United States Department of Labor
Employees' Compensation Appeals Board

GARY L. REDD, Appellant	)	
and	)	**Docket No. 05-1154**
	)	**Issued: September 9, 2005**
DEPARTMENT OF THE AIR FORCE, HEADQUARTERS, WRIGHT-PATTERSON AIR FORCE BASE, OH, Employer	)	

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, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 8, 2005 merit decision denying his disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability for periods between January 29 and March 9, 2004 due to his accepted employment injuries.

FACTUAL HISTORY

On November 28, 2001 appellant, then a 43-year-old gardener/pest controller, filed an occupational disease claim alleging that he sustained right carpal tunnel syndrome due to the

repetitive duties of his job.[1] The Office accepted that appellant sustained employment-related right carpal tunnel syndrome. He stopped work in October 2001 and underwent right carpal tunnel release surgery on January 28, 2002 which was authorized by the Office.[2] Appellant returned to light-duty work for the employing establishment on February 13, 2002; he returned to full-time regular work on June 21, 2002, but was later placed on light-duty work by his attending physicians. The Office paid appellant compensation for various periods of disability.

In a report dated March 25, 2002, Dr. Gregory E. Maupin, an attending Board-certified orthopedic surgeon, indicated that he felt appellant might have developed reflex sympathetic dystrophy in his right wrist and hand. Dr. Maupin referred appellant to Dr. Anthony Russo, an osteopath, and in a report dated April 25, 2002, Dr. Russo indicated that appellant had symptoms and signs consistent with chronic regional pain syndrome. In a report dated August 1, 2002, Dr. Suresh Gupta, an attending Board-certified anesthesiologist, stated that appellant had signs and symptoms consistent with "reflex sympathetic dystrophy (chronic regional pain syndrome)" of the right hand.

The Office referred appellant to Dr. Arthur L. Hughes, a Board-certified neurosurgeon, for additional evaluation of his upper extremity condition. In a report dated September 26, 2002, Dr. Hughes stated that appellant reported continued pain, numbness and swelling in his right wrist and hand. He noted that on examination there was no difference in appearance between appellant's hands, but that he had weakly positive Tinel's and Phalen's signs. Dr. Hughes concluded that appellant's findings on examination were not those of complex regional pain syndrome, but rather were those of "carpal tunnel syndrome which failed to respond to decompression."[3]

The Office determined that there was a conflict in the medical evidence regarding whether appellant had employment-related reflex sympathetic dystrophy or chronic regional pain syndrome in his right upper extremity. It referred appellant to Dr. Colin Zadikoff, a Board-certified neurosurgeon, for an impartial medical examination and an opinion on this matter.

In a report dated January 7, 2003, Dr. Zadikoff indicated that examination of appellant's right hand revealed very slight swelling and no Tinel's or Phalen's sign. He noted that diagnostic testing showed improvement in the conduction velocities and latency of the right median nerve. Dr. Zadikoff diagnosed right carpal tunnel syndrome which appeared to have been successfully surgically decompressed and stated:

> "The description of the patient's pain, minimal swelling, and no discoloration, with no significant dysesthesias or sensitivity of the hand, is not strongly

[1] Appellant indicated that he first realized on June 14, 2000 that his claimed condition was caused or aggravated by his employment. His job periodically required the operation of power tools.

[2] The record also contains evidence which suggest that appellant also underwent right carpal tunnel release surgery on October 21, 2004.

[3] Dr. Hughes indicated that appellant could not perform his regular work and he continued to periodically perform light-duty work.

> suggestive of complex regional pain syndrome, in my opinion. I think the patient probably does have some mild degree of tenosynovitis, which is also a repetitive use injury syndrome which may be associated with carpal tunnel syndrome and the above-described symptoms…. I, therefore, feel that the work-related condition of right carpal tunnel syndrome is not presently active, but do feel that he does have a repetitive injury condition in the form of tenosynovitis with resolved carpal tunnel syndrome. This condition should also resolve and, in my opinion, should be treated with anti-inflammatory agents as well as avoidance of repetitive activities for approximately another three months. In my opinion, this would include the use of power tools, although other physical work which did not result in the kind of vibration or constant holding that power tools require would be acceptable. I believe he is capable of performing his duties except for the restriction stated above."

Appellant continued to claim compensation for various periods of disability and the Office paid him appropriate compensation. Dr. Gupta saw appellant approximately once per month. His brief reports of these appointments occasionally indicated that appellant complained of chronic pain, but did not contain any findings on examination. In a note dated January 16, 2004, Dr. Gupta determined that appellant was able to return to his full-time regular work on that date.

Appellant then claimed that he was due compensation for the following dates of disability: January 29 to 30, February 5 to 6, 9 to 10, 12 to 13, 19 and March 9, 2004.

In a report dated January 27, 2004, Dr. Gupta stated that when he examined appellant in April 2002 he had right hand symptoms, including discoloration, swelling and increased perspiration, which were consistent with reflex sympathetic dystrophy of the right hand. He discussed appellant's right hand pain and stated, "With no history of previous similar problems, I feel that [appellant's] right upper extremity pain is a direct and proximate result of his work-related injury from June 2000."

In a note dated January 29, 2004, Dr. Gupta stated that appellant was "unable to work following an outpatient procedure at 2:00 p.m." and indicated that he could return to work on January 31, 2004.[4] In a note dated February 5, 2004, Dr. Gupta noted that appellant was "unable to work following [an] outpatient procedure" and indicated that he could return to work on February 7, 2004. In a note dated February 9, 2004, Dr. Gupta stated that appellant was "unable to work" and indicated that he could return to work on February 11, 2004.

In a note dated February 12, 2004, Dr. Gupta stated that appellant had "chronic pain" and was "unable to work" and indicated that he could return to work on February 14, 2004. In a note dated February 19, 2004, Dr. Gupta noted that appellant had "chronic pain" and could return to light-duty work on February 20, 2004 and regular-duty work on February 23, 2004. In a March 3, 2004 report, Dr. Gupta indicated that appellant's claim should be approved because "he still suffers from severe right upper extremity pain secondary to his work-related injury from

[4] In another note dated January 29, 2004, Dr. Gupta indicated that he was treating appellant for chronic pain.

June 14, 2000." In a note dated March 9, 2004, Dr. Gupta noted that appellant made an "office visit" and could return to work on March 10, 2004.

By decision dated April 1, 2004, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability for periods between January 29 and March 9, 2004 due to his accepted employment injuries.[5] The Office noted that it had not been accepted that appellant had an employment-related reflex sympathetic dystrophy or chronic regional pain syndrome and indicated that the weight of the medical evidence regarding this matter rested with the opinion of the impartial medical specialist, Dr. Zadikoff. The Office also determined, based on Dr. Zadikoff's opinion, that appellant's claim should be accepted for employment-related right wrist tenosynovitis retroactive to January 7, 2003.

Appellant requested a hearing before an Office hearing representative which was held on January 25, 2005. Appellant's attorney argued that appellant sustained a recurrence of disability for periods between January 29 and March 9, 2004 due to his accepted employment injuries.

By decision dated and finalized April 8, 2005, the Office hearing representative affirmed the Office's April 1, 2004 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related 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.[6] 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 conclusion with sound medical rationale.[7] Where no such rationale is present, medical evidence is of diminished probative value.[8]

ANALYSIS

The Office accepted that appellant sustained right carpal tunnel syndrome due to the repetitive duties of his job and later accepted that he also sustained right wrist tenosynovitis

[5] The record contains an August 30, 2004 Office decision denying appellant's claim for four hours of employment-related disability on June 21, 2004. Appellant has not appealed this decision to the Board and the matter is not currently before the Board.

[6] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."

[7] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[8] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

retroactive to January 7, 2003. Appellant returned to his regular full-time work and then claimed that he was due compensation for the following dates of disability: January 29 to 30, February 5 to 6, 9 to 10, 12 to 13, 19 and March 9, 2004.

Appellant submitted various reports of Dr. Gupta, an attending Board-certified anesthesiologist, but the Board finds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability for periods between January 29 and March 9, 2004 due to his accepted employment injuries. The reports of Dr. Gupta indicated that appellant had disability on the above-noted dates claimed by appellant, but these reports are of limited probative value on the relevant issue of the present case in that Dr. Gupta did not provide adequate medical rationale in support of his conclusion on causal relationship.[9] Dr. Gupta failed to provide a reasoned opinion explaining how appellant's disability could be due to the accepted employment injuries, right carpal tunnel syndrome and right wrist tenosynovitis.

In several notes, Dr. Gupta stated that appellant could not work because he had "chronic pain" or had undergone a "procedure" in his office. For example, in a note dated January 29, 2004, Dr. Gupta stated that appellant was "unable to work following an outpatient procedure at 2:00 p.m." and indicated that he could return to work on January 31, 2004. In a note dated February 12, 2004, Dr. Gupta stated that appellant had "chronic pain" and was "unable to work" and indicated that he could return to work on February 14, 2004. However, Dr. Gupta's reports do not contain a notable discussion of appellant's accepted condition or a significant description of his factual and medical history.[10] They do not explain the medical process of how an employment-related condition could have prevented appellant from working on the alleged dates. In fact, Dr. Gupta's reports do not contain a detailed description of examination findings from early 2004, *i.e.*, the period that appellant claimed that he sustained an employment-related recurrence of disability.

In a report dated January 27, 2004, Dr. Gupta stated that when he examined appellant in April 2002 he had right hand symptoms, including discoloration, swelling and increased perspiration, which were consistent with reflex sympathetic dystrophy of the right hand. He discussed appellant's right hand pain and stated, "With no history of previous similar problems, I feel that [appellant's] right upper extremity pain is a direct and proximate result of his work-related injury from June 2000." Although Dr. Gupta suggested, in this and later reports, that appellant had employment-related reflex sympathetic dystrophy, it has not been accepted that appellant sustained any form of employment-related chronic pain condition whether it be reflex sympathetic dystrophy, chronic regional pain syndrome, or some similar condition nor do any of his reports contain sufficient medical rationale to support that appellant sustained such a

[9] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[10] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

condition.[11] In a March 3, 2004 report, Dr. Gupta indicated that appellant's claim should be approved because "he still suffers from severe right upper extremity pain secondary to his work-related injury from June 14, 2000." However, neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[12]

Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability for various dates is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability for periods between January 29 and March 9, 2004 due to his accepted employment injuries.

[11] Moreover, the Office referred appellant to Dr. Zadikoff, a Board-certified neurosurgeon, for an impartial medical examination and an opinion regarding whether he had employment-related reflex sympathetic dystrophy or chronic regional pain syndrome in his right upper extremity. In a report dated January 7, 2003, Dr. Zadikoff determined that appellant did not have any type of chronic pain syndrome. Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a). In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Jack R. Smith*, 41 ECAB 691, 701 (1990).

[12] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 8, 2005 decision is affirmed.

Issued: September 9, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board