United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 10-1357**
	)	**Issued: February 1, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

Appearances:
Appellant, pro se
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 April 20, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 20, 2010 merit decision denying his traumatic injury claim. 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 that his claimed stroke was caused or aggravated by his federal employment on December 5, 2009.

FACTUAL HISTORY

On December 9, 2009 appellant, then a 59-year-old letter carrier, filed a traumatic injury claim alleging that on December 5, 2009 he suffered a stroke while delivering mail. He described the nature of the injury as "no collision, just a clot."

The employing establishment controverted the claim, stating that appellant had not reported the incident to any supervisor on duty on the date in question and that he had failed to provide evidence of medical treatment on December 5, 2009.

Appellant submitted a December 9, 2009 duty status report, bearing an illegible signature. The form reflected that he had suffered a stroke on December 5, 2009.

In a letter dated December 16, 2009, the Office advised appellant to submit additional factual and medical information to establish his claim. This included a comprehensive medical report from his treating physician, which contained an explanation as to how exposure or incidents in his federal employment contributed to his diagnosed condition.

In a December 18, 2009 conference with the claims examiner, appellant stated that on December 5, 2009 he was asked by his employer to work an additional half hour delivering mail for a sick coworker. He had a disagreement with the person casing the mail because he estimated that the mail he was assigned would require an additional 35 to 45 minutes of his time to deliver. Appellant eventually agreed to deliver the mail. He began experiencing unusual symptoms about 9:00 a.m. Appellant dropped mail from his hands as he reached for mailboxes; had difficulty driving; and was disoriented. He finished his route and went home after delivering mail for 4 hours and 45 minutes instead of his usual 4 hours. Two days later, appellant saw his regular physician, who referred him to the hospital emergency room. He stated that his disagreement with the person casing mail raised his blood pressure, which in turn loosened plaque from somewhere else in his body and moved it to cause the blood clot. It was agreed that appellant had established the factual element of his claim. The claims examiner noted that the claim was still under review for performance of duty and advised him to submit medical information to support his claim of injury.

In an undated statement, appellant repeated his version of the events of December 5, 2009. He added that, after returning to the employing establishment on the date in question, he "felt really bad" and went home early. Appellant was trying to help and got stressed at the volume of auxiliary mail.

Appellant submitted reports from Dr. Robert Warwick, a Board-certified family practitioner. On December 7, 2009 Dr. Warwick stated that, two days earlier, appellant had experienced "some kind of disorientation, off-balance feeling and his depth perception seem[ed] off." He reported that appellant had been watching football games at a friend's house, where he drank two beers. When appellant started to get into his vehicle, he felt significantly off-balance. Suspecting a possible subacute cerebral accident (CVA), Dr. Warwick referred appellant to the hospital for a computerized tomography (CT) scan. On December 9, 2009 he reported that appellant's magnetic resonance imaging (MRI) scan revealed some diastic dysfunction and that the MRI and CT scan were consistent with small CVAs. Noting that appellant had asked Dr. Warwick to complete workers' compensation forms, he stated that "this would not really qualify as an on-the-job injury." On December 16, 2009 Dr. Warwick recommended cardiology and neurology workups. On December 24, 2009 he indicated that, after arguing with a coworker about his workload, appellant had performed extra work on December 5, 2009. Appellant stated, "[d]uring that period of time is when he started having some disorientation and ataxia."

Appellant submitted a December 8, 2009 report from Dr. John S. Wendt, a Board-certified neurologist, who related that he was in his normal state of health until about three days previously when he became slightly confused and frustrated. This was a nondescript feeling. Appellant reported to Dr. Wendt that he and his wife went to a party. After drinking a few beers, he still felt a little bit confused and out of sorts and went home and went to bed. Appellant noted also a bit of difficulty driving. Dr. Wendt diagnosed acute or subacute right pontine infarct, likely on the basis of small vessel disease. He noted the possibility of remote emboli from the proximal vertebral system.

The record contains a December 6, 2009 MRI scan report, a December 7, 2009 report of a CT scan and a report of a December 8, 2009 echocardiography report.

By decision dated January 20, 2010, the Office denied appellant's claim. It accepted that on December 5, 2009 his employer asked him to carry an additional 1/2 hour route of mail from another sorting case because another letter carrier was sick and that he had a disagreement with the person casing the mail as to the amount of mail assigned. However, the Office found that the medical evidence was insufficient to establish that appellant's stroke resulted from the accepted employment factors.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

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

time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

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 evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The 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 established incident or factor of employment.[9]

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the December 5, 2009 workplace incidents occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incidents caused an injury. The medical evidence presented does not contain a rationalized medical opinion from a qualified physician establishing that the work-related incidents caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Reports from appellant's treating physician, Dr. Warwick, are insufficient to establish appellant's claim. On December 7, 2009 he stated that, two days earlier, appellant had experienced some kind of disorientation and off-balance feeling, after watching football games at a friend's house. Suspecting a possible subacute CVA, he referred him to the hospital for a CT

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Id.*

[8] 20 C.F.R. § 10.303(a).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

scan. Dr. Warwick's diagnosis is speculative. Moreover, his report offers no opinion on the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[10] The Board also notes that Dr. Warwick's description of the events surrounding the onset of appellant's claimed stroke does not support his contention that it occurred in the performance of duty and is inconsistent with that offered by appellant.

Dr. Warwick's December 9, 2009 report does not support a causal relationship between appellant's diagnosed condition and the accepted employment incidents. After noting that appellant had asked him to complete workers' compensation forms, he stated that, "this would not really qualify as an on-the-job injury." As the December 16, 2009 report does not contain an opinion on causal relationship, it is of limited probative value.

On December 24, 2009 Dr. Warwick indicated that, after arguing with a coworker about his workload, appellant had performed extra work on December 5, 2009. He stated, "[d]uring that period of time is when [appellant] started having some disorientation and ataxia." Dr. Warwick did not provide a specific diagnosis or definitive opinion, to a reasonable degree of medical certainty, as to the cause of appellant's condition. Rather, he merely described symptoms which occurred during a period of time. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[11] Dr. Warwick did not provide a complete factual background or explain the nature of the relationship between appellant's stroke condition and the established incident.[12] For all of these reasons, his report is of diminished probative value.

In a December 8, 2009 report, Dr. Wendt related that appellant was in his normal state of health until about three days previously when he became slightly confused and frustrated. This was a nondescript feeling. Appellant reported to Dr. Wendt that he and his wife went to a party. After drinking a few beers, appellant still felt a little bit confused and out of sorts and went home and went to bed. He noted also a bit of difficulty driving. Dr. Wendt diagnosed acute or subacute right pontine infarct, likely on the basis of small vessel disease and noted the possibility of remote emboli from the proximal vertebral system. He did not, however, explain how the accepted incidents, namely, carrying mail and arguing with a coworker on December 5, 2009 were competent to cause appellant's diagnosed condition. In fact, Dr. Wendt's report did not even refer to the December 5, 2009 incidents as a possible cause of the stroke. The Board finds his report to be of limited probative value.

The Board notes that the remaining medical evidence of record, including duty status reports and reports of MRI, CT scans and echocardiograms, does not contain an opinion on causal relationship. Therefore, it is of limited probative value and insufficient to establish appellant's claim.

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

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *John W. Montoya*, *supra* note 9.

The record does not contain an opinion by any qualified physician supporting appellant's contention that his stroke was causally related to the December 5, 2009 incidents. Appellant expressed his belief that his condition resulted from the accepted employment incidents. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither, the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how his claimed condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

[13] *See Joe T. Williams*, *supra* note 11.

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs January 20, 2010 decision is affirmed.

Issued: February 1, 2011
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