

FACTUAL HISTORY

On October 25, 2003 appellant, then a 57-year-old mail carrier, filed an occupational disease claim alleging that on October 2, 2003 he became aware that he had thoracic outlet syndrome caused or aggravated by factors of his federal employment. He did not stop work.

In a statement accompanying his claim, appellant related:

“Approximately in September of 2002, I noticed minute tremors in my right hand, these tremors were neither constant [n]or prolonged.

“Because of the repetitious motion and constant lifting required to deliver mail, I thought at that time the tremors might be work related.”

Appellant noted that he initially believed that his tremors might be related to his tendinitis of the right wrist, which was diagnosed in November 2001. He stated that his tremors worsened from September 2002 through January 2003, which corresponded to an increase in the volume of mail. Appellant indicated that he began receiving medical treatment for the tremors in January 2003. He described his job duties as lifting packages, “constantly handling and sorting mail” and “repetitive reaching from [the] waist level to above shoulder level.” Appellant stated: “I believe that my job aggravated or even caused the tremors to my hand by the constant use of my hands and shoulders.”

By letter dated November 13, 2003, the Office requested additional information from appellant, including a detailed medical report addressing the relationship between his diagnosed condition and factors of his federal employment.

By letter dated December 2, 2003, appellant described his job duties and the reason that he believed his condition was work related. He further noted that he had a 30 percent disability of his hand from a military injury. Appellant submitted a June 14, 2003 letter from the Department of Veterans Affairs granting him a 30 percent disability for a “laceration of the palm of the right hand with severed flexor tendons of the little and ring fingers with arthritis, fingers and wrist.”

Appellant submitted notes from Dr. Thomas L. Smith, an attending orthopedic surgeon, dated February 16, 2001 through January 6, 2003. On February 6, 2001 Dr. Smith evaluated appellant for pain in his thumbs and noted that he had a history of injury to his right wrist. He noted that appellant’s symptoms grew worse over the holidays and that he worked as a mail carrier. Dr. Smith diagnosed degenerative joint disease of the carpometacarpal (CMC) joints of both thumbs. He provided follow-up notes on February 27, April 10, May 19 and July 10, 2001 regarding his treatment of appellant for thumb pain. In a chart note dated August 29, 2001, Dr. Smith evaluated appellant for unchanged right hand problems and noted that he was “concerned about [the] upcoming holiday work season.” In a chart note dated October 23, 2001, Dr. Smith again diagnosed bilateral degenerative joint disease of the thumbs. On December 4, 2001 he discussed appellant’s complaints of right wrist pain. Dr. Smith diagnosed tendinitis and noted that it was a “new claim.” Dr. Smith provided follow-up notes regarding his treatment of appellant’s right wrist on December 18, 2001 and January 8, 2002. In a chart note dated

February 12, 2002, he noted that appellant complained of “intermittent pain in [the] thumbs and wrist [with] heavy mail days.” In a chart note dated January 6, 2003, he found that appellant had a tremor in his right hand and in both wrists.

On April 21, 2003 Dr. Smith diagnosed degenerative arthritis of the CMC joint of the right hand. He stated: “There is some grinding and crepitus in this area consistent with degenerative arthritis. It has been well documented in the past that appellant has this problem secondary to his work with the [employing establishment].”

In an unsigned report dated June 24, 2003, Dr. Vernon B. Williams, a Board-certified neurologist, diagnosed thoracic outlet syndrome and a unilateral tremor of uncertain etiology.

In an unsigned report dated October 2, 2003, Dr. Williams noted that a magnetic resonance imaging scan revealed abnormalities. He stated: “[Appellant’s] primary symptom is unilateral tremor in the upper extremity. He does have evidence of possible adhesions with increased intensity and endoneural edema at the level of the plexus, as outlined.” Dr. Williams stated:

“It should be noted that [appellant] is questioning whether his symptoms could, in fact, be work related. He has informed me that his over 20 years of work with the [employing establishment] has required him to do characteristic and repetitive lifting and placing of large boxes and heavy materials in a certain position. [Appellant] has difficulty with range of motion of the shoulder. It is within the realm of possibility that there is a work-related injury which is at the basis of his symptoms. I have requested that [appellant] discuss this with his employer and provide us with a description of his work activities.”

A nerve conduction study (NCV) and electromyogram (EMG) were performed on October 8, 2003. On October 24, 2003, Dr. Williams interpreted the EMG/NCV as follows:

“[T]here was some slowing of ulnar conduction across the wrist. There were no frank denervation potentials in any of the muscles tested, but there was rhythmic discharge in multiple muscles which corresponds with his tremor. The discharges change in intensity (as do the tremors) based on the position of his shoulder extremity during testing.”

Dr. Williams noted that appellant was going to file a workers’ compensation claim.

By decision dated January 6, 2004, the Office denied appellant’s claim on the grounds that the evidence was insufficient to establish that he sustained a medical condition causally related to factors of his federal employment.

On January 25, 2004 appellant requested reconsideration. In a decision dated February 4, 2004, the Office denied reconsideration of its January 6, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation of the Act; that an injury was sustained while in the performance of duty as alleged; and that any disability and specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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.³ The medical evidence required to establish a causal relationship 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. Such an opinion of the physician 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

ANALYSIS -- ISSUE 1

In this case, appellant identified the employment factors alleged to have caused or contributed to his hand tremors as lifting packages and repetitively handling and sorting mail. It is not disputed that appellant performed these employment duties. The issue, therefore, is whether the medical evidence establishes that these employment activities caused or contributed to his hand tremors.

In support of his claim, appellant submitted chart notes from Dr. Smith dated February 16, 2001 through January 6, 2003. In a chart note dated February 6, 2001, he evaluated appellant for pain in his thumbs which had increased over the holidays. Dr. Smith noted that appellant worked as a mail carrier and diagnosed degenerative joint disease of the CMC joints of both thumbs. He provided follow-up notes on February 27, April 10, May 19 and July 10, 2001

¹ 5 U.S.C. §§ 8101-8193.

² *Rebecca LeMaster*, 50 ECAB 254 (1999).

³ *Charles E. Burke*, 47 ECAB 185 (1995).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

regarding his treatment of appellant's thumb pain. In a chart note dated August 29, 2001, Dr. Smith evaluated appellant for unchanged right hand problems and noted that he was "concerned about [the] upcoming holiday work season." In a chart note dated October 23, 2001, he again diagnosed bilateral degenerative joint disease of the thumbs and, on December 4, 2001 noted that appellant now had right wrist pain and diagnosed tendinitis. Dr. Smith treated him for right wrist pain on December 18, 2001 and January 8, 2002. In a chart note dated February 12, 2002, Dr. Smith noted that appellant complained of pain in his wrist and thumbs on "heavy mail days." On January 6, 2003 Dr. Smith indicated that appellant had a tremor in his right hand and in both wrists. In his chart notes, however, Dr. Smith did not address causation. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵ Additionally, in the chart note dated January 6, 2003, which is the only chart note relevant to appellant's claimed condition of right hand tremors, Dr. Smith failed to provide either a diagnosis or findings on examination and thus, his opinion is of little probative value.⁶

The record contains unsigned reports from Dr. Smith dated April 21, 2003 and from Dr. Williams dated June 24, October 2 and 24, 2003. As these reports are unsigned, they lack the proper identification necessary for the Board to ensure that a physician prepared the report.⁷ As the issue in this case is medical in nature, it can only be resolved through the submission of medical evidence from a physician.⁸ Without a signature identifying the preparer of the report as a physician, the reports are of no probative value and consequently insufficient to establish appellant's claim.⁹

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and her employment.¹⁰ To establish causal relationship, he must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether the employment injury caused or aggravated his diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Anna C. Leanza*, 48 ECAB 115 (1996) (the weight of medical evidence is determined by the opportunity for an thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion).

⁷ *Merton J. Sills*, 39 ECAB 572 (1988).

⁸ *Ronald M. Cokes*, 46 ECAB 967 (1995).

⁹ *Id.*

¹⁰ *Calvin E. King*, 51 ECAB 394 (2000).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹¹ the Office's regulation provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal arguments not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹² Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS -- ISSUE 2

In this case, appellant indicated that he desired reconsideration of his claim on a form containing his appeal rights and accompanying the Office's January 6, 2004 decision. However, appellant did not submit any evidence or advance a legal argument in support of his request for reconsideration. As appellant has not shown that the Office erred in applying a point of law, advanced a relevant legal argument not previously considered or constitute relevant and pertinent new evidence not previously considered by the Office, the Office properly denied his application for review of the merits of his claim.

CONCLUSION

The Board finds that appellant has not established that he sustained tremors in his right hand and/or thoracic outlet syndrome causally related to factors of his federal employment. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b)(2).

¹³ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 4 and January 6, 2004 are affirmed.

Issued: September 13, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member