United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 05-1927**
	)	**Issued: August 9, 2006**
DEPARTMENT OF THEY NAVY, COMMANDER-IN-CHIEF PACIFIC FL, Bremerton, WA, Employer	)	

Appearances:
Brook L. Beesley, for the appellant
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument June 22, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 15, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 17, 2005 which affirmed the denial of his 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 to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated April 19, 2005, the Board set aside the Office's June 18, 2003 decision and remanded the case for further development and the issuance of a *de novo* decision. The law and the facts as set forth in the

Board's decision are incorporated herein by reference.[1] Because the Board's decision was based on a procedural issue, the relevant evidence is set forth.

On December 11, 2000 appellant, then a 54-year-old retired painter, filed an occupational disease claim for degenerative arthritis in his neck which he alleged was causally related to his federal employment.[2] In support of his claim, appellant submitted a statement describing his medical conditions pertaining to his neck and his official duties. No medical evidence was submitted.

By letter dated January 31, 2001, the Office requested that appellant provide additional factual and medical information, including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the claimed employment factors identified by appellant had contributed to his claimed injury.

In a February 20, 2001 statement, appellant responded with additional factual information. However, no medical documentation was submitted.

By decision dated March 26, 2001, the Office denied the claim, finding that appellant had not established that he sustained any condition causally related to his employment.

Appellant requested a hearing that was held on July 23, 2002. Evidence submitted included an August 6, 2002 note from Dr. D. Larry Miller, a Board-certified family practitioner, addressing appellant's existing medical appointments for objective testing and treatment; an undated medical report from a Dr. M. Emerzian of Kaiser Permanente noting that appellant was seen for a stiff neck; a copy of a November 1, 2000 x-ray of the cervical spine noting C5-6 and C6-7 degenerative disease; copies of progress notes from a physician, whose signature is illegible, at Kaiser Permanente dated February 2001 to July 1, 2002 assessing degenerative joint disease and copies of physical therapy reports from February 2001 to July 2002.

By decision dated October 7, 2002, an Office hearing representative affirmed the denial of the claim on the grounds that the medical evidence submitted was insufficient to establish fact of injury.

In a letter dated March 16, 2003, appellant requested reconsideration and submitted an August 23, 2002 magnetic resonance imaging (MRI) scan containing an impression of degenerative cervical spondylosis at C5-6 and C6-7. He also submitted February 4, May 9 and August 13, 2002 x-rays of his chest; and two handwritten progress notes from Dr. Miller dated August 2 and 29, 2002. On August 2, 2002 Dr. Miller gave a history of degenerative arthritis in the neck "for workers' compensation -- sent back to us by legal representative for reevaluation." He noted that appellant had no known injury and had worked as a painter and sandblaster for many years. An assessment of cervical disc disease was provided. In the August 29, 2002 note, Dr. Miller stated that appellant injured his neck at work as a painter and a sandblaster over many

[1] Docket No. 03-2241 (issued April 19, 2005).

[2] The employing establishment indicated that appellant retired on or about August 26, 2000.

years and assessed a cervical neuropathy. The note also contained the notation "work-related cervical disc disease and spondylolysis."

By decision dated June 18, 2003, the Office denied reconsideration. It found that the evidence submitted was not relevant as the notes of Dr. Miller did not provide any factual discussion that appellant's condition was causally related to factors of his employment.

On September 15, 2003 appellant appealed to the Board and requested oral argument, which was held on April 5, 2005. By decision dated April 19, 2005, the Board set aside the Office's June 18, 2003 decision and remanded the case to the Office for further development and the issuance of a *de novo* decision.

By decision dated June 17, 2005, the Office denied modification of appellant's claim. The Office found that the medical evidence failed to establish a causal relationship between appellant's diagnosed condition and his duties as a painter/sandblaster.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 in the performance of duty as alleged and that any disability and/or 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.[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 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 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. The medical evidence required to establish causal relationship, generally, 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. 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

[3] 5 U.S.C. §§ 8101-8193.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

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.[6]

ANALYSIS

Appellant claimed that his work duties as a painter/sandblaster caused or aggravated his claimed neck conditions. It is not disputed that appellant worked as a painter/sandblaster and that the medical evidence shows that he has a neck condition. The medical evidence of record, however, fails to establish that his work duties as a painter/sandblaster caused or contributed to his claimed neck condition.

In an August 2, 2002 note, Dr. Miller noted that appellant had degenerative arthritis in the neck "for workers' compensation," had no known injury and had worked as a painter and sandblaster for many years. An assessment of cervical disc disease was provided. In his August 29, 2002 note, Dr. Miller opined that appellant had work-related cervical disc disease. However, he neither explained nor provided any medical rationale on how appellant's neck condition was due to his work as a painter/sandblaster or to any other employment factors.[7] There was no history provided and no report of any physical examination upon which Dr. Miller based his assessment. Therefore, his reports are insufficient to meet appellant's burden of proof. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence, and appellant failed to submit such evidence.[10]

Other medical reports submitted by appellant, including reports of diagnostic testing, neither offer a diagnosis of appellant's condition nor offer any opinion on causal relationship between appellant's medical condition and his claimed work duties. This evidence is of diminished probative value in establishing appellant's claim. Furthermore, physical therapy reports cannot be used to establish an employment-related condition as a physical therapist is not

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[5] *Id.*

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *Id.*

[8] *Nicollette R. Kelstrom*, 54 ECAB 570 (2003).

[9] *Patricia J. Glenn*, 53 ECAB 370 (2001).

[10] *Frankie A. Farinacci*, 56 ECAB ___ (Docket No. 05-1282, issued September 2, 2005).

a physician within the meaning of the Act. A physical therapist's opinion is of no probative value.[11] As there is insufficient probative, rationalized medical evidence addressing and explaining why appellant's claimed medical condition was caused and/or aggravated by his employment exposure, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.[12]

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[11] 5 U.S.C. **§§** 8101-8193; 8101(2); *Vickey C. Randall***,** 51 ECAB 357 (2000) (a physical therapist is not a physician under the Act).

[12] On appeal, appellant's representative argued that the case of *Robert C. Treadway*, Docket No. 00-2182 (issued February 19, 2002) supported his position that appellant had established a *prima facie* claim based on Dr. Miller's notes. The Board notes that *Treadway*, an emotional condition case, did not purport to direct any particular action in all cases where a *prima facie* claim may be established. Establishing a *prima facie* claim does not mean that the Office must accept a claim or even that it must directly obtain further evidence. Board precedent recognizes that, even if a *prima facie* claim is established, the Office, depending on the circumstances, may satisfy its obligation to take the next step in developing the claim by notifying the claimant of the additional evidence needed to fully establish the claim. *See Robert P. Bourgeois*, 45 ECAB 745 (1994); Federal (FECA) Procedure Manual, Part 2 -- *Claims*, Development of Claims, Chapter 2.800.2(g) (April 1993). As noted, there is insufficient medical evidence to establish a *prima facie* claim.