United States Department of Labor
Employees' Compensation Appeals Board

W.K., Appellant	)	
and	)	**Docket No. 06-2057**
	)	**Issued: December 22, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lindenhurst, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 6, 2006 appellant filed a timely appeal from March 1 and July 5, 2006 merit decisions of the Office of Workers' Compensation Programs which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 22, 2005 appellant, then a 53-year-old mail carrier, filed an occupational disease claim, alleging that he developed "work-related aches and pains" including shoulder, neck, back and leg pain in the course of his employment. He first became aware of his condition on November 19, 2005. Appellant stopped work on November 22, 2005.

In a letter dated December 13, 2005, the Office informed appellant that it had received his claim form, a challenge from his employing establishment and a statement from his attorney. It requested that he provide additional information, including a comprehensive medical report from a treating physician which explained how appellant's federal employment caused his condition. In response, appellant submitted a personal statement dated December 23, 2005. He advised that his job required twisting, reaching and carrying up to 35 pounds.

By decision dated March 1, 2006, the Office denied appellant's claim on the grounds that he failed to establish the fact of injury. It accepted that the claimed work activities occurred, but noted that appellant had not submitted any medical evidence and failed to establish that any physician had diagnosed a condition in connection with his work.

In a February 17, 2006 report, Dr. Lawrence A. Opisso, a chiropractor, conducted a physical examination and a magnetic resonance imaging (MRI) scan. He diagnosed vertebral subluxation, displacement of cervical disc, shoulder joint stiffness and lumbago. Based on his clinical and MRI scans, Dr. Opisso opined that appellant's condition was "closely related" to his employment. Dr. Opisso concluded that "[h]is compensated abnormal posture from carrying heavy mailbags affects the normal weight-bearing of his spine/discs that likely contributed to the findings demonstrated by MRI [scan]."

On May 2, 2006 appellant requested reconsideration. He argued that the Office had failed to assist in claim development and had not previously considered Dr. Opisso's report. Appellant contended that the chiropractor's report was considered competent medical evidence "if it can be demonstrated that there exists a subluxation of the spine."

By decision dated July 5, 2006, the Office denied appellant's request for reconsideration after reviewing the merits of the claim. It found that Dr. Opisso's report was not competent medical evidence as he diagnosed subluxation of the spine using MRI scan results rather than x-ray test results.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.[3] To establish a causal relationship, the claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Donald W. Long*, 41 ECAB 142 (1989).

causing his or her condition and taking these factors into consideration as well as findings upon examination of the claimant and his or her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[4]

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.[5] The test for determining whether the claimant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, the claimant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant."[6]

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.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant[8] and must be one of reasonable medical certainty[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof in establishing that he developed an occupational disease in the performance of duty. It is accepted that appellant twists, reaches and carries mail in his job. However, the medical evidence of record is insufficient to establish that his job duties caused or aggravated a diagnosed condition.

Appellant alleged that he developed "work-related aches and pains" over the course of his federal employment. However, the only evidence he submitted in support of his claim was a

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[4] *Id.*

[5] D.D., 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

[6] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

[10] *Judy C. Rogers*, 54 ECAB 693 (2003).

narrative report by a chiropractor, Dr. Opisso, who cannot be considered a physician and his report is not considered medical evidence.[11] He diagnosed spinal subluxation by means of an MRI scan. Appellant argues that Dr. Opisso's opinion qualifies as competent medical evidence because he diagnosed spinal subluxation.[12] Dr. Opisso's argument fails, however, because the Act defines the term "physician" to include chiropractors only to the extent that the chiropractor diagnoses a spinal subluxation by means of x-ray.[13]

The Board affirms the Office's finding that Dr. Opisso's report is not competent medical evidence because he used an MRI scan rather than an x-ray to diagnose spinal subluxation. The Office's procedure manual states that "[a] chiropractor's opinion constitutes medical evidence only if a diagnosis of subluxation of the spine is made and supported by x-rays."[14] The Board has held that MRI scans do not satisfy the Act's requirement, stating that "there is no provision in the Act or regulations for acceptance of a chiropractor's report as probative medical evidence where subluxation is diagnosed by MRI scan."[15] Accordingly, the Board finds that Dr. Opisso's report does not qualify as competent medical evidence as it did not diagnose spinal subluxation by means of x-ray. As appellant has failed to submit any competent medical evidence to supplement Dr. Opisso's report, the evidence of record does not demonstrate that appellant developed an occupational disease.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an occupational disease.

[11] Under the Act, "the term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." 5 U.S.C. § 8101(2) (1993); *Isabelle Mitchell*, 55 ECAB 623 (2001). The Board has held that a chiropractor's opinion constitutes competent medical evidence only where the chiropractor used x-ray to diagnose spinal subluxation. *See Cheryl L. Veale*, 47 ECAB 607 (1996).

[12] In support of his argument that a chiropractor's report constitutes competent medical evidence whenever the chiropractor diagnoses spinal subluxation, appellant cited *Steven R, Piper*, 39 ECAB 312 (1987). *Piper*, however, does not address the question of a chiropractor's competence to give medical opinion evidence and makes no mention of spinal subluxation, x-rays or MRI scans.

[13] 5 U.S.C. § 8101(2).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(a) (July 2000); *Lorcas C. Digman*, 34 ECAB 1049 (1983).

[15] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 5 and March 1, 2006 are affirmed.

Issued: December 22, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board