United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 09-597**
	)	**Issued: September 28, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Southeastern, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 December 31, 2008 appellant, through his attorney, filed a timely appeal from an August 19, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review affirming a March 13, 2008 merit decision of the Office. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of his claim.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On January 4, 2008 appellant, a 60-year-old mail clerk, filed an occupational disease claim (Form CA-2) for bilateral brachial plexus and a shoulder condition. He alleged that he first became aware of these conditions and their relation to his federal employment on December 6, 2007. The employing establishment controverted appellant's claim. The record

reflects that he had a claim, which was accepted for a left shoulder condition for which he had surgery on April 7, 2007.[1] Following this surgery, appellant returned to light-duty work.

Appellant submitted a June 8, 2007 report (Form CA-20) signed by Dr. Randeep S. Kahlon, a Board-certified orthopedic surgeon, who diagnosed him with left shoulder bicep tendinitis. In a subsequent report (Form CA-20) dated August 10, 2007, Dr. Kahlon diagnosed appellant with left shoulder pain. He noted that appellant was post left shoulder arthroscopy and bicep tenotomy. Dr. Kahlon noted that appellant had been advised that he could return to work. By checkmark, he indicated that appellant's diagnosed conditions were caused or aggravated by his work activities.

Appellant submitted notes dated December 16, 2007 and January 15, 2008 signed by Dr. Scott M. Fried, a Board-certified orthopedic surgeon, who reported that appellant was to continue light-duty work that involved no use of his left arm or hand.

Appellant submitted a September 17, 2007 report in which Dr. Fried reported that x-rays of his hands and wrists were unremarkable and revealed no significant arthritis or evidence of acute fracture. Dr. Fried reported that x-rays of his left shoulder and acromioclavicular (AC) joint showed no severe abnormality. He noted that there was minimal change to the humeral head and that the subacromial area showed Grade 1 postoperative change. X-rays of appellant's cervical spine revealed straightening of the normal cervical lordosis and mild disc space narrowing at the C5-6 and C6-7 levels with no severe foraminal change. X-rays of appellant's left elbow and proximal forearm revealed moderate heterotypic calcification anterior to the elbow as well as probable deformity to the radial head. Dr. Fried observed no other severe abnormality.

Dr. Fried diagnosed appellant with left median, radial and ulnar neuropathy, left brachial plexopathy/cervical radiculopathy with long thoracic neuritis, scapular winging Grade 2, secondary to a traction injury, capsulitis of the shoulder as well as rotator cuff strain and sprain. He noted a narrowing of the disc space at C5-6 and C6-7, and reported that appellant had a distal nerve injury. X-rays of the left shoulder and AC joint demonstrated Grade 1½ spurring as well as some interior spurring Grade 1½ change at the AC joint and glenohumeral articulation was grossly intact and that the subacrominal area showed perhaps a Grade 1 change. Dr. Fried recommended that appellant be restricted to light-duty sedentary work involving no repetitive motions or lifting objects weighing more than five pounds. He opined that early retirement was the best option as it was the most medically and cost effective solution to appellant's condition.

In the same report, Dr. Fried noted that appellant's initial work consisted of sorting of letters and was assigned to the LSM for 18 years, which was highly repetitive hand, wrist and arm activity. He reported that appellant was then assigned to the flat sorter, where he had worked for the past six years, under modified conditions, primarily pitching mail. Prior to appellant's injury, Dr. Fried noted that he lifted trays of mail that weighed up to 30 pounds and performed repetitive hand, wrist and arm activity. He reported that appellant's injury occurred while collecting mail from a tray on May 3, 2005. Dr. Fried reported that, while appellant was

[1] OWCP No. xxxxxx973. Appellant was injured on May 3, 2005, when he tried to stop a tray of mail from falling.

collecting mail from a tray, reaching down to his left side at about shoulder level with his arm fully extended, he grabbed a tray of mail, pulling it towards him, when the tray slipped. To prevent the tray from falling, he noted that appellant attempted to catch the tray with his left arm fully extended and abducted. Dr. Fried related that appellant experienced a sharp pain in his left anterior shoulder. He characterized this as a classic abduction traction injury.

Dr. Fried reported that appellant was a hard worker who "obviously … continued to try to work through [a] substantial injury." He opined that appellant "…obviously [had] a substantial shoulder muscular ligamentous injury as well as a brachial plexus traction injury at his initial incident." Dr. Fried opined that appellant developed capsulitis or frozen shoulder in addition to the shoulder condition for which he received surgery. He opined that shoulder surgery did not treat the brachial plexus or the ongoing symptoms produced by it. Dr. Fried opined that appellant could not abduct his shoulder post surgery and, thus, was not able to straighten the nerves and, further, did not know that doing so would exacerbate his nerve symptoms. It was not the surgery, rather post surgery motion of the shoulder that caused the nerve damage. Dr. Fried opined that appellant had the nerve injury when he injured his shoulder and that, once his shoulder was free, the nerve injury was inflamed and damaged. Regarding appellant's ability to work, he noted that appellant should not perform repetitive work activities with his upper extremities, and that, if such light-duty work was not available, his work hours should be limited or he should stop work altogether.

Appellant submitted a January 22, 2008 note documenting his employment history. He also submitted a report dated November 5, 2007 in which Dr. Fried reviewed results from a functional capacity evaluation (FCE) conducted October 24, 2007.

In a February 8, 2008 note, appellant's attorney, noted that appellant had a claim which was accepted for a left shoulder condition for which he underwent surgery. Counsel asserted that the current claim was for bilateral upper extremity conditions, including carpal tunnel syndrome. He argued that Dr. Fried's September 17, 2007 report established causal relationship between appellant's brachial plexus, carpal tunnel syndrome and his federal employment.

By decision dated March 13, 2008, the Office denied appellant's claim because the evidence of record was insufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act.

On March 18, 2008 appellant, through his attorney, requested an oral hearing. This was conducted June 18, 2008 at which appellant testified that his job at the employing establishment involved sorting trays of mail. He testified that he sustained a left shoulder injury in May 2005, which developed after his shoulder was injured while trying to stop a tray of mail he was carrying from falling. Appellant testified that following surgery he returned to work in a position where he pitched rather than sorted mail. He reported that, upon returning to work, he immediately developed a problem with his hands and arms as well as numbness in his fingers. Appellant testified that he changed jobs within the employing establishment to one where he was taping letters and prepackaging damaged letters. Counsel contended that he believed Dr. Fried's September 17, 2007 report was sufficient to establish a *prima facie* claim and that appellant's condition was an aggravation of his prior left arm and shoulder condition when he went back to pitching mail. He opined that the report demonstrated that Dr. Fried was familiar with

appellant's employment and the duties he performed. Counsel argued that Dr. Fried's September 17, 2007 report sufficiently established a causal relationship existed between appellant's work activities and his left arm condition as well as development of the brachial plexus condition.

By decision dated August 19, 2008, the hearing representative affirmed the Office's March 13, 2008 decision, finding that no medical condition had been identified in connection with the claimed employment factors.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.[2]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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.[3]

ANALYSIS

The Board finds this case is not in a posture for decision.

Appellant alleged that his bilateral brachial plexus and shoulder condition were caused by pitching mail at the employing establishment, after he returned to light-duty work following his May 2005 accepted injury. His burden was to demonstrate, through production of probative rationalized medical evidence, that his bilateral brachial plexus and shoulder condition were causally related to the identified employment factor.[4]

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

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

[4] The Board notes that appellant submitted a report from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Thus the physical therapy report appellant submitted is of no probative value.

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,[5] must be one of reasonable medical certainty[6] 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.[7] The fact that the condition became apparent during a period of employment is not sufficient to establish that the causal relationship, which must be established in each case by affirmative medical evidence.[8]

Dr. Fried reported a history of injury, a review of appellant's employment duties and findings upon examination. He diagnosed appellant with left brachial plexopathy/cervical radiculopathy with long thoracic neuritis, scapular winging Grade 2, secondary to a traction injury, capsulitis of the shoulder, rotator cuff strain and sprain as well as left median, radial and ulnar neuropathy. Dr. Fried noted a narrowing of the disc space at C5-6 and C6-7. He also reported that appellant had a distal nerve injury.

Dr. Fried reported that appellant's injury occurred while collecting mail from a tray on May 3, 2005. He noted that, while appellant was collecting mail from a tray, reaching down to his left side at about shoulder level with his arm fully extended, he grabbed a tray of mail, pulling it towards him, when the tray slipped. To prevent the tray from falling, Dr. Fried noted that appellant attempted to catch the tray with his left arm fully extended and abducted. He related that appellant experienced a sharp pain in his left anterior shoulder. Dr. Fried characterized this as a classic abduction traction injury.

Dr. Fried opined that it was not the surgery, rather post surgery motion of the shoulder that caused the nerve damage. He opined that appellant had the nerve injury when he injured his shoulder and that, once his shoulder was free, the nerve injury was inflamed and damaged.

In summary, Dr. Fried's report reviewed the identified employment factors which appellant claimed caused his condition and, incorporating these identified factors together with findings upon examination and a review of his medical history, explained how the identified employment factors caused or aggravated a diagnosed condition and presented a medical rationale in support of his opinion.[9] The Board finds that Dr. Fried's report is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[10] It is well established that proceedings under the Federal Employees' Compensation Act[11] are not

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Paul D. Weiss*, 36 ECAB 720 (1985); *William J. Murray*, 35 ECAB 606 (1984); 20 C.F.R. § 10.110(a).

[9] *Robert Broome*, 55 ECAB 339 (2004).

[10] *See Earnest J. Reece, Jr.*, 32 ECAB 1508, 1510 (1981).

[11] 5 U.S.C. §§ 8101 *et seq*.

adversarial in nature[12] and while appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[13] The Office has an obligation to see that justice is done.[14]

The case will be remanded for the Office for further action consistent with appellant's decision. On remand, after such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.[15]

CONCLUSION

The Board finds this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 19 and March 13, 2008 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings in accordance with this decision.

Issued: September 28, 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

[12] *See e.g., Walter A. Fundinger*, Jr., 37 ECAB 200, 204 (1985); *Michael Gallo*. 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

[13] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[14] *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[15] *See John J. Carlone*, 41 ECAB 354 (1989).