U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDMUND V. CARRIDO and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, Wash.

Docket No. 97-1330; Submitted on the Record;
Issued February 5, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a medical condition or disability causally related to factors of his federal employment.

On August 7, 1996 appellant, then a 38-year-old machine clerk, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging an employment-related thoracic outlet syndrome. Appellant states that the repetitive keying on the letter sorting machine and on the work floor caused serious pain in his shoulders, arms and hands and has resulted in a diagnosis of thoracic outlet syndrome. In a decision dated October 22, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish a causal relationship between appellant's hand, arm, elbow and shoulder condition and his federal employment. The Office found that, while the claimed event, incident or exposure occurred at the time, place and in the manner alleged; a medical condition or disability resulting from the accepted incident or exposure was not supported by the evidence of file. In a letter dated December 3, 1996, appellant requested reconsideration of the Office's October 22, 1996 decision and submitted additional evidence. In a December 17, 1996 merit decision on reconsideration, the Office denied appellant's application for modification of its October 22, 1996 decision on the grounds that the factual and medical evidence submitted in support of appellant's request for reconsideration did not establish a medical connection between appellant's medical condition or disability and his federal employment and was insufficient to warrant modification of the prior decision. The Office also found that the physicians of record have presented a range of diagnoses and have neither, agreed upon one common diagnosis, nor explained the nature of the relationship, *i.e.*, the pathophysiological mechanism of injury.

The Board had duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant failed to meet his burden of proof in establishing that he sustained a medical condition or disability causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact 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 are causally related to the employment injury.[2]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. 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,[4] must be one of reasonable medical certainty,[5] 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]

In the present case, it is not disputed that appellant has a hand, arm, elbow and shoulder condition, but the Office found that there was insufficient evidence in the file regarding whether or not an injury or medical condition resulted from the accepted employment exposure, or that the diagnosed condition is causally related to any employment factors or conditions.

In an attending physician's report dated August 7, 1996, Dr. Timothy M. Gilmore, Board-certified in occupational medicine, indicated that appellant was being treated for pain in his shoulder and arm. On examination Dr. Gilmore noted that appellant had pain on abduction, paresthesias and sensation, diagnosed appellant with thoracic outlet syndrome, and opined "[patient's] job as a mail sorter caused and aggravated his condition." This report was countersigned by Dr. Ronald L. Horn, a family practitioner, on that same day, and is accompanied by a disability slip dated August 8, 1996 from Dr. Horn.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

[5] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

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

In a medical report dated August 13, 1996, Victor Picou, a physician's assistant specializing in occupational medicine, presented appellant's date of injury as August 7, 1996; noted that appellant described his job duties in detail; that appellant stated that he had been having severe pain in his elbows and shoulders since last week. Appellant also stated that this pain was due to repetitive use of his keyboarding on the letter sorting machine, which has no arm rest, etc. On examination Mr. Picou stated:

> "[Appellant] had a normal build and has normal musculature and joint contours and full range of motion. [He] has adequate strength in his extremities except for the left hand, which has a weak hand grip. [Appellant] has normal sensory findings and he has negative Tinel's and negative Phalen's tests. [He] has multiple areas of significant tenderness, *i.e.*, over the biceps tendons of both shoulders, over the distal triceps, over the lateral and medial condyles, and over the dorsum of each wrist and over his right extensor tendons of his right thumb. [Appellant] has no crepitus, any redness or increased heat in any joints."

Mr. Picou then assessed appellant with "bilateral epicondylitis/overuse tendinitis to both arms," and recommended that appellant have an arm rest on his sorting machine, otherwise he was to refrain from keying until the employing establishment provided him with an arm rest. This report was accompanied by an August 13, 1996 duty status report, Form CA-17, which indicated that appellant was not to lift more than 20 pounds for the next 2 weeks. Mr. Picou's completed report was countersigned as an accurate medical report by Dr. Timothy M. Gilmore, Board-certified in occupational medicine on August 22, 1996.[7] The Board, therefore, finds the August 13, 1996 medical report of Mr. Picou and countersigned by Dr. Timothy M. Gilmore, to be appropriate medical evidence within the meaning of the Act.[8] While the August 13, 1996 medical report and attending physician's report, Form CA-20, prepared by Dr. Gilmore on August 7, 1996, provided some support for causal relationship, neither Dr. Gilmore, nor Mr. Picou explained how or why the repetitive keying on the letter sorting machine caused, precipitated or aggravated appellant's diagnosed condition.[9] Furthermore, there is no reasoned explanation explaining why appellant was diagnosed with thoracic outlet syndrome on August 7, 1996 and rediagnosed with bilateral epicondylitis/overuse tendinitis to both arms on August 13, 1996. Therefore, the August 13, 1996 medical report is of limited probative value

[7] Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value; *see Jane A. White*, 34 ECAB 515, 518 (1983) (finding that because health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act, their opinions on causal relation do no constitute rationalized medical opinions and have no weight or probative value). However, the Federal (FECA) Procedure Manual at Chapter 3.100(3)(c) provides that a report prepared by a physician's assistant which is countersigned by a licensed physician should be accepted as medical evidence. *Beverly A. Wright*, Docket No. 95-1218 (issued May 5, 1997); *see also Curtis L. Lord*, 33 ECAB 1481(1982).

[8] *Id.*

[9] *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

and insufficient to establish appellant's claim for benefits. Mr. Picou has also presented a medical report dated November 8, 1996 which contains a blank signature line for Dr. Gilmore, but does not contain a signature from him. The November 8, 1996 report is, therefore, of no probative value and will not be considered since it was not countersigned by a licensed physician.[10]

In unsigned medical reports dated October 24 and 31, 1996, Dr. Kevin McNamara, a practicing orthopedist, stated that appellant is being evaluated for bilateral upper extremity complaints and presented the history of injury as given to him by appellant. In the October 24, 1996 report, Dr. McNamara diagnosed bilateral impingement syndrome related to his industrial exposure, more-probable-than-not-basis; ruled out bilateral carpal tunnel syndrome; recommended physical therapy of appellant's shoulders and change of anti-inflammatory medication and referral for an electromyography (EMG) nerve conduction study to rule out carpal tunnel syndrome, but in the interim, appellant was to avoid repetitive activities involving his upper extremities. In the October 31, 1996 report, Dr. McNamara noted that appellant came in for follow-up of his EMG nerve conduction study which revealed negative for a cervical radiculopathy, cubital tunnel syndrome or median nerve carpal tunnel syndrome. There is no evidence of any compressive neuropathy at either the elbow or at the wrist of the ulnar or median nerve. Dr. McNamara stated that at "this point in time it is felt that it is possible that [appellant] does have an EMG negative mild carpal tunnel syndrome and we are going to approach his problem from that standpoint as well as his bilateral impingement syndrome. His reports did not address whether the diagnosed condition was causally related to appellant's accepted employment exposure and presented two separate diagnosis. Therefore, Dr. McNamara's reports are speculative, of diminished probative value, and insufficient to meet appellant's burden of proof.

Additionally, Mr. Picou has submitted various progress notes ranging in dates from October 1 to October 17, 1996; along with various other duty status reports ranging in dates from August 27 to October 17, 1996 restricting appellant from pulling, pulling or lifting more than 20 pounds, and recommending the use of a splint for the left elbow, an arm rest and lumbar support in order to continue to perform his repetitive duties of keying on the letter sorting machine and/or lifting of up to 70-pound bags of mail. As neither the progress notes and/or the duty status reports provided a rationalized opinion explaining the cause and effect of appellant's various diagnosed conditions they are insufficient to satisfy appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment[11] or that work activities produce symptoms revelatory of an underlying condition[12] does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated

[10] *Id.*

[11] *William Nimitz, Jr., supra* note 4.

[12] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[13] As appellant has not submitted rationalized medical evidence explaining how and why the diagnosed condition was caused or aggravated by appellant's federal employment, the Office properly denied appellant's claim for compensation.[14]

The decisions of the Office of Workers' Compensation Programs dated December 17 and October 22, 1996 are affirmed.

Dated, Washington, D.C.
February 5, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] *Victor J. Woodhams, supra* note 3.

[14] Following the Office's December 17, 1996 decision appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request.