

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NICHOLAS A. PAGLIA and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Providence, RI

*Docket No. 02-2029; Submitted on the Record;
Issued February 3, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty.

On September 12, 1997 appellant, then a 45-year-old mailhandler, filed a traumatic injury claim assigned number 01-0351731, alleging that on September 9, 1997 he experienced pain in his left shoulder, deltoid, left and rear neck and left face cheek, dizziness, a headache and some numbness down his left arm. Appellant indicated that a coworker, who greeted him by striking his left shoulder-deltoid with his palm, caused his conditions.

On the same date appellant filed another traumatic injury claim assigned number 01-0351732 alleging that on September 9, 1997 he twisted his back when he tried to avoid an injury by side stepping out of someone's way. Appellant stated that he experienced lower back pain.

In support of his claims, appellant submitted statements dated September 11, 1997, describing each incident that took place on September 9, 1997. Appellant also submitted the August 25 and September 16, 1997 treatment notes of Dr. Ronald C. Hillegass, a Board-certified orthopedic surgeon, regarding a right foot and ankle and left shoulder condition. Hospital records from a physician whose signature is illegible described the September 9, 1997 incident where appellant was slapped on the shoulder by a coworker and the medical treatment appellant received.

By letters dated October 22, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claims. The Office further advised appellant of the type of medical evidence needed to establish his claims and requested that he submit such evidence.

The Office received Dr. Hillegass' October 1, 1997 treatment notes indicating that appellant sustained two injuries on September 9, 1997. He noted appellant's complaints and

medical treatment. Dr. Hillegass opined that it was difficult to separate the functional aspects of appellant's problems and that appellant was able to perform the regular modified work, which he was doing at the time of his evaluation, but he advised appellant to remain off work.

In response to the Office's October 22, 1997 letter, appellant submitted a November 17, 1997 letter, requesting an extension of time to submit the requested documents. Appellant explained that he had just finished working on another request from the Office and that he would submit the requested documents soon.

By decisions dated December 1, 1997, the Office found the evidence of record sufficient to establish that appellant experienced the claimed incidents, but insufficient to establish a diagnosed condition caused by these incidents.

Appellant submitted a November 25, 1998 letter, which the Office interpreted as a request for an oral hearing before an Office representative based on his statement that he was "not relinquishing my right for a hearing even if this is beyond the deadline."

By decision dated February 5, 1999, the Office denied appellant's request for a hearing as untimely filed pursuant to section 8124(b) of the Federal Employees' Compensation Act. In a February 8, 2000 letter, appellant requested reconsideration.

In support of his request, appellant submitted diagrams describing the September 9, 1997 incidents, the Office's February 5, 1999 decision and correspondence between himself, the employing establishment and Dr. K. Nicholas Tsiongas, Board-certified in preventive medicine, regarding the scheduling of his physical and psychological fitness-for-duty examinations.

Appellant also submitted medical evidence in support of his request. An undated report of Dr. Frank R. Sparadeo, a clinical neuropsychologist, provided a history of the September 9, 1997 incidents and his findings on mental and physical examination. Dr. Sparadeo concluded that appellant experienced chronic pain syndrome, which was complex due to unresolved pain, long-term physical vulnerability and feelings of being unfairly treated by the employing establishment and certain physicians. He opined that pain management was unlikely to be of any further benefit to appellant. He diagnosed pain disorder on Axis I, multiple injuries on Axis III, moderate chronic pain unsatisfied with medical interventions on Axis IV and global assessment of functioning (GAF) of 60 on Axis V. Dr. Sparadeo deferred a diagnosis on Axis II.

The notes of Dr. Christopher F. Huntington, an orthopedic surgeon, covering the period March 30 through December 10, 1998, noted appellant's medical treatment for his neck, back and shoulder conditions.

Dr. Huntington's May 10, 1998 letter, revealed appellant's complaints of neck pain along with headaches, dizziness and some numbness in his toes. Dr. Huntington recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

A September 19, 1998 MRI scan report of Dr. Damian E. Dupuy, a Board-certified radiologist, indicated that a small central herniated nucleus pulposus at C3-4, right paracentral herniated nucleus pulposus at C4-5 with resulting mild spinal stenosis and anterior thecal sac compression with no evidence for cord signal abnormality and C5-6 posterior disc-ridge complex

demonstrating anterior thecal sac compression without cord signal abnormality. Dr. Dupuy's September 22, 1998 MRI scan report, indicated a small amount of fluid in the subdeltoid and subacromial bursa without evidence for a full thickness rotator cuff tear in appellant's right upper extremity. Dr. Dupuy stated that the findings might be consistent with bursitis.

By decision dated April 26, 2000, the Office modified its previous decision denying appellant's claims by accepting that he sustained a chronic cervical strain, cervical spondylosis and bursitis of the right rotator cuff. The Office, however, found the evidence of record insufficient to establish a causal relationship between these conditions and the September 9, 1997 employment incidents.

In an April 26, 2001 letter, appellant through his counsel requested reconsideration. In support of his request, appellant submitted Dr. Huntington's April 26, 2001 letter. In this letter, Dr. Huntington provided a history of appellant's April 24, 1997 employment-related left shoulder injury and subsequent medical treatment.¹ Dr. Huntington described the September 9, 1997 incident, wherein appellant was slapped on his left shoulder by a coworker and the medical treatment he received from Dr. Hillegass including a diagnosis of possible rotator cuff strain. Dr. Huntington noted his findings on examination of appellant on March 29, 2001. He further noted that appellant reported two separate injuries to his left shoulder with similar complaints that were both consistent with rotator cuff tendinitis and/or strain. Dr. Huntington stated that appellant's treatment history was nonexistent since appellant never received specific treatment for his shoulder. He also stated that appellant suffered a rotator cuff strain initially on April 24, 1997 with an aggravation on September 9, 1997. Dr. Huntington further stated that there were no nonwork-related injuries to appellant's shoulder that he was aware of and appellant's disability was partial and likely permanent. He opined that within a reasonable degree of medical certainty the injury was sustained at work based on appellant's history. Dr. Huntington stated that, since he was not the treating physician at the time of the injuries, he did not have the benefit of a personal physical examination and his opinion was rendered based on appellant's history. He concluded that the mechanism described would be somewhat unusual to cause rotator cuff tendinitis, but not improbable. He further concluded that a review of the medical information including the treatment and history of Dr. Hillegass were inconsistent with his findings on examination and with appellant's description of the mechanism of injuries.

Appellant also submitted Dr. Huntington's March 29, 2001 duty status report. Dr. Huntington described the September 9, 1997 incidents, wherein appellant twisted his lower back to avoid an oncoming coworker and a coworker slapped him on the left shoulder. He provided an illegible diagnosis caused by the described incidents. He also noted appellant's physical restrictions and disability for work.

By decisions dated July 26, 2001, the Office denied appellant's request for modification based on a merit review of its prior decisions.

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

¹ The record reveals that appellant filed a traumatic injury claim alleging that on April 24, 1997 he injured his left shoulder and neck in the performance of duty, which was accepted by the Office for a very mild left trapezius strain.

An employee seeking benefits under the Act 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 The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.³

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, 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 specific employment factors identified by the claimant.⁴ 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. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁵

In this case, appellant has alleged that he sustained two injuries on September 9, 1997 in two separate incidents. Initially, appellant contends that he experienced pain in his left upper extremity and face when a coworker greeted him by striking his left shoulder. Appellant also contends that he sustained lower back pain when he twisted his back in order to avoid a collision with someone. The Office found the medical evidence of record insufficient to establish that he sustained a traumatic injury due to these employment factors.

The August 25, 1997 treatment notes of Dr. Hillegass, a Board-certified orthopedic surgeon, concerning appellant's right foot and ankle predate the September 9, 1997 employment incidents.

Dr. Hillegass' September 16 and October 1, 1997 treatment notes, the hospital records and the treatment notes of Dr. Huntington, an orthopedic surgeon, covering the period March 30 through December 10, 1998, failed to address whether appellant's left shoulder, neck and back conditions or disability for work were caused by the accepted employment factors.

Dr. Huntington's May 10, 1998 letter, containing his recommendation that appellant undergo MRI testing and the September 19 and 22, 1998 MRI scan reports of Dr. Dupuy, a Board-certified radiologist, failed to address whether appellant had a condition caused by the September 9, 1997 employment incidents.

² *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Victor J. Woodhams*, *supra* note 2 at 351-52; *William E. Enright*, 31 ECAB 426, 430 (1980).

⁵ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

The diagrams describing the September 9, 1997 employment incidents, the Office's February 5, 1999 decision and correspondence between appellant, the employing establishment and Dr. Tsiongas, Board-certified in preventive medicine, regarding the scheduling of his physical and psychological fitness-for-duty examinations do not establish appellant's burden. Causal relationship is medical in nature and can be established only by medical evidence.⁶ As the diagrams, the Office's decision and correspondence do not constitute medical evidence, they are insufficient to establish appellant's burden.

The undated report of Dr. Sparadeo, a clinical neuropsychologist, diagnosing pain disorder on Axis I, multiple injuries on Axis III, moderate chronic pain on Axis IV and GAF 60 on Axis V failed to address whether appellant's conditions were caused by the September 9, 1997 employment incidents.

In his March 29, 2001 duty status report, Dr. Huntington failed to provide any medical rationale to support his opinion that appellant sustained an injury due to the September 9, 1997 employment incidents. He also failed to provide any medical rationale to support his opinion that appellant sustained an aggravation of his preexisting rotator cuff strain due to the September 9, 1997 employment incidents in his April 26, 2001 letter.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained an injury caused by either of the employment incidents occurring on September 9, 1997, the Board finds that he has failed to satisfy his burden of proof in this case.

The July 26, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).