United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 09-836**
	)	**Issued: October 8, 2009**
DEPARTMENT OF VETERANS AFFAIRS, CHEYENNE VETERANS MEDICAL CENTER, Cheyenne, WY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 9, 2009 appellant filed a timely appeal from a November 10, 2008 decision of the Office of Workers' Compensation Programs denying his claim for an injury to his neck and arms. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained an injury to his neck or arms in the performance of duty.

FACTUAL HISTORY

On August 11, 2008 appellant, then a 51-year-old hospital housekeeping officer, filed an occupational disease claim alleging that he sustained an injury to his neck and arms beginning June 25, 2008 due to housekeeping activities, moving furniture and other job duties. He alleged

that his job caused an aggravation of cervical disc impingement on his spinal cord and spinal stenosis.

By letter dated August 15, 2008, the Office asked appellant to submit additional evidence including a detailed description of his employment activities and a comprehensive medical report from his treating physician with a description of symptoms, the results of tests, a diagnosis and a rationalized medical opinion as to how the condition was causally related to specific factors of his employment.

Appellant submitted copies of nursing and physical therapy progress notes dated February 10, 2003 to July 25, 2008 for treatment of various medical conditions, including degenerative disc disease, hypertension, dyslipidemia, sleep apnea and depression. In notes dated February 10, 2003 to November 8, 2005, Dr. William D. Holland, a Board-certified internist, provided an initial patient evaluation and the results of follow-up visits regarding appellant's degenerative lumbar disc disease, hypertension, hyperlipidemia, allergic rhinitis, myclonic jerking, syncope and depression.

On September 20, 2005 Dr. James V. Johnson, a Board-certified specialist in family and emergency medicine, reviewed appellant's medical history and provided findings on physical examination. Appellant's lower back problems dated to his military service which ended in 1984. In January or February 2005, he began experiencing numbness in both arms and his fingers. A magnetic resonance imaging (MRI) scan revealed degenerative uncinate proliferation and bulging discs at C5-6 and C6-7 resulting in some moderate to severe stenosis. An electromyogram (EMG) and nerve conduction study revealed mild bilateral carpal tunnel syndrome. Appellant had a tense sensation in his upper back, neck and top of his shoulder muscles which he believed was causing numbness in the forth and fifth fingers of his hands. He asserted that his military service-related low back condition caused him to walk differently and he believed this alteration in gait and tensing of his back and neck muscles caused his current degenerative changes and bulging discs in his cervical spine. Findings on physical examination included a normal gait and station, no atrophy of the upper extremities and symmetrical deep tendon reflexes of the upper extremities. There was diffuse tenderness on palpation over the trapezius muscle, over the top of the shoulders and the upper back. On neurosensory testing, appellant had a positive Tinel's sign at the wrist with symptoms into the index and middle fingers. He had decreased pinprick discrimination on the fourth and fifth digits of the right hand. There was decreased pinprick sensation in both the little and ring fingers of the left hand. Examination of the cervical spine revealed pain at 25 degrees of extension with full extension to 29 degrees. Appellant had 0 to 15 degrees of flexion with pain at the end of flexion. He had 11 degrees of right lateral motion, 20 degrees of left, 36 degrees of right rotation and 35 degrees of left with pain at the end of these motions. There was no limitation to bilateral shoulder function. Dr. Johnson diagnosed degenerative joint and disc disease of the lumbar spine, cervical spine degenerative changes with degenerative disc disease and trapezius muscle strain. He stated that appellant presented with a normal station and he could not conceive how an alteration of forces in his axial skeleton and in the lower back would be affecting his neck. Dr. Johnson advised that the numbness in appellant's hands was caused by bilateral carpal tunnel syndrome and possible ulnar nerve neuritis and was not related to a shoulder condition.

On July 22, 2008 Dr. Robyn H. Peckham, a Board-certified orthopedic surgeon, stated that appellant had chronic neck pain and upper extremity numbness and weakness. An MRI scan of the cervical spine revealed at least moderate stenosis at C4 to C7. Dr. Peckham provided findings on physical examination which included intact light touch sensation and normal finger flexion and abduction. Deep tendon reflexes were two plus at the biceps and brachioradialis and triceps. Appellant had exacerbation of neck pain with cervical spine palpation and passive range of motion. Cervical range of motion did not aggravate upper extremity symptoms. Dr. Peckham diagnosed moderate cervical stenosis with minimal objective signs of radiculopathy or myelopathy. He did not opine as to the cause of the condition.

In a report dated July 25, 2008, Dr. Roy A. Kanter, a Board-certified neurologist, stated that an EMG and nerve conduction study revealed borderline bilateral carpal tunnel syndrome and C5 or C6 radiculopathy on the left side.

By decision dated November 10, 2008, the Office denied appellant's claim, finding that the evidence did not establish that his neck and upper extremity conditions were causally related to factors of his federal employment.

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.[1] 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 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.[2]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee'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.[3]

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

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

[3] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ANALYSIS

Appellant alleged that he sustained an occupational injury to his neck and arms due to hospital housekeeping activities, moving furniture and other job duties. He contended that his job caused an aggravation of disc impingement of his cervical spine with spinal stenosis. The Office requested that appellant submit a detailed description of his employment duties and a comprehensive medical report containing a description of his symptoms, the results of tests and medical rationale explaining how his neck and upper extremity conditions were causally related to specific factors of his employment. Appellant did not provide the requested information.

Appellant submitted medical notes from nurses and physical therapists. Nurses and physical therapists are not defined as a physician under the Federal Employees' Compensation Act.[4] Their opinions are of no probative value.[5] The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician.[6] Consequently, this evidence from nurses and physical therapists does not constitute probative medical evidence and is not sufficient to establish that appellant sustained a work-related injury.

Dr. Kanter stated that an EMG and nerve conduction study revealed borderline bilateral carpal tunnel syndrome and C5 or C6 radiculopathy on the left side. However, he did not provide an opinion as to the cause of these conditions. Dr. Kanter's report did not attribute appellant's cervical or upper extremity condition to his federal employment.

Dr. Johnson noted that in January or February 2005 appellant began experiencing numbness in both arms and his fingers. An MRI scan of the cervical spine revealed degenerative changes and bulging discs causing moderate to severe stenosis. An EMG and nerve conduction study revealed mild bilateral carpal tunnel syndrome. Appellant felt tension in his upper back, neck and top of his shoulder muscles which he believed was causing numbness in his hands. Dr. Johnson stated that his military service-related low back condition caused him to walk differently. Appellant asserted that this alteration in his gait and tensing of his back and neck muscles caused his degenerative changes and bulging discs in his cervical spine. Dr. Johnson diagnosed degenerative joint and disc disease of the lumbar spine, cervical spine degenerative changes with degenerative disc disease and trapezius muscle strain. He noted that appellant presented with a normal station and he could not conceive how an alteration of forces in his axial skeleton and in the lower back would be affecting his neck. Dr. Johnson stated that the numbness in appellant's hands was caused by bilateral carpal tunnel syndrome and possible ulnar nerve neuritis and was not related to any shoulder condition. He did not opine that appellant's neck or upper extremity conditions were causally related to his employment. Dr. Johnson noted that appellant did not present with an abnormal gait or station although he asserted that his gait had been altered. He saw no causal connection between an alteration in axial alignment in appellant's lower back and the development of a neck condition. For these reasons,

[4] *See* 5 U.S.C. § 8101(2) which provides: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law"; *see also Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[5] *Id.*

[6] *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

Dr. Johnson's notes do not establish that appellant sustained a cervical or upper extremity condition causally related to his employment.

Dr. Peckham stated that appellant had chronic neck pain and upper extremity numbness and weakness. An MRI scan of the cervical spine revealed at least moderate stenosis at C4-5, C5-6 and C6-7. Dr. Peckham provided findings on physical examination and diagnosed moderate cervical stenosis with minimal objective signs of radiculopathy or myelopathy. He did not address the cause of the conditions. Therefore, Dr. Peckham's notes do not establish that appellant sustained a work-related injury to his neck or upper extremities.

There is no medical evidence of record with a description of appellant's specific job duties and medical rationale establishing that the diagnosed condition is causally related to specific factors of his employment. Therefore, appellant failed to meet his burden of proof to establish that his neck or upper extremity conditions were caused or aggravated by his job.

On appeal, appellant described his job duties and asserted they caused a work-related injury. The Board notes that lay individuals are not competent to render a medical opinion.[7] The mere fact that a disease or condition manifests itself during a period of employment does not raise any inference of causal relationship between the two.[8]

CONCLUSION

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

[7] *See Robert J. Krstyen*, 44 ECAB 227 (1992).

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 2008 is affirmed.

Issued: October 8, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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