U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OATHER N. CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Macon, GA

Docket No. 99-2521; Submitted on the Record;
Issued May 18, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On June 1, 1998 appellant, then a 39-year-old mail processor, filed an occupational disease claim asserting that his tendinitis resulted from pulling trays weighing 30 or 40 pounds out of sleeves on a daily basis.[1] He stopped work on June 5, 1998.

In a March 16, 1998 report, Dr. Duward Benson, a chiropractor, indicated that appellant was being treated for injuries sustained in an automobile accident on February 1, 1998 and that his treatment should conclude sometime between May 25 and June 8, 1998.

In a July 9, 1998 report, Dr. Guy D. Foulkes, a Board-certified orthopedic surgeon, indicated that appellant developed a sharp pain and swelling in his right hand on June 8, 1997. Dr. Foulkes noted that appellant's pain was somewhat migratory in that every time he came in to be evaluated, the pain seemed to be in a new location. He found no swelling or point tenderness and negative Tinel's signs. Dr. Foulkes conducted several tests, including a nerve conduction study, which showed mild right carpal tunnel syndrome, with a normal radial nerve. He diagnosed right wrist pain of uncertain etiology. Dr. Foulkes indicated that appellant could "probably return to full, unrestricted duty, with no use of a splint."

In a letter dated July 28, 1998, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence within 30 days.

In an August 7, 1998 report, Dr. Timothy R. Stapleton, a Board-certified orthopedic surgeon, noted that appellant came in with a right wrist problem with tingling and numbness in

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[1] Appellant had an earlier occupational disease claim on June 8, 1997, which the Office of Workers' Compensation Programs accepted for right extensor tenosynovitis and later for carpal tunnel syndrome.

his fingers. Dr. Stapleton noted a positive nerve test that showed carpal tunnel syndrome and a mass to the back of the wrist indicative of a ganglion cyst. He diagnosed right carpal tunnel syndrome, plus right dorsal carpal ganglion. Dr. Stapleton indicated that appellant was scheduled for the right carpal tunnel release and right ganglion cyst excision on September 10, 1998.

In a September 18, 1998 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish that a condition was diagnosed in connection with his employment.

In a report dated September 23, 1998, Dr. Stapleton indicated that appellant was suffering from carpal tunnel disease as well as a ganglion cyst on the right hand. He noted that appellant worked as a mail processor and did a lot of work using his wrist. Dr. Stapleton indicated there was no doubt that carpal tunnel disease was more often than not a work-related injury. He also indicated that the ganglion cyst could be aggravated by repetitive activities with the wrist and he thought it was likely that this was a worker's compensation injury.

In an October 12, 1998 report, Dr. Watson diagnosed right wrist carpal tunnel syndrome. He asserted that jobs, which involved repetitive flexion and extension of the wrist, may influence the development of carpal tunnel syndrome. Dr. Watson also opined that other causes of carpal tunnel syndrome included disorders that affected the musculoskeletal system in the region of the wrist, such as trauma or colles fracture, degenerative joint disease, rheumatoid arthritis, ganglion cyst and seleroderma. He indicated that there is no universal agreement that carpal tunnel syndrome was job related.

In an undated letter, which was received by the Office on October 19, 1998, appellant requested an oral hearing.[2]

Appellant provided the December 16, 1998 medical notes of Dr. Stapleton concerning his right carpal tunnel syndrome and ganglion cyst surgical procedures. In a January 14, 1999 report, Dr. Stapleton indicated that appellant was able to resume full duties as of January 8, 1999.

Appellant submitted a booklet on carpal tunnel syndrome.

In a report dated February 26, 1999, Dr. Stapleton advised that appellant underwent a carpal tunnel release and a ganglion excision in December of 1998 and that appellant continued to have the same symptoms, although he was better since the surgery. He advised that appellant continue in nonrepetitive light-duty activities.

The Office advised appellant that a hearing would be held on March 22, 1999.

In a June 20, 1997 report received by the Office on April 16, 1999, Dr. Foulkes noted that appellant complained of dorsal wrist pain, localized just to the ulnar side of the Lister's tubercle.

[2] Appellant also requested an appeal in an undated letter received on November 10, 1998 and his request was treated as a request for an oral hearing.

He indicated that appellant worked as a mail processor and that in the past two months, he had an additional duty of pulling the sleeves off the mail before he stacked the bar-coding machine. Dr. Foulkes noted that previously appellant did not have to remove the sleeves as a separate job. He also indicated that appellant did this type of work for about 11 years. Dr. Foulkes diagnosed right wrist pain of uncertain etiology and indicated that appellant might have a pain syndrome over the posterior interosseous nerve or occult extensor tenosynovitis. He noted the absence of clinical swelling and indicated that it probably was not extensor tenosynovitis.

In a May 12, 1999 decision, the hearing representative affirmed the Office's September 18, 1999 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employee's Compensation Act[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 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. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[6]

[3] 5 U.S.C. §§ 8101-8193.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Lourdes Harris*, 45 ECAB 545, 547 (1994); *Victor J. Woodhams, supra* note 5.

In this case, the Office accepted that the claimed exposure occurred at the time, place and in the manner alleged. However, the medical evidence submitted in support of appellant's claim was insufficient to establish that his diagnosed conditions were causally related.

Dr. Watson's light-duty slips did not contain any medical opinion that there was a causal connection between appellant's condition and any specific work factors.[7] In his October 12, 1998 report, Dr. Watson opined that jobs involving repetitive flexion and extension of the wrist might influence the development of carpal tunnel syndrome. Dr. Watson also asserted that it could be influenced by trauma, colles fracture, degenerative joint disease, arthritis and other external factors.[8] He did not provide any medical rationale that appellant's medical condition was caused or aggravated by his work duties.

In a June 20, 1997 report, Dr. Foulkes indicated that appellant worked as a mail processor and had increased duties during the past two months. He diagnosed right wrist pain of unknown etiology but did not make a definitive diagnosis. In a July 9, 1998 report, he opined that appellant's pain was somewhat migratory and seemed to be in a new location every time he came to be evaluated, appellant's bone scan was normal and he could return to "full unrestricted duty, with no use of a splint." Dr. Foulkes did not provide any rationalized opinion that appellant's condition was caused by or related to his employment. Therefore, his opinion merits little probative value and is insufficient to meet appellant's burden of proof.[9]

Dr. Stapleton, in his August 7, 1998 report, diagnosed carpal tunnel syndrome and a ganglion cyst but did not provide any opinion on how appellant's condition evolved or was sustained. In subsequent reports, he discussed appellant's right carpal tunnel release and ganglion cyst excision, but did not refer to its cause or even suggest that the condition was employment related.

In a September 23, 1998 report, he indicated that appellant worked for the employing establishment and that as a mail processor, he did a lot of work using his wrist. Dr. Stapleton opined that carpal tunnel disease was more often than not a work-related injury, but did not indicate that appellant's condition was work related or provided an opinion on causal relationship.[10] He also opined that appellant's ganglion cyst could be aggravated by repetitive activities and that his condition was likely a worker's compensation injury, but these statements were speculative and insufficient to establish causal relationship.[11]

Additionally, appellant provided an article on carpal tunnel syndrome. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary

[7] *See Victor J. Woodhams, supra* note 5.

[8] The Board has held that an opinion that is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet,* 31 ECAB 366 (1979).

[9] *Carolyn F. Allen,* 47 ECAB 240 (1995).

[10] *Id.*

[11] *See Carolyn F. Allen, supra* note 9.

value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.[12]

Appellant also provided a report from a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered to be a physician under the Act. Section 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist…."[13] Therefore, a chiropractor cannot be considered a physician under the Act unless the x-ray evidence establishes the existence of a subluxation.[14] In this case, appellant did not provide sufficient information to have Dr. Benson considered a physician under the Act. Therefore, his report was not probative.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.[15] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[16]

[12] *Dominic E. Coppo*, 44 ECAB 484 (1993).

[13] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[14] *Kathryn Haggerty*, 45 ECAB 383 (1994).

[15] *Id.*

[16] On appeal, appellant submitted new evidence. The Board cannot consider this evidence as the Board's review of the case is limited to the evidence of record, which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The May 12, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 18, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member