

**United States Department of Labor
Employees' Compensation Appeals Board**

PAUL J. LEHANE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-2145
Issued: February 4, 2005**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 30, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 15, 2003 and July 19, 2004 denying his occupational injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a left hand injury causally related to factors of his federal employment on or before June 23, 2003.

FACTUAL HISTORY

On July 24, 2003 appellant, then a 41-year-old mail processor, filed an occupational disease claim alleging that on June 23, 2003 he suffered an exacerbation of a 2002 job-related

injury.¹ Appellant stated that, due to the repetitive nature of his job, he continued to suffer pain resulting from that injury, which involved a “sca[ph]oid fracture, tend[i]nitis, neuropathy in hands and fingers, loss of strength in left hand, pain and complications.”

On September 8, 2003 the Office notified appellant that the information he had submitted was insufficient to substantiate his claim and requested additional factual and medical evidence, including: a detailed description of the employment-related activities which appellant believed contributed to his condition, including the regularity and duration of each activity; a description of all activities outside appellant’s federal employment in which he engaged; a description of the development of the claimed condition, including symptoms and treatment; a comprehensive medical report from his treating physician which described his symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of the treatment; and the doctor’s opinion, with medical reasons, on the cause of his condition. The letter specifically advised appellant to secure from his physician an explanation as to how exposure or incidents in his federal employment contributed to his alleged condition and asserted that the requested information was “crucial” to the consideration of his claim.

In response, appellant submitted several documents, including a report of a magnetic resonance imaging (MRI) scan dated July 21, 2003 and disability slips dated June 30 and July 28, 2003 signed by Dr. Stephen H. Lacey, a Board-certified orthopedic surgeon. The MRI scan report indicated intact triangular fibrocartilage with cystic changes and edema involving the lunate, both medially and laterally, possibly related to abutment syndrome or a recent injury. Dr. Lacey’s June 30, 2003 disability slip reflected a diagnosis of “scaphoid fx. complications, left hand.” Appellant also submitted a personal statement dated October 1, 2003 in which he stated that the condition of his wrist remained chronic and described the pain “as akin to a ‘painful tooth’ sensation in the wrist and sometimes in the arm.” He stated further that some numbness and tingling was also present in the four fingers but not in the thumb and indicated that he was back at work full time, with the assistance of a splint/brace and over-the-counter pain medication. He further stated that he cut and weeded his sister’s lawn once a week, after which he usually noticed pain; that he used a personal computer at home approximately one to one and a half hours per day; and that he had refrained from upper body workouts since the 2002 injury and focused primarily on jogging and bicycling. He noted that his job involved constant repetitive work lifting tubs of mail.

By decision dated October 15, 2003, the Office denied appellant’s claim for compensation on the grounds that the evidence was not sufficient to establish that he had sustained an injury as defined by the Federal Employees’ Compensation Act. Specifically the Office found that appellant had provided no factual basis for his claim and no medical evidence providing a diagnosis which could be connected to the claimed event.

On November 5, 2003 appellant requested an oral hearing, which occurred on May 19, 2004. At the hearing appellant explained that the repetitive nature of his job caused increased symptoms in his left wrist. He stated that, after missing approximately four months of work, he returned with a brace to full-time work. The hearing representative stated that he would

¹ The record indicates that appellant’s April 12, 2002 claim was accepted for abrasion and sprain of the left middle finger, and left wrist sprain.

keep the record open for 30 days, so that appellant could provide additional medical evidence explaining the relationship between appellant's condition and his 2002 injury.

Subsequent to the hearing, appellant submitted several documents, including an attending physician's report dated June 16, 2004 and signed by Dr. Jeff Kirschman, Board-certified in the areas of family and occupational medicine, indicating "arthritic changes accelerated past what is normal for age in left wrist." The stated diagnosis was "abutment syndrome of left wrist with arthritic changes." In response to the question as to whether he believed the condition was caused or aggravated by an employment activity, Dr. Kirschman responded by placing a checkmark in the "yes" box, but provided no explanation. In response to the question as to whether there was any history or evidence of concurrent or preexisting injury or disease or physical impairment, Dr. Kirschman placed a checkmark in the "no" box. Appellant submitted a note dated June 23, 2003 signed by Dr. Robert Kakish, a Board-certified internist, stating that appellant had chronic pain in his left wrist and had suffered a "two-inch fracture in April 2002." The note further stated that appellant should not work until cleared by Dr. Lacey.

On July 19, 2004 the hearing representative denied appellant's claim, finding that he had not met his burden of proof in establishing that he sustained a left wrist condition causally related to his employment resulting in disability beginning June 20, 2003.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged,³ and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.⁴

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; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) 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 a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion

² 5 U.S.C. §§ 8101-8193.

³ *Joseph W. Kripp*, 55 ECAB ____ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he 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. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁵ *Michael R. Shaffer*, 55 ECAB ____ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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.⁶ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁷ Furthermore, the Board has held that a diagnosis of "pain" does not constitute the basis for the payment of compensation.⁸

ANALYSIS

The medical evidence included in the record does not provide sufficient facts or a rationalized medical opinion to establish that appellant's alleged injury was causally related to his employment.

As a threshold matter, appellant did not state with clarity the injury for which he is seeking compensation. In his CA-2 claim form, appellant described a claim previously filed in 2002 when he allegedly fractured his wrist and stated that as of June 23, 2003 he suffered pain related to the 2002 injury and to performance of repetitive activities. Appellant does not appear to be claiming a recurrence of disability, because he is not alleging a spontaneous return of his prior symptoms, but rather he is claiming that performance of repetitive work activities caused his condition as of June 23, 2003. Standing alone, appellant's allegation of pain, coupled with his belief that the alleged injury was caused by factors relating to his employment, is insufficient to constitute a basis for the payment of compensation.⁹ He failed to allege the specific repetitive activities which occurred on or before June 23, 2003 that triggered his pain.

The record also lacks medical evidence establishing the presence or existence of a specific condition for which appellant claims compensation. Dr. Lacey's disability slips reflect a diagnosis of "scafoid fx, complications, left hand." Presumably, Dr. Lacey was referring to complications from a previously alleged fracture, since there is no medical evidence of record in the form of MRI scan reports or x-rays to document a current fracture. Dr. Kirschman's diagnosis of "abutment syndrome of left wrist with arthritic changes" is not probative without further explanation, as this appears to be a preexisting condition. Finally, Dr. Kakish's note stating that appellant had "chronic pain" in his left wrist is also vague and does not provide a definitive diagnosis. None of the medical reports in evidence establishes the presence or existence of a specific condition caused by his employment prior to June 23, 2003.

⁶ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

⁸ *See Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

⁹ *Id.*

Furthermore, the medical evidence presented does not provide a rationalized medical opinion to establish that appellant sustained an injury in the performance of duty that was causally related to his employment. Evidence which includes a medical report is necessary to establish that the condition for which appellant claimed he sought treatment was related to his employment.¹⁰ In his attending physician's report, Dr. Kirschman checked a "yes" box in response to a question as to whether appellant's condition was caused or aggravated by his employment. He failed to explain his diagnosis or to provide a reasoned medical opinion regarding a causal relationship between the condition and appellant's work conditions. This Board has held that a checkmark on a form is insufficient to establish a causal relationship.¹¹ Likewise, neither Dr. Lacey nor Dr. Kakish provided any explanation of his diagnosis or an opinion as to the cause of the diagnosed condition. The Board has long held that 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.¹²

There is no medical evidence of record which explains the physiological process by which appellant's work activities would have caused the diagnosed condition. The Office advised appellant that it was his responsibility to provide within 30 days, among other things, a comprehensive medical report from his treating physician which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Asserting that this request for information was "crucial" to consideration of his claim, the letter specifically advised appellant to secure an explanation from his physician as to how exposure or incidents in his federal employment contributed to his alleged condition. Appellant failed to submit the required medical documentation. Therefore, the Office properly denied appellant's claim for benefits under the Act.

The Board, therefore, finds that none of the reports provided by appellant included a rationalized opinion regarding the causal relationship between appellant's condition and the factors of appellant's employment believed to have caused or contributed to such condition. As appellant did not submit medical evidence to establish that he sustained an injury causally related to factors of employment, he has failed to meet his burden of proof.

CONCLUSION

Appellant has failed to meet his burden of proof that he sustained an injury in the performance of duty on June 23, 2003.

¹⁰ See *Solomon Polen*, *supra* note 5.

¹¹ *Ricky S. Storms*, 52 ECAB 349, 352 (2001).

¹² *Dennis M. Mascarenas*, *supra* note 4 at 218.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2004 and October 15, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 4, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member