United States Department of Labor
Employees' Compensation Appeals Board

LORENZO SMITH, Appellant	)	
and	)	**Docket No. 05-1651**
	)	**Issued: February 16, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

Appearances:
Lorenzo Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 29, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 8, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant met his burden of proof in establishing that he developed high blood pressure, hypertension, gastroesophageal reflux, chest pain and hypertrophy of the prostate in the performance of duty.

FACTUAL HISTORY

On August 21, 2003 appellant, then a 52-year-old former telecommunications specialist, filed an occupational disease claim (Form CA-2), alleging that on November 18, 1999 he was treated by an employing establishment nurse for congestion and sneezing and was prescribed phenlypropanolamine and guaifenesin to which he had an adverse reaction. He asserted that when he presented to the health clinic his blood pressure was 134 over 88 and after taking the

medication, appellant's blood pressure was 174 over 112. Appellant asserted that he developed high blood pressure, hypertension, gastroesophageal reflux, chest pain and hypertrophy of the prostate after taking phenylpropanolamine which was prescribed by the nurse. He realized that his condition was caused by his employment on May 23, 2003. Appellant retired in 1999.

On February 11, 2005 appellant filed a CA-2a, notice of recurrence of disability, alleging that he sustained a recurrence causally related to his work injury of November 1999.

In a letter dated March 4, 2005, the Office advised appellant that it was premature to file a claim for recurrence of disability as his initial claim was not fully processed. The Office noted that when his claim was initially received it appeared to be a minor injury with no time lost from work and, therefore, payment of a limited amount of medical expenses was approved. The Office advised that it would develop appellant's claim and determine whether he experienced a work-related injury on May 23, 2003.[1] The Office advised him of the factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office requested that appellant respond to questions regarding his exposure and the development of his condition and to submit a physician's reasoned opinion addressing the relationship of his condition and specific employment factors.

Appellant submitted various medical records from the employing establishment from July 1, 1998 to November 16, 2004. The records indicate that he was treated from July 1, 1998 to January 19, 1999 for contact dermatitis, eczema and dermatophytosis of the foot.

In a treatment note dated November 24, 1999, Dr. H. Marcellus, a Board-certified internist, reported that appellant was seen at the employing establishment health clinic and was diagnosed with fluid on the eardrum and increased blood pressure. He diagnosed hypertension. On November 27, 1999 Dr. Robert Von McGee, a Board-certified internist, noted treating appellant for dizziness and nausea which started after he took new blood pressure medicine for hypertension. He diagnosed low blood pressure and recommended that he stop the medicine. Appellant was seen in follow-up on November 29 and 30, 1999 by Dr. Marcellus for a blood pressure check and was prescribed new medication for hypertension. In treatment notes dated December 1 to 6, 1999, he was treated for dizziness and diagnosed with hypertension.[2] On December 9, 1999 appellant was prescribed a previous trial of a diuretic that caused his hypertension. He submitted medical records for a hospital admission from June 24 to 27, 2002. Dr. Anita Basu, a Board-certified internist, treated him for a history of atypical chest pain and presyncopal episodes. Appellant underwent a cardiac catheterization which revealed no evidence of coronary artery disease. Dr. Basu ruled out myocardial infarction and diagnosed atypical chest pain, gastroesophageal reflux disease, presyncope and hypertension. She noted that the hypertension was controlled upon discharge. Dr. Olawale O. Fashina, a Board-certified internist, noted treating appellant on August 18, 2003 for fainting spells that dated to his childhood. He diagnosed paranoia and noted that an echocardiogram suggested diastolic dysfunction. Treatment notes by a nurse practitioner were also submitted.

[1] It appears from this correspondence that the Office was adjudicating appellant's claim as a new claim and not a recurrence of disability.

[2] The physician's signature was illegible.

Appellant also submitted diagnostic testing performed at the Veteran's Administration Medical Center (VA) from November 29, 1999 to November 16, 2004. Chest x-ray's dated November 29, 1999, June 24, 2002 and November 16, 2004 revealed no abnormalities. A bilateral renal ultrasound dated June 5, 2001 revealed enlargement of the prostate gland. An ultrasound of the testicle dated June 5, 2001 revealed two cysts. A colon air contrast performed on August 16, 2002 revealed a possible polypoid lesion.

In an April 8, 2005 decision, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that his medical conditions were caused by employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 timely filed within the applicable time limitation period of the Act, that the 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 an occupational disease.[3]

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) 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 is generally 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 relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. The mere fact that a disease or condition manifests

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

[4] *Solomon Polen*, 51 ECAB 341 (2000).

itself or worsens during a period of employment[5] or that work activities produce symptoms revelatory of an underlying condition[6] does not raise an inference of causal relation between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.[7]

ANALYSIS

On November 18, 1999 appellant was at work and went to the employing establishment's health center for treatment of congestion and sneezing where he was prescribed phenylpropanolamine. The Board finds, however, that the medical evidence is insufficient to establish that any of his work duties caused or aggravated his claimed medical conditions.

Appellant submitted treatment reports from the VA Medical Center in support of his claim. Dr. Marcellus first reported that he was treated at the employing establishment health clinic and diagnosed with fluid on the eardrum and increased blood pressure and diagnosed hypertension. Appellant was seen in follow-up on November 29 and 30, 1999. However, Dr. Marcellus failed to address how his work duties on November 18, 1999 caused or contributed to the medical conditions for which appellant sought treatment. There is no rationalized opinion supporting causal relationship between appellant's factors of employment and the diagnosed condition.[8] For example, he did not explain how a medicine prescribed at the health center on November 18, 1999 would cause or aggravate the diagnosed high blood pressure, hypertension, gastroesophageal reflux, chest pain and hypertrophy of the prostate. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a November 27, 1999, report from Dr. Von McGee, who treated him for dizziness and nausea which started after he took new blood pressure medication. However, he failed to reference any employment factor or exposure as a cause of a diagnosed medical condition. This report is insufficient to meet appellant's burden of proof. The medical records from Dr. Basu failed to provide a rationalized opinion regarding the causal relationship between appellant's conditions and the factors of employment believed to have caused or

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[7] *Robert G. Morris*, 48 ECAB 238-39 (1996).

[8] *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).

contributed to such conditions. Other medical evidence submitted also does not support that any employment factors or exposures caused or aggravated any of the claimed conditions.[9]

Generally, the treatment of a nonemployment-related condition at an employing establishment facility is not considered to arise out of and in the course of employment.[10] Appellant did not allege, nor does the evidence support that the congestion and sneezing for which he was originally treated was related to his work duties. The Board has allowed compensation for complications arising from treatment of nonemployment-related conditions at employing establishment medical facilities in the following specified situations: when the Office has given prior authorization for treatment for a nonemployment-related condition;[11] when the medical treatment which leads to the complications is given while the question of causal relation of the original condition is in doubt;[12] and when the "human instincts doctrine," which provides for emergency care at employing establishment facilities, is applicable.[13] The record reflects that the Office did not give prior approval to the employing establishment for treatment, nor do the health records indicate that there was reason to believe the employee's condition was due to work-related factors. The evidence does not show that the care obtained by appellant was provided on an emergency basis. Therefore, under the criteria set forth above, appellant's claim is not covered for any injury due to complications arising from treatment of nonemployment-related conditions at employing establishment medical facilities.

For these reasons, appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed high blood pressure, hypertension, gastroesophageal reflux, chest pain and hypertrophy of the prostate in the performance of duty.

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[9] Appellant also submitted nursing notes indicating that a diuretic caused hypertension. However, the Board has held that treatment notes signed by a nurse are not considered medical evidence as a nurse is not a physician under the Act. *See* 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician). Therefore, these reports are insufficient to meet appellant's burden of proof.

[10] *See David T. Green, Sr.*, 16 ECAB 620 (1965) (where a VA employee, who underwent surgery at a VA hospital for a nonemployment-related condition, was not covered by the Act with respect to complications of surgery); *Michael J. Delaney*, 5 ECAB 405 (1953) (where an employee, hospitalized for dizziness and vertigo due to a fall at work, elected at that time to undergo surgery for a nonemployment-related urethral condition, the Board found that complications from the surgery were not covered by the Act).

[11] *Joseph J. Rotelli*, 40 ECAB 987 (1989); *John Meyers*, 6 ECAB 660 (1954).

[12] *Melvin D. Dombach*, 8 ECAB 389 (1955).

[13] *Antoinette Anderson*, 43 ECAB 1054 (1992); *Jerry L. Sweeden*, 41 ECAB 721 (1990); *Marianne Eick* (*George E. Eick*), 40 ECAB 1056 (1989); *Joseph J. Rotelli*, *supra* note 11; *Beverly Sweeny*, 37 ECAB 651 (1986); *Mildred Drisdel*, 33 ECAB 409 (1982); 32 ECAB 82 (1980).

ORDER

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

Issued: February 16, 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