U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE R. TRACY and U.S. POSTAL SERVICE,
POST OFFICE, Hampden, ME

Docket No. 02-1103; Submitted on the Record;
Issued October 16, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained a left elbow injury while in the performance of duty, as alleged; and (2) whether the January 11, 2002 decision of the Office of Workers' Compensation Programs is null and void.

On May 24, 2001 appellant, then a 55-year-old rural carrier, filed a claim asserting that he sustained a sore left elbow as a result of his federal employment. Appellant began to explain the relationship to his employment by writing the letters "repa" but did not finish. He explained his delay in filing a claim as follows: "Tried to change casing mail (did not work). Also tried pneumatic armband. Has not helped."

On June 5, 2001 the Office requested additional information. The Office asked appellant to describe in detail the employment-related activities that he believed contributed to his condition. The Office also asked appellant to submit a comprehensive medical report from his physician, one that contained the physician's opinion, supported by medical reasoning, on the cause of the diagnosed condition.

Appellant submitted treatment notes. A May 24, 2001 note from an osteopath, Dr. Stephen P. Typaldos, stated as follows:

> "[Appellant] has had pain in his left elbow for the past five months or so. [Appellant] first noticed it in January. He works for the [employing establishment] and does a lot of sorting of mail and so forth. [Appellant] had a similar problem with his right elbow. He rested it a couple of months and then it was okay. This was several years ago. [Appellant] says that the left elbow hurts in one spot. He does point to that one spot but [appellant] also pushes his fingers into the intermuscular septum. He has continued to work and is not on part time or restricted duty or anything like that. [Appellant] has not missed a day of work in the past five years. He has not had any x-rays or diagnostic studies or seen any

> [physicians] about this. [Appellant] denied night fevers, sweats, chills, pain in his hands, numbness, tingling seizures, fevers, etc."

Dr. Typaldos described his findings on physical examination, diagnosed left lateral epicondylitis and left elbow pain and administered manipulative treatment. Subsequent notes indicated that playing golf sometimes agitated appellant's left elbow condition.

In a form report dated May 24, 2001, Dr. Typaldos indicated with an affirmative mark that appellant's left elbow condition was work related.

In a decision dated August 24, 2001, the Office denied appellant's claim for compensation on the grounds that he failed to establish fact of injury. The Office found that appellant failed to describe adequately the job-related activities that he believed caused his medical condition. Further, no supervisor confirmed that appellant engaged in these activities at work. The Office also found that the he failed to provide the requested detailed medical report providing a firm diagnosis and explaining the causal relationship between the diagnosis and factors of employment.

On September 21, 2001 appellant stated that he "would like a written record." Unclear whether appellant was requesting a review of the written record or reconsideration, the Office asked him to clarify which avenue of appeal he wanted. Appellant replied on December 14, 2001 that he was requesting reconsideration of the Office's August 24, 2001 decision. To support his request he submitted a September 9, 2001, narrative report from Dr. Typaldos:

> "Concerning [appellant]: as you know he first came to my office with left elbow pain on [May 24, 2001]. [Appellant] had been having pain for the past five months was diagnosed by me as having (1) left lateral epicondylitis and (2) left elbow pain. I treated him a total of eight times with manipulative therapy and he did well. However, as soon as [appellant] went back to work he had discomfort again. The last visit to see me was [July 5, 2001].
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> "It is my medical opinion that it is likely that [appellant's] injury to his left elbow is directly related to his work. As far as I know there have been no restrictions (during that time) of his work duties or changes of habit.
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> "I believe that it is likely he would benefit from continuing care here in this office."

In a decision dated December 21, 2001, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that appellant failed to establish that an injury occurred at the time, place and in the manner alleged by providing basic information relating to how he suffered an injury related to his employment and by identifying the job duties responsible for the injury. The Office also found that while Dr. Typaldos offered an opinion that the left elbow condition was work related, he did not identify the job duties that caused the condition.

Following the December 21, 2001 merit review of appellant's claim, the Office expressed some confusion over appellant's request for reconsideration: "Was this request for reconsideration for the August 21, 2001 original decision or are you requesting reconsideration of the December 21, 2001 decision?" The Office invited appellant to respond by telephone.

In a decision dated January 11, 2002, the Office stated that it had reviewed appellant's letter of December 14, 2001 and telephone call of January 9, 2002[1] and was denying his request for reconsideration because his request neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that appellant has not met his burden of proof to establish that he sustained a left elbow injury while in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, appellant must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical 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 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 established incident or factor of employment.[7]

On his May 24, 2001 claim form appellant failed to explain the relationship between his sore left elbow and his federal employment as a rural carrier. Appellant indicated only that he had "tried to change casing mail." The Office asked him on June 5, 2001 to describe in detail the employment-related activities that he believed contributed to his condition, but he did not respond. The only other reference to appellant's duties appears in a May 24, 2001, treatment note from Dr. Typaldos, an osteopath. He stated that appellant "does a lot of sorting of mail and so forth."

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[1] No memorandum or report of telephone contact appears in the record.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

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

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

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

There appears to be no dispute that appellant, as a rural carrier, "does a lot of sorting of mail and so forth," but this is far too vague a description to establish a factual basis for his claim. Because the record contains no sufficient description of the duties to which he attributes his left elbow condition, appellant has not met his burden of proof to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.

Appellant has also failed to establish the element of causal relationship. Indications or statements by Dr. Typaldos that appellant's left lateral epicondylitis is related to his federal employment support appellant's claim, but Dr. Typaldos has offered no medical reasoning to explain how specific duties in appellant's federal employment caused or contributed to the diagnosed condition.

The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[8] Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. Dr. Typaldos' statement that "it is likely that [appellant's] injury to his left elbow is directly related to his work" is not only premised on an insufficient description of the implicated employment duties, it offers no medical reasoning.[9] Medical conclusions unsupported by rationale are of little probative value.[10]

As appellant has failed to establish fact of injury, the Board will affirm the Office's August 24 and December 21, 2001, decisions denying his claim for compensation.

The Board also finds that the Office's January 11, 2002 decision is null and void.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[11]

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[8] *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

[9] It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical. *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

[10] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[11] 5 U.S.C. § 8128(a).

Regulations require that an application for reconsideration must be submitted in writing.[12]

Asked to provide clarification of his September 21, 2001 request, appellant made clear on December 14, 2001 that he was requesting reconsideration of the Office's August 24, 2001 decision. Appellant could not at that time request reconsideration of the Office's December 21, 2001 decision, because the Office had not yet issued that decision. On its face, then, appellant's December 14, 2001, clarification stands as an application for reconsideration of the Office's August 24, 2001 decision. The Office granted this application for review, reconsidered the merits of appellant's claim and issued a new decision on December 21, 2001. No subsequent application for reconsideration appears in the record.

Any request for reconsideration made by telephone, notwithstanding an invitation by the Office to make such a request, is not a valid application for reconsideration or a valid exercise of review rights. As the record shows no written application for reconsideration following the Office's December 21, 2001 merit decision, the Board will set aside the Office's January 11, 2002 decision as null and void.

The January 11, 2002 decision of the Office of Workers' Compensation Programs is set aside. The December 21 and August 24, 2001 decisions of the Office are affirmed.

Dated, Washington, DC
October 16, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

[12] 20 C.F.R. § 10.606(b)(1) (1999). The review rights attached to the Office's December 21, 2001 decision also state: "If you have additional evidence which you believe is pertinent, you may request, in writing, that [the Office] reconsider this decision."