United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 10-613**
	)	**Issued: November 19, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Monroe, LA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case submitted on the record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 4, 2010 appellant filed a timely appeal from the December 4, 2009 merit decision of the Office of Workers' Compensation Programs. 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 met his burden of proof to establish a recurrence of disability beginning November 4, 2008 causally related to his January 5, 2004 employment injury.

FACTUAL HISTORY

On March 25, 2004 appellant, then a 43-year-old part-time flexible postal carrier, filed an occupational disease claim alleging that he sustained a heart attack in the performance of duty. He alleged that he was aware of the condition on January 5, 2004. Appellant stopped work on January 5, 2004 and missed work intermittently thereafter. On August 15, 2006 the Office accepted the claim for a myocardial infarction of the anterolateral wall and subsequent episode of

care and it paid wage-loss compensation for intermittent claimed dates through October 26, 2006. Appellant was released to restricted duty on October 3, 2006.

In a July 16, 2008 report, Dr. Emile A. Barrow, a Board-certified internist, noted that appellant had an acute myocardial infarction in January 2004. He advised that appellant had recurrent angina and multiple coronary stint replacements, continued shortness of breath and fatigue and elevated blood pressure. Dr. Barrow stated that appellant was "very depressed as a result of his heart attack and his inability to return to his previous level of physical activity."

In an August 5, 2008 report, Dr. Ronald Hammett, a Board-certified internist, advised that appellant was unable to work on August 4, 2008 due to chest pain. In a November 7, 2008 disability certificate, he advised that appellant was unable to work due to heart disease. On November 10, 2008 Dr. Hammett noted that he was seeing appellant for coronary artery disease and hypertension. He advised that appellant had problems with his coronary artery disease with continued dyspnea on exertion and exertional chest pain. Dr. Hammett advised that appellant was "unable to fulfill his duties as a mailman due to the problems related to his heart disease." He advised that appellant had "hypertension and underlying type A personality with hyperlipidemia and an attention deficit disorder." Dr. Hammett opined that appellant could not return to work and that the "duration of this debilitation is unclear and indefinite for the time being until his cardiac status has been clarified by his cardiologist." He recommended follow up with a specialist.

In a November 13, 2008 report, Dr. Michael W. Archie, a Board-certified internist, advised that he saw appellant for developing fibromyalgia, recurrent chest pain, dyspnea on exertion, chest pains, body aches, muscular pain and discomfort that affected his sleep cycle. He noted that appellant continued to have a "great deal of stress that is job related and has been instructed to discontinue work by one of his [physicians]." Dr. Archie diagnosed fibromyalgia and opined that "given the stresses of his job at the [employing establishment] and his lack of control of this type of environment, this predisposes him to added stress and depression and this could exacerbate his underlying cardiac condition."

In a November 26, 2008 report, Dr. Barrow, noted that appellant had a history of coronary artery disease with an inferior myocardial infarction in January 2004. Appellant also had hypertension, hyperlipidemia, esophageal reflux and attention deficit disorder. Dr. Barrow explained that, at the time of his myocardial infarction in January 2004, appellant had coronary stents placed in his right coronary artery. He noted that he saw appellant in February 2004 when he presented with increasing exertional angina and was "recathed." Dr. Barrow indicated that appellant continued to complain of angina and shortness of breath. He noted that he last saw appellant on July 16, 2008 for complaints of chest burning, left arm tingling and elevated blood pressure.

In a letter dated December 8, 2008, appellant indicated that his condition and recurrences were related to his job. He noted that he had provided supporting documentation from his physicians. Appellant advised that his job caused him stress as he had to work "a route and a half."

On December 11, 2008 appellant filed a notice of recurrence alleging that on November 4, 2008, he had a recurrence of his January 5, 2004 injury. He asserted that he had coronary artery disease, hypertension and memory loss and now attention deficit disorder. Appellant alleged that, on a daily basis, he was required to carry a route and a half in an unreasonable time limit. He further alleged that he was engaged with several disputes with his supervisors and his blood pressure went out of control and caused him to have a heart attack. Appellant stopped work on November 7, 2008. The employing establishment noted that he was accommodated with a modified-job assignment working eight hours a day within medically defined limitations. Appellant also filed a Form CA-7, claim for compensation for the period beginning November 23, 2008.

In letters dated January 6, 2009, the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability on November 23, 2008.

In a January 26, 2009 report, Dr. Hammett noted that he was treating appellant for coronary artery disease, hypertension and a previous myocardial infarction. He also indicated that appellant had a "type A personality." Dr. Hammett explained that he was not the cardiologist but that he was a pulmonary physician helping to manage appellant's case. He advised that appellant had exertional chest pain and his angina, which was aggravated by stress at work. Dr. Hammett opined that, due to his angina and the stress of his job, appellant was unable to return to work. He explained that appellant's coronary artery disease, hypertension, type A personality and his heart disease, were aggravated by the stress of his employment and he was unable to return to work at any time in the future in his position as a mailman.

By decision dated February 13, 2009, the Office denied appellant's claim for recurrence of disability on November 4, 2008. It found that the evidence was insufficient to establish that the claimed recurrent condition beginning on November 4, 2008 was causally related to his January 5, 2004 injury. The Office noted that appellant's physician's provided a diagnosis of coronary artery disease and hypertension; however, it had only accepted acute myocardial infarction of anterolateral wall with a subsequent episode of care. It found that appellant had not submitted sufficient factual and medical evidence to support his claim.

On November 10, 2009 appellant's representative requested reconsideration and submitted additional evidence, which included a copy of Dr. Hammett's January 26, 2009 report. Additional treatment notes from Dr. Hammett dating from December 18, 2008 to April 8, 2009 were also included.

The Office also received a June 3, 3008 report and emergency room notes from Dr. Barrow, who diagnosed noncardiac chest pain, coronary disease with previous stents and possible esophagitis. In a January 14, 2009 treatment note, Dr. Barrow noted that appellant was seen for follow up of chest pain. He continued to treat appellant.

The Office also received an August 14, 2008 emergency room report from Dr. Gary Loder, an emergency room physician and osteopath, who noted that appellant presented with chief complaints of chest pain. Dr. Loder diagnosed chest pain, diarrhea and fever. He noted that appellant was discharged and sent home in stable condition.

The Office received diagnostic tests which included an August 15, 2008, x-ray of the chest, read by Dr. Lin Xiong, a Board-certified diagnostic radiologist, who found evidence of a pulmonary embolism and an unremarkable aorta. Dr. Xiong also found chronic lung change without acute disorder and a four-millimeter nodule at the left lung base.

In an August 19, 2008 report, Dr. Hammett advised that he was treating appellant for hypertension and coronary artery disease. He indicated that appellant was hospitalized on three different occasions for complications. Dr. Hammett opined that due to the stress of appellant's present job and his medical problems he was unable to return to work and completely disabled. The Office also received copies of previously received reports.

By decision dated December 4, 2009, the Office denied modification of its prior decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[1]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantive evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.[2]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.[3] This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[4] The physician's opinion 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.[5]

[1] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[2] *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[4] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[5] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant'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.[6]

ANALYSIS

The record indicates that appellant was performing a modified job offer within his medical restrictions when he filed his claim for a recurrence of disability on November 4, 2008. Appellant has not alleged that his claimed recurrence of disability was the result of a change in the nature and extent of his limited-duty assignment. There is also no evidence that the employing establishment withdrew his modified-job assignment prior to his recurrence. Therefore, appellant must establish disability due to a change in the nature and extent of his employment-related condition.[7]

Appellant's claim was accepted for acute myocardial infarction of anterolateral wall, subsequent episode of care. On January 6, 2009 the Office advised him of the type of medical evidence needed to establish his claim for a recurrence of disability. However, appellant did not submit any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that he had a condition which was causally related to the employment injury and supported that conclusion with sound medical reasoning.[8] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

The medical reports with respect to the period from November 4, 2008 include several reports from Dr. Hammett. They included a November 7, 2008 disability certificate, in which Dr. Hammett advised that appellant was unable to work due to heart disease and a November 10, 2008 report, in which Dr. Hammett noted that he was seeing appellant for coronary artery disease and hypertension. Dr. Hammett also indicated that appellant had hypertension and underlying type A personality with hyperlipidemia and an attention deficit disorder. The Board initially notes that these are not accepted conditions.[10] The Office accepted appellant's claim for

[6] *Walter D. Morehead*, 31 ECAB 188 (1986).

[7] *Terry R. Hedman, supra* note 2.

[8] *See Helen K. Holt*, 50 ECAB 279 (1999).

[9] *Ricky S. Storms*, 52 ECAB 349 (2001).

[10] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (the claimant bears the burden of proof to establish that conditions not accepted by the Office are causally related to the accepted employment injury through the submission of rationalized medical evidence).

myocardial infarction on January 5, 2004. While Dr. Hammett explained that appellant was "unable to fulfill his duties as a mailman due to the problems related to his heart disease," he did not specifically explain how he concluded that these conditions were due to the work-related myocardial infarction. Thus, these reports are insufficient to establish that appellant's disability is due to his January 5, 2004 myocardial infarction. On January 26, 2009 Dr. Hammett reiterated that he was treating appellant for coronary artery disease, hypertension and a previous myocardial infarction. He also indicated that appellant had a "type A personality." Dr. Hammett explained that appellant had exertional chest pain and angina, which was aggravated by work stress and that, due to his angina and job stress, appellant could not return to work. He explained that appellant's coronary artery disease, hypertension, type A personality and his heart disease, were aggravated by the stress of his employment and he was unable to return to work at any time in the future in his position as a mailman. The Board notes that Dr. Hammett did not indicate that appellant's condition resulted from his previous injury, but rather, it appears he attributed it to new employment factors and a new condition that was aggravated by the stress of his job. Thus, this report is not sufficient to relate the disability to the accepted injury in this case.

In a November 13, 2008 report, Dr. Archie indicated that he saw appellant for developing fibromyalgia, recurrent chest pain, dyspnea on exertion, chest pains, body aches, muscular pain and discomfort that affected his sleep cycle. Again, the Board notes that these conditions were not accepted by the Office. Dr. Archie attributed these conditions to job-related stress. However, he did not explain how these conditions arose from his accepted myocardial infarction and he did not offer a specific opinion that appellant was disabled due to his accepted myocardial infarction.

In a November 26, 2008 report, Dr. Barrow, noted that appellant had a history of coronary artery disease with an inferior myocardial infarction in January 2004. He diagnosed hypertension, hyperlipidemia, esophageal reflux and attention deficit disorder. Dr. Barrow noted that appellant continued to complain of angina and shortness of breath. He noted that he last saw appellant on July 16, 2008 for complaints of chest burning, left arm tingling and elevated blood pressure. These diagnoses are not accepted by the Office as being work related. Furthermore, Dr. Barrow did not offer any opinion regarding a recurrence of disability on or after November 4, 2008. Thus, this report is of limited probative value. Dr. Barrow's January 14, 2009 treatment note is also insufficient to establish the claim as he did not address whether appellant had a recurrence disability due to the accepted condition.

The record also contains medical evidence that either predated the claimed period of recurrent disability or did not address the cause of the claimed recurrent disability. This includes treatment notes and reports of diagnostic testing. As this evidence does not specifically address whether appellant had a recurrence of disability, beginning on or about November 4, 2008, causally related to the January 5, 2004 myocardial infarction, it is insufficient to establish the claim.[11]

[11] *See Michael E. Smith*, 50 ECAB 313 (1999).

As appellant has not submitted sufficient medical evidence to establish that he sustained a recurrence of disability due to his accepted myocardial infarction, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability beginning November 4, 2008 causally related to the January 5, 2004 myocardial infarction.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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