

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

JOSEPH D. DILLARD, Appellant)	
)	
and)	Docket No. 05-30
)	Issued: March 11, 2005
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Youngstown, OH, Employer)	
)	
)	

Appearances:
John P. Lutsek, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 27, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs' hearing representative dated August 25, 2004, affirming an April 2, 2004 decision finding that appellant failed to establish that he sustained an injury in the performance of duty. 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 met his burden of proof in establishing that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On February 18, 2004 appellant, then a 52-year-old clerk, filed a traumatic injury claim alleging that on February 14, 2004 he was startled while pitching mail with his headphones on when someone raised the volume and knocked the headphones off his head. He jumped up and

turned around, experiencing a sharp chest pain which lasted 15 to 20 minutes. Appellant stated that he had similar pain previously. Appellant stopped work on February 17, 2004.

By letter dated March 4, 2004, the Office informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a report dated February 17, 2004, Dr. Alan E. Edwards, a Board-certified family practitioner, stated that appellant related that a friend turned the volume of his headphones up, startling him and that, soon after, he experienced chest discomfort. That happened on two successive days, at which time appellant presented to the emergency room where a myocardial infarction was ruled out. Appellant was admitted to Northside Medical Center for chest pain. The physician examined appellant who, at that time, related no chest pain; he was subsequently discharged to his home to continue medications.

In a report dated February 19, 2004, Dr. Alan L. Cruz, appellant's attending physician, stated that appellant had atypical chest pain with the possibility of costochondritis. On February 24, 2004 Dr. Cruz examined appellant that day and that he had no chest pain and no other symptoms related to his chest. He stated that appellant had atypical chest pain that may be secondary to costochondritis and he was released to return to full duty. Dr. Cruz stated that appellant had atypical chest pain but was able to resume work on February 28, 2004.

In a report dated March 2, 2004, Dr. Zia Ahmed Sial stated that appellant had been admitted to the hospital and discharged on February 17, 2004 for nonwork-related atypical chest pain. The physician noted that appellant was off work from February 16 to 24, 2004 and was released to return to full duty on March 2, 2004.

In a report dated March 10, 2004, Dr. Cruz stated that he last examined appellant on March 9, 2004 at which time he had no symptoms. He stated that appellant's chest pain could be due to stress and anxiety. He released appellant to return to full duty.

By decision dated April 2, 2004, the Office denied appellant's claim for compensation finding that the medical evidence failed to establish that a medical condition arose out of the accepted work incident.

Appellant requested a review of the written record and submitted an April 27, 2004 report from Dr. Cruz, who stated that appellant had vague chest pain, which might be caused by stress and anxiety. Appellant was released to return to full duty.

On August 25, 2004 an Office hearing representative affirmed the April 2, 2004 decision.

LEGAL PRECEDENT

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee

actually experienced the employment incident, which is alleged to have occurred.¹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.² 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁴ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.⁵

ANALYSIS

The evidence of record establishes that the claimed incident occurred on February 14, 2004 as alleged. However, the Board finds that appellant has submitted insufficient medical evidence to establish a causal relationship between his chest discomfort and the February 14, 2004 employment incident.

Dr. Edwards' February 17, 2004 report noted appellant's chest pain symptoms but did not provide a rationalized medical opinion establishing a causal relationship between the chest pain and the employment incident. Dr. Cruz, an attending physician, submitted several reports in which he stated that appellant had atypical chest pain. However, the physician did not address how appellant's chest pain was causally related to the accepted February 14, 2004 employment incident. He merely noted a diagnosis of chest pain that may be related to costochondritis and

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

³ *Joan F. Burke*, 54 ECAB ____ (Docket No. 01-39, issued February 14, 2003).

⁴ *William S. Wright*, 45 ECAB 498, 503 (1993).

⁵ *Calvin E. King*, 51 ECAB 394, 401 (2000).

released appellant to return to full duty. Dr. Cruz stated that the chest pain might be caused by stress and anxiety. This opinion of causal relationship is speculative and therefore of diminished probative value.⁶ Dr. Sial noted in a March 2, 2004 report that appellant had a nonwork-related atypical chest pain. Although he placed appellant off work from February 16 to 24, 2004, he did not express any opinion relating appellant's condition to the employment incident.

There is no medical evidence which explains how the February 14, 2004 incident caused or aggravated appellant's chest discomfort. The medical evidence submitted either does not specifically address causal relationship or, the reports that do address causal relationship indicate that appellant's condition is not work related. Because there is no medical evidence explaining how the employment incident caused or aggravated a diagnosed condition, appellant has not met his burden of proof in establishing his claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on February 14, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2004 is affirmed.

Issued: March 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ See *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 2002.