower back injury while in the performance of duty.

FACTUAL HISTORY

On June 3, 2008 appellant, then a 55-year-old air conditioning equipment mechanic, filed a traumatic injury claim alleging that on April 7, 2007 while moving an air handler and lifting a

pipe he injured his right shoulder, right arm, neck and low back.¹ He did not stop work. Appellant submitted a report of accident dated April 7, 2007, which noted that on March 24, 2007 he was assisting in moving an air conditioning unit and injured his shoulder.

On June 12, 2008 the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant sought treatment from Dr. Sandy Bidner, a Board-certified orthopedist, for persistent neck pain with right radicular symptoms. In a June 25, 2008 report, Dr. Bidner stated that he first saw appellant on April 23, 2008. He advised that appellant reported injuring his right shoulder on March 24, 2007 while lifting an air handler at work. Appellant related that his symptoms diminished over the ensuing months; however, he recently experienced recurrent neck pain and radicular symptoms. Dr. Bidner noted findings of decreased range of motion of the cervical spine, neurological weakness of the right triceps and digital extensors, decreased symmetrical reflexes, decreased sensation in the forearm, radial wrist and hand, full painless motion of the right shoulder, no weakness of the rotator cuff or impingement and tenderness of the lumbar spine at L4 to sacrum. He diagnosed cervical spondylosis with right C5-6 and C6-7 nerve root impingement, lumbar disc disease with nerve root entrapment at L4-5 and L5-S1, right shoulder supraspinatus and infraspinatus tendinopathy with partial tear of the rotator cuff. Dr. Bidner opined that, based on appellant's clinical presentation and diagnostic findings, he would require surgical compression at C5-6 and C6-7. He opined that appellant's injuries were work related based on his presentation and history. In a return to work slip dated May 30, 2008, Dr. Bidner released appellant to work light duty with restrictions on heavy lifting or repetitive use of the right arm.

In a decision dated August 11, 2008, the Office denied appellant's claim on that grounds that the medical evidence was not sufficient to establish that his condition was caused by the March 24, 2007 work incident.

On September 8, 2008 appellant requested reconsideration. He submitted a magnetic resonance imaging (MRI) scan of the cervical spine dated May 2, 2008, which revealed moderate right neural foraminal narrowing at C2-3, mild right neural foraminal narrowing at C3-4, moderate bilateral neural foraminal narrowing at C4-5, moderate right neural foraminal narrowing at C5-6 and severe right neural foraminal narrowing at C6-7 with all findings due to a right paracentral disc bulge. An MRI scan of the lumbar spine dated May 19, 2008 revealed mild spinal canal stenosis, moderate left and mild right neural foraminal narrowing due to a disc bulge and facet osteoarthritis at L3-4, L4-5 and L5-S1. An MRI scan of the right shoulder revealed supraspinatus and infraspinatus tendinopathy, partial thickness distal small rotator cuff tear and moderate bony spurring around the acromioclavicular joint. In an August 27, 2008 report, Dr. Bidner noted that appellant described a work injury to his neck, back and right shoulder that occurred on March 24, 2007 when lifting an air handler. Appellant reported that

¹ The employing establishment submitted a statement indicating that the date of injury was reported as March 24, 2007 and not April 7, 2007.

the pain subsided and recently recurred with symptoms of cervical discomfort with radiculopathy. Dr. Bidner opined that appellant's condition was directly related to the March 24, 2007 work injury and that the cervical, lumbar and shoulder injury should be compensable.

In a decision dated November 18, 2008, the Office denied modification of the August 11, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 filed within the applicable time limitation 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 is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

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.⁶ The weight of medical evidence is determined by its reliability, its probative

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Id.*

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

Appellant alleged that he sustained a right shoulder, right arm, neck and low back injury when moving an air handler and lifting a pipe. The Board notes that the evidence supports that the incident occurred on March 24, 2007 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a right shoulder, right arm, neck and low back injury causally related to the March 24, 2007 work incident.

On June 12, 2008 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the March 24, 2007 work incident may have caused or aggravated his claimed condition.

In support of his claim, appellant submitted a June 25, 2008 report from Dr. Bidner, who treated him for persistent neck pain with right radicular symptoms. Dr. Bidner diagnosed cervical spondylosis with right C5-6 and C6-7 nerve root impingement, lumbar disc disease with nerve root entrapment at L4-5 and L5-S1, right shoulder supraspinatus and infraspinatus tendinopathy with partial tear of the rotator cuff. Appellant reported injuring his right shoulder on March 24, 2007 while lifting an air handler at work and noted his symptoms recently recurred. Dr. Bidner opined that appellant's condition was employment related based on appellant's presentation and history. However, he did not provide a rationalized opinion explaining the reasons why any diagnosed conditions were caused or aggravated by particular factors of employment.⁸ For example, Dr. Bidner did not explain the process by which moving an air handler and lifting a pipe over one year earlier would cause the diagnosed condition and why any presently diagnosed condition would not be due to any nonwork factors. The need for medical rationale is especially important where the claimed injury occurred on March 24, 2007 but appellant apparently did not seek any treatment for the injury until April 23, 2008. This report is insufficient to meet appellant's burden of proof.

Appellant also submitted a return to work slip from Dr. Bidner dated May 30, 2008, who released appellant to light-duty work. However, this note neither provided a diagnoses of a medical condition,⁹ noted a history of injury,¹⁰ or offered an opinion on how appellant's

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ *Id.*

⁹ See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

¹⁰ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

employment could have caused or aggravated his condition.¹¹ Consequently, this note was of no probative value and do not establish appellant's traumatic injury claim. In an August 27, 2008 report, Dr. Bidner noted that appellant described a neck, back and right shoulder injury that occurred at work on March 24, 2007 when lifting an air handler. He opined that appellant's injuries were directly related to the March 24, 2007 work injury. However, as noted above, Dr. Bidner did not provide a rationalized opinion explaining the reasons why any diagnosed conditions were caused or aggravated by an employment incident that occurred more than one year earlier.¹²

Likewise, reports of diagnostic testing, such as MRI scan reports are insufficient to establish appellant's claim as they do not provide a physician's opinion on the causal relationship between appellant's job factors and a diagnosed medical condition.

On appeal, appellant has submitted statements from coworkers and asserts that he is "at a loss" to understand why his claim was denied.¹³ As explained above, the evidence supports that the March 24, 2007 work incident occurred as alleged. The basis for the denial of the claim is that appellant has not submitted sufficient medical evidence to explain why the March 24, 2007 incident caused or aggravated diagnosed medical conditions for which he first sought treatment in April 2008. To establish his claim, appellant must submit a physician's opinion which explains the reasons why that incident caused or aggravated his diagnosed condition. As noted, part of his burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁴ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right shoulder, right arm, neck and low back injury causally related to his March 24, 2007 employment incident.

¹¹ A.D., 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (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).

¹² See *Jimmie H. Duckett*, *supra* note 7.

¹³ The Board notes that it may not consider new evidence on appeal as its review is limited to the evidence that was before the Office at the time of its decision. See 20 C.F.R. § 501.2(c).

¹⁴ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 18 and August 11, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 3, 2009
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