

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES L. HARDING and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 03-558; Submitted on the Record;
Issued April 23, 2003*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

On February 26, 2001 appellant, then a 52-year-old postmaster, filed a claim alleging that he developed hypertension, loss of use of his right arm and pain and discomfort in his extremities on or around October 17, 1999 due to factors of his employment. Appellant claimed that processing mail and overuse was associated with pain in his right hand and fingers and that his blood pressure was volatile and often reached stroke levels without medication. Appellant stopped work on February 20, 2001 and retired from the employing establishment effective May 21, 2002. The employing establishment controverted his claim stating that appellant never reported any accident or injury and that his right arm injury was preexisting. Appellant's supervisor also stated that his job duties were not as physical as appellant claimed.

By letter dated April 4, 2001, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence needed to establish his claim, including specific factors of employment implicated and a physician's rationalized medical opinion supporting causal relation.

In response appellant submitted an April 27, 2001 letter, in which he stated that he was required to perform arduous physical activity on a regular basis as postmaster of a small employing establishment. He stated that he injured his right arm about five years ago, which was an aggravation of a gunshot wound to the right arm in Vietnam in 1969 and that his condition worsened in October 1999. Appellant alleged that he had to break down tubs of mail involving lifting, pushing, pulling and sorting and lifting heavy parcels across the counter and claimed that he injured his right arm again while carrying mail on February 17, 2001. He further alleged that the stress from the injury aggravated his hypertension causing his blood pressure to rise. Appellant blamed his additional duties, including carrying routes and custodial duties, on the lack of personnel.

In support of his claim, appellant submitted medical office notes and reports from Christopher Kiesow, a physician's assistant and Dr. Sami Moufawad, a Board-certified neurologist. On January 19, 2001 Dr. Moufawad diagnosed appellant as having post-traumatic right ulnar neuralgia and hypercholesterolemia. Causation was not discussed and hypertension was not mentioned.

In a February 19, 2001 progress report, Dr. Laura J. Born, a U.S. Air Force physician, noted that appellant had noted an increase in his right arm symptomatology over the preceding week, that his elbow "popped" while delivering mail with burning and swelling, that the "popping" was associated with aching in the forearm and that he had a preexisting deformity of the right arm due to a gunshot wound. Dr. Born diagnosed: chronic intermittent pain/paresthesias in right forearm and she recommended decreased right arm usage; she also noted old muscle atrophy above the elbow on the right; and she indicated that appellant had work restrictions of no use of his right arm/hand until seen by his neurologist. Causation was not discussed and hypertension was not mentioned.

In a report dated March 2, 2001, Dr. Moufawad noted that two weeks prior appellant was delivering mail when he started to have worsening pain in the ulnar aspect of the right elbow radiating to the fourth and fifth fingers. He noted that the pain was severe enough to cause appellant to stop work. Right ulnar post-traumatic chronic neuropathy and myofascial pain with trigger points were diagnosed. Causation was not discussed and hypertension was not mentioned.

By report dated March 30, 2001, Dr. Moufawad noted that appellant's complaints of right elbow and forearm pain related to his chronic ulnar neuritis, noted that he did have Tinel's sign on palpation of his right ulnar nerve and mild allodynia in the ulnar distribution on the right and that he was wearing a neoprene sleeve on his elbow, which helped with his pain. Dr. Moufawad diagnosed post-traumatic ulnar neuritis on the right and exacerbation of the pain with repetitive motion and he indicated that appellant may not return to work. Hypertension was not mentioned.

By decision dated April 16, 2002, the Office rejected appellant's claim finding that he had not established fact of injury. The Office found that an injury was not demonstrated as having occurred.

By letter dated May 15, 2002, appellant requested a review of the written record.

In support he submitted a May 7, 2002 report from Dr. Moufawad, which noted a diagnosis of post-traumatic neuralgia worsened by activities at work involving repetitive motion and pain over his right elbow. Dr. Moufawad opined that appellant could not participate in any gainful activities due to worsening of his symptoms, including pain radiating from the medial aspect of his elbow down to his hand. Again, causation was not discussed, nor was hypertension mentioned.

Also submitted was a duplicate of Dr. Moufawad's March 2, 2001 report and a report from the physician's assistant.

Additionally, appellant submitted an August 7, 2001 letter from the Office of Personnel Management approving his application for disability retirement.

By decision dated September 20, 2002, the hearing representative affirmed the April 16, 2002 decision finding that the evidence submitted was insufficient to warrant modification. The hearing representative found that the medical evidence of record established only that appellant experienced neurologic injury in his right arm secondary to a 1969 gunshot wound and offered no opinion on causal relation of his right arm symptomatology and his employing establishment duties.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that he 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 and/or specific condition, for which compensation is claimed is causally related to the employment injury.²

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

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;³ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ 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.⁵ The medical evidence required to establish 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,⁶ must be one of reasonable medical certainty⁷ and must be supported by medical rationale explaining the

¹ 5 U.S.C. §§ 8101-8193.

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

³ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁵ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁹

In this case, the medical evidence appellant submitted lacked any rationalized medical opinion explaining the causal relationship between specific factors of his employment and his right arm symptomatology.

Appellant claimed that his right arm symptomatology was caused by lifting, pushing, pulling, sorting and lifting heavy parcels across the counter and by carrying mail on February 17, 2001. He further claimed that stress from his employment aggravated his hypertension, which included additional duties, carrying routes, custodial duties and the lack of personnel. However, no rationalized medical evidence was submitted, which supported that these factors caused or aggravated either his right arm symptomatology or his hypertension.

Dr. Moufawad diagnosed post-traumatic right ulnar neuralgia, right ulnar post-traumatic chronic neuropathy, myofascial pain and hypercholesterolemia, but he did not discuss causal relationship with factors of appellant's employment nor did he provide an opinion on appellant's hypertension.

On May 7, 2002 Dr. Moufawad diagnosed post-traumatic neuralgia "worsened by activities at work involving repetitive motion" and right elbow pain, but he did not identify the repetitive activities implicated in the neuralgia worsening and he did not explain the pathophysiologic mechanism involved. Therefore, this opinion is entirely unrationalized and is consequently of diminished probative value and is insufficient to establish appellant's claim.

Dr. Born noted that appellant had "popping" of his elbow while delivering mail with burning and swelling and aching of the forearm, but she did not discuss factors of appellant's employment, which were implicated in causing these symptoms. Dr. Born noted preexisting right arm atrophy related to a 1969 gunshot wound, chronic intermittent pain and paresthesias on the right, but she provided no opinion as to causal relation with appellant's employment and she did not discuss appellant's hypertension or its alleged aggravation. Therefore, Dr. Born's report is of diminished probative value and is insufficient to establish appellant's claim.

Appellant submitted no further probative medical evidence, as the medical reports from the physician's assistant do not constitute probative medical evidence in support of his claim.¹⁰

As appellant has not provided rationalized medical evidence identifying the specific factors of employment implicated in causing his right arm symptomatology and has not provided

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Juanita Rogers*, 34 ECAB 544 (1983).

¹⁰ See *Lyle E. Dayberry*, 49 ECAB 369 (1998) (a physician's assistant's report is entitled to no weight because a physician's assistant is not a physician under the Act).

any medical evidence discussing aggravation of his hypertension, he has not established that he sustained an injury in the performance of duty under the Act.

Consequently, the decisions of the Office of Workers' Compensation Programs dated September 20 and April 16, 2002 are hereby affirmed.

Dated, Washington, DC
April 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member