U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVERT A. JOHNSON and DEPARTMENT OF AGRICULTURE, FOOD SAFETY INSPECTION SERVICE, Grand Island, NE

Docket No. 03-821; Submitted on the Record;
Issued June 3, 2003

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of disability commencing September 14 or 27, 2001, for which he claimed compensation beginning November 16, 2001, causally related to his accepted left carpal tunnel syndrome; and (2) whether appellant has established that he sustained a right upper extremity condition, causally related to factors of his federal employment.

On May 1, 2001 appellant, then a 48-year-old red meat inspector, filed an occupational disease claim alleging that on April 18, 2001 his left hand became stiff and he could not move his thumb or index finger as he was inspecting carcasses on the inspection line. He did not stop work.

In support of his claim, appellant submitted an April 30, 2001 consultation report from Dr. Dolf R. Ichtertz, a Board-certified orthopedic surgeon specializing in hand surgery, which noted that appellant was referred for "occupationally-related stiffness and occasional locking of the left index and thumb, a lump that occurs in his left palm after prolonged working…. In addition he has been experiencing some numbness in the left index and thumb. He specifically denies any right hand problems." Dr. Ichtertz noted that appellant claimed that he noticed his left-handed problem about three months earlier, that he slept with his elbows flexed and tended to lie on one side related to chronic lower back pain, that he was "morbidly over-nourished" and physically deconditioned and that he had been diagnosed with multiple sclerosis [MS] during the preceding year." Dr. Ichtertz's diagnoses included "1. Chronic, bilateral median and ulnar neuropathy, symptomatic on the left side only," and "Occupational exacerbation of #1 in LUE [left upper extremity] only." However, on an unsigned form from Dr. Ichtertz's office it was noted "bilateral endoscopic carpal tunnel release needed."

On July 9, 2001 the Office of Workers' Compensation Programs accepted that appellant sustained left carpal tunnel syndrome in the performance of his inspection duties.

Thereafter appellant submitted a March 23, 1999 report from Dr. Richard C. Bailly, a Board-certified neurologist, which indicated that magnetic resonance imaging scanning of appellant's brain had demonstrated multiple lesions suggestive for demyelinating disease such as multiple sclerosis. On April 27, 1999 Dr. Bailly diagnosed multiple sclerosis that was not related to appellant's work.

In an August 15, 2001 report, Dr. Ichtertz noted that authorization of the requested left endoscopic carpal tunnel release had been received, that appellant experienced some numbness in the left index finger and thumb, but sometimes felt that the whole left hand was numb and that the left hand felt weak to him and had felt weak for about six months. He diagnosed "morbidly over-nourished, physically deconditioned status, multiple sclerosis by history unchanged, [and] chronic bilateral carpal tunnel and cubital tunnel syndrome unappreciably changed."

Appellant did not stop work until he underwent surgery on August 28, 2001 for a left external ulnar neurolysis of the elbow, a left medial epicondylectomy and a left endoscopic carpal tunnel release. Postoperative diagnosis was noted as chronic cubital tunnel syndrome and chronic left carpal tunnel syndrome.

It is not clear from the record whether appellant returned to work following his August 28, 2001 surgery, as Dr. Ichtertz expected recovery to take seven days, maximum. He stopped work totally on either September 14 or 27, 2001 and his pay stopped on November 16, 2001. Thereafter appellant claimed compensation for temporary total disability from November 16, 2001.

In an October 3, 2001 report, Dr. Thomas F. Werner, a Board-certified family practitioner, noted that appellant had problems with weakness and paresthesias of the left leg and he diagnosed an exacerbation of multiple sclerosis. Dr. Werner advised that appellant was unlikely to be able to continue his work activities for an unknown period of time.

On October 11, 2001 Dr. Werner noted that appellant "has been diagnosed with multiple sclerosis. He is currently under treatment by a neurologist with medication and is currently unable to fill the physical requirements of his job. Long-term prognosis and return to work dates are unknown."

On January 10, 2002 appellant filed a Form CA-2 claim for compensation for bilateral upper extremity involvement on April 18, 2001. He claimed that his hands were getting stiffer causing pain such that he could not do his job, that both of his hands were involved, and that, although the left hand claim had been accepted, he was still waiting for the right. Appellant's supervisor noted on the reverse of the form that appellant stopped work on September 27, 2001 before close of business, his pay stopped on November 15, 2001 before close of business and that he was waiting at home for the Office to approve his right carpal tunnel syndrome.

By report dated February 20, 2002, Dr. Ichtertz noted that appellant's "MS seems to be acting up," with difficulty walking, predominantly because of some weakness in the left quadriceps. He noted that appellant's left hand had gotten along fine and felt a lot better than the right and he opined that appellant needed right cubital decompression with an epicondylectomy and right endoscopic carpal tunnel release to avoid further problems with his nervous system

related to the entrapment neuropathy on top of preexisting MS. Dr. Ichtertz indicated that appellant had not been back at work since September 2001. In a separate letter that date, he requested authorization for right-sided surgery.

In a misdated statement written on March 5, 2002, the employing establishment compensation claims technician noted that appellant had sent her a CA-2 claim for right carpal tunnel syndrome and wondered why the left hand claim could not be expanded to include the right hand as all of the evidence was the same.

On March 6, 2002 appellant again filed a Form CA-2 claim for occupational disease claiming that both his right and left hands were getting stiff, with the left being more pronounced causing him to think he had a bone splinter in his left hand. He noted that he became aware of this condition on April 18, 2001 when he noticed that, beside his left upper extremity symptomatology, his right hand and arm would get stiff so that he could not turn livers over or turn a carcass. On the reverse of the form, the injury compensation specialist noted that appellant last worked September 14, 2001.

On April 12, 2002 appellant claimed that the stress from the job, the lack of money and the paperwork led to an exacerbation of his MS.

In a May 8, 2002 report, Dr. Ichtertz noted that appellant's left upper extremity was doing quite well, but that in the right upper extremity he experienced the inability to hold things, dropping things frequently, that he felt he was losing control and felt very weak, and that he awakened at night because of discomfort from the right side. He diagnosed chronic right carpal and cubital tunnel syndrome and resolving left median and ulnar neuropathy. Light duty of a preferably sedentary nature was recommended.

On May 9, 2002 appellant filed a claim for occupational disease, of which he became aware on April 18, 2001, affecting his right upper extremity. He described the disease as right carpal tunnel syndrome and indicated that on April 18, 2001 he got so bad he could not hold his knife, turn a carcass or turn livers.

By letter dated May 21, 2002, the Office noted that Dr. Ichtertz's request for authorization to perform right cubital decompression and a right endoscopic carpal tunnel release, and it requested that Dr. Ichtertz explain how and why appellant's right carpal tunnel syndrome and cubital tunnel were work related.

In a response dated May 21, 2002, Dr. Ichtertz noted that appellant "feels strongly that his occupation somehow precipitated his carpal and cubital tunnel syndrome." He opined he was not convinced that appellant's MS had much to do with his cubital and carpal tunnel syndrome, and that the majority of people treated for nerve entrapment under workers' compensation were treated on the basis of occupational symptom exacerbation of the problem and that "the activities that one does often bring forth the symptoms experienced with entrapment neuropathy."

On June 11, 2002 the Office noted that appellant's CA-7 claim for compensation for continual disability for the period November 16, 2001 to June 1, 2002 and requested that he submit medical evidence showing total disability for this period.

In a June 17, 2002 medical progress note, Dr. Ichtertz noted that the lack of medical follow-up between September 2001 and February 2002 and being off work and he stated:

> "[S]ince I did not tell him to take off work despite having problems with his MS and untreated right carpal and cubital tunnel syndrome, I was unable to assist him with his claim … for … disability benefits between November 2001 and May 2002."

In a lengthy response to the Office's questions, on July 14, 2002 Dr. Daniel D. Zimmerman, Board-certified in internal medicine, the Office medical adviser indicated that Dr. Ichtertz had noted on April 30, 2001 that appellant "specifically denies any right hand problems," that upon examination he found absolutely no examination findings affecting the right elbow and right wrist, and that the record was not clear as to whether, following the August 28, 2001 surgery, appellant ever returned to any meat inspection duties. He noted as follows:

> "[Appellant's] reports conceptualization about the multiple sclerosis is not germane to the decision process (and is wrong particularly with reference to the comment that he takes medication to control it) regarding the work relatedness of the EMG demonstrates [right][-]sided cubital tunnel syndrome and [right] carpal tunnel syndrome."
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> "Dr. Ichtertz seems to think the weakness shown of the [right] side as discussed in a progress note of February 20, 2002 is somehow associated with the entrapment neuropathies on the [right] side. It is worth noting, however, on that date that [appellant] had a similar degree of weakness on the [left] side (the surgically treated side). Thus, the argument by this physician regarding the weakness issue being a consequence of the [right] peripheral nerve entrapments is not particularly convincing.
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> "The [MS] would be at least as probable an explanation for the bilateral moderate weakness discussed in the February 20, 2002 progress note."

Dr. Zimmerman opined that right-sided surgery should not be authorized.

On August 2, 2002 Dr. Ichtertz examined appellant, noted that the presence of right-sided dysesthesias and weakness without muscle atrophy and stated that the nerve conduction studies (NCV) suggested that the predominant problem was ulnar nerve entrapment at the cubital tunnel which was worsening. He opined that appellant's symptoms were compatible with a polyneuropathy, worse in the ulnar nerve distribution.

On August 7, 2002 the Office requested that Dr. Ichtertz provide an opinion on the causal relationship of appellant's conditions with his employment. On August 13, 2002 the Office received an unsigned response from Dr. Ichtertz, to questions posed in an August 7, 2002 request, indicating that there was no relationship of appellant's present condition to other

medical conditions, especially the MS and that he had "CTS/cubital due to age, genetics, sleep posture [with] possible work aggravation as he describes it."

By report dated September 18, 2002, Dr. Zimmerman noted that nothing in Dr. Ichtertz's subsequent report would cause a reversal of the opinion discussed in the July 14, 2002 report. He noted that Dr. Ichtertz definitively indicated in his progress reports that at the time of the left-sided operative procedure, appellant had no right-sided signs or symptoms to suggest right epicondylitis or right-sided cubital or carpal tunnel syndromes. Dr. Zimmerman noted that appellant had been off work for a significant period of time prior to the onset of the right-sided complaints and that the NCV studies were not accompanied by EMG studies to be evaluated by a Board-certified neurologist to confirm the results. He recommended a second opinion from a Board-certified neurologist.

By decision dated September 26, 2002, the Office rejected appellant's claim finding that he had no disability after November 16, 2001, causally related to his accepted left-sided employment injury and that no condition affecting his right upper extremity had been accepted. The Office found that initially appellant had denied right-sided involvement and when he claimed right-sided injury he had been out of work for five months at the time he alleged right-sided "work-related" pathology. The Office found that Dr. Ichtertz's report stated that appellant believed strongly that his right-sided problems were work related but that "CTS/cubital due to age, genetics, sleep posture [with] possible work aggravation as he describes it," was not affirmative rationalized medical evidence to support work relatedness.

The Board finds that appellant has not established that he sustained a recurrence of disability commencing September 14 or 27, 2001, for which he claimed compensation beginning November 16, 2001, causally related to his accepted left carpal tunnel syndrome.

As used in the Federal Employees' Compensation Act,[1] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[2] An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that

[1] 5 U.S.C. §§ 8101-8193.

[2] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation. *See Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury). *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

conclusion with sound medical reasoning.[3] Causal relationship is a medical issue and can be established only by medical evidence.[4] Appellant did not provide such evidence in this case.

In this case according to the medical evidence of record, appellant did not begin to complain about his right-sided problems until January 10, 2002, with earlier medical reports noting specifically that there were no right-sided symptoms of neuropathy. Although Dr. Ichtertz earlier had diagnosed chronic bilateral median and ulnar nerve neuropathy, and requested authorization for bilateral carpal tunnel releases, no right-sided symptomatology was noted to support these diagnoses. Further, appellant stopped work in September 2001 and only claimed compensation from November 16, 2001 when his other sick and annual leave had expired. He did not explain how employment which ended in September 2001 could cause appellant to develop right-sided symptomatology four months later. In fact, Dr. Ichtertz noted that appellant's MS seemed to be acting up, with his complaints of weakness and somatosensory problems.

Dr. Ichtertz provided no rationalized medical evidence explaining how appellant's accepted left-sided entrapment neuropathies, which were released surgically on August 28, 2001, caused total disability commencing in September 2001 or in November 2001. Appellant claimed that he had stopped work due to weakness in his legs, among other symptoms. He has submitted no other probative rationalized medical evidence to establish that his work cessation in September 2001 or on November 16, 2001 was in any way causally related to his surgically-treated left entrapment neuropathies and therefore he has failed to establish that he sustained such a recurrence.

The Board further finds that appellant has failed to establish that he sustained a right upper extremity condition, causally related to factors of his federal employment.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.[5] Causal relationship is a medical issue that can be established only by medical evidence.[6] The Board notes the fact that a

[3] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[5] *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a). Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant. *See Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

[6] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.[7]

In this case, the only medical evidence appellant has submitted in support of his claim for right-sided entrapment neuropathies consists only of reports from Dr. Ichtertz which attribute the right-sided symptomatology to "CTS/cubital due to age, genetics, sleep posture [with] possible work aggravation as he describes it." Dr. Ichtertz's comment on causal relation that "CTS/cubital due to age, genetics, sleep posture [with] possible work aggravation as he describes it," is speculative on its face. This opinion, therefore, is of diminished probative value because it is couched in speculative terms, and is consequently insufficient to establish appellant's claim.[8] Further, no pathophysiologic explanation as to how such right-sided entrapment neuropathies were work related when they did not manifest until five months after appellant ceased working, was provided. This lack of medical rationale further reduces the probative value of his reports.[9]

Appellant has not submitted rationalized medical evidence explaining the relationship of his 2002 right-sided entrapment neuropathies to his work which he ceased in September 2001, and therefore he had failed to meet his burden of proof to establish his new injury claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 26, 2002 is hereby affirmed.

Dated, Washington, DC
June 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

[8] *Id.*

[9] *See Caroline Thomas*, 51 ECAB 451 (2000).