United States Department of Labor
Employees' Compensation Appeals Board

DAVID A. BOYLE, Appellant	)	
and	)	**Docket No. 06-305**
	)	**Issued: June 1, 2006**
U.S. POSTAL SERVICE, PITTSBURGH PROCESSING & DISTRIBUTION CENTER, Pittsburgh, PA, Employer	)	

Appearances:
David A. Boyle, 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 November 23, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 24, 2005, which denied modification of prior decisions finding that he did not sustain an injury in the performance of duty causally related to factors of his federal employment. 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 to establish that he has a cervical or upper extremity condition causally related to his federal employment.

FACTUAL HISTORY

On December 26, 2000 appellant, then a 48-year-old mail processor, filed an occupational disease claim, alleging that lifting trays of mail caused a pinched nerve with numbness in his left arm and hand. He did not stop work but commenced limited duty. In an

attached statement, appellant noted that approximately four to five months previously he had experienced a sharp fleeting pain at work which reappeared. He currently had left arm pain and numbness which was diagnosed as a pinched nerve. Appellant submitted reports dated December 14, 2000 in which Dr. Nicolette E. Chiesa, a Board-certified internist, described appellant's intermittent neck pain with left upper extremity numbness. She opined this was consistent with possible cervical or ulnar radiculopathy. An x-ray of the neck demonstrated cervical spondylosis. Dr. Chiesa advised that appellant could have intermittent flares which would require light duty or disability for several days.

By letters dated January 31, 2001, the Office informed appellant of the evidence needed to develop his claim and asked that the employing establishment respond to his contentions. By response dated February 12, 2001, appellant described the work duties which he believed caused his condition, noting that his neck pain and left upper extremity numbness continued. In a February 12, 2001 report, Dr. Steven Williams, a Board-certified internist, noted appellant's complaints of pain and numbness which appellant attributed to work activities. Findings on examination included tenderness over the C7 area. X-ray revealed mild degenerative changes and decrease of the lordotic curve. Dr. Williams diagnosed chronic neck pain aggravated by work-related activities with possible C7-8 radiculopathy or ulnar neuropathy. He stated that employment activities clearly aggravated appellant's condition and referred him to an orthopedic surgeon. On February 27, 2001 the employing establishment described appellant's actual daily work activities.

In an April 19, 2001 report, an Office medical adviser addressed appellant's underlying cervical spondylosis. He noted that, while work activities could cause symptoms, any diagnosis and treatment would be for the underlying condition.

The Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Stephen R. Bailey, Board-certified in orthopedic surgery, for a second opinion evaluation. By report dated May 14, 2001, Dr. Bailey noted appellant's description of his regular work duties and injury and his light-duty work. He reviewed the record, including a February 24, 2001 magnetic resonance imaging (MRI) scan. Physical examination revealed findings consistent with ulnar neuropathy, which the physician considered to be not employment related, and he opined that appellant suffered no specific employment injury and did not require treatment. In an attached work capacity evaluation, Dr. Bailey advised that appellant could work his regular job without restrictions.

By decision dated May 22, 2001 and finalized May 24, 2001, the Office found that the medical evidence submitted was insufficient to establish appellant's claim. On January 8, 2002 appellant requested reconsideration and submitted a June 13, 2001 report in which Dr. Mark A. Fye, a Board-certified orthopedic surgeon, noted appellant's complaints of neck pain with bilateral upper extremity numbness. MRI scan findings noted degenerative spondylosis throughout the cervical spine with some stenosis at C5-6. Dr. Fye opined that, since appellant's symptoms began in November 2000 while at work at a fairly physical job, this aggravated his underlying spondylosis and possibly caused some radiculopathy. He recommended computerized tomography myelogram and electromyography (EMG). A June 14, 2001 EMG study was submitted although a physician's interpretation of the study was not included.

By decision dated April 1, 2002, the Office denied modification of the May 24, 2001 decision. On May 22, 2002 appellant requested reconsideration and submitted a May 23, 2002 report from Dr. Alexander Kandabarow, also Board-certified in orthopedic surgery. He noted appellant's complaints of neck and upper extremity pain and numbness. Dr. Kandabarow stated that the EMG "apparently showed no definite radiculopathy." Findings on examination included normal range of motion of the cervical spine with some tenderness of the left medial scapular border with no neurological deficits. Dr. Kandabarow reviewed x-rays and the February 24, 2001 MRI scan which demonstrated cervical degenerative disc disease at C5-6 with osteophytes and neuroforaminal narrowing. He diagnosed intermittent chronic neck and left upper extremity pain and cervical spondylosis and radiculitis. Dr. Kandabarow opined that appellant's preexisting condition was aggravated by a November 28, 2000 employment incident.

The Office determined that a conflict in medical evidence was created regarding whether appellant's cervical condition was causally related to his employment duties. It referred him, together with a statement of accepted facts, a set of questions and the medical record, to Dr. W. Scott Nettrour, Board-certified in orthopedic surgery, for an impartial medical evaluation. By report dated November 12, 2002, Dr. Nettrour noted appellant's complaints and history of injury and his review of the record including the February 24, 2001 MRI scan and a computerized myelogram dated September 12, 2002 which demonstrated multilevel cervical degenerative disc disease. Physical findings included mild limitation of motion of the cervical spine with moderate tenderness and no localized motor, sensory or reflex deficit in the left upper extremity with full passive range of motion of the shoulders bilaterally. Dr. Nettrour advised that x-rays confirmed the multilevel cervical degenerative disc disease with significant foraminal stenosis bilaterally at C5-7 and C7-T1. A left shoulder x-ray was normal. He diagnosed multilevel cervical degenerative disc disease with referred or radicular left arm pain but no specific radiculopathy and opined that this preceded his reported work-related condition. Dr. Nettrour advised that appellant's current complaints were secondary to the preexisting degenerative condition and were unrelated to any work injury. He opined that appellant had a mild permanent impairment of function of his neck and left arm region based on his degenerative disc disease and could perform full-time light duty with no work at shoulder height or overhead lifting, pushing or pulling at greater than 20 pounds. He recommended epidural steroid injections.

By decision dated December 10, 2002, the Office denied modification of the prior decisions, based on the impartial evaluation of Dr. Nettrour that appellant's condition was not caused by his federal employment. On April 2, 2003 appellant requested reconsideration and submitted unsigned clinic notes dated March 22 and December 19, 1992. In a July 9, 2003 decision, the Office again denied modification of the prior decision. On June 23, 2004 appellant again requested reconsideration and resubmitted the unsigned clinic notes. He also submitted an October 24, 2003 disability slip in which Dr. Dale J. Block, Board-certified in family medicine, advised that appellant could return to limited duty with restrictions on his physical activity. In an unsigned report dated April 27, 2004, Dr. Joseph C. Maroon, Board-certified in neurosurgery, noted appellant's history of employment injury and his complaints of neck and upper extremity pain. Reflex testing was normal with subjective decreased sensation in the left ulnar nerve distribution. Dr. Maroon noted his review of the February 2001 MRI scan and September 2002 myelogram which he stated revealed significant cervical spondylosis without cord or nerve root compression. He recommended upper extremity EMG studies.

In an August 4, 2004 decision, the Office denied modification of the prior decisions. On June 11, 2005 appellant requested reconsideration and submitted an April 19, 2002 report in which Dr. Daniel M. Bursick, Board-certified in neurosurgery, noted appellant's report that his problems began at work in November 2000 and appellant's complaints of neck and left arm pain and numbness. Examination findings included good neck range of motion although flexion caused pain. He reviewed the MRI scan which he interpreted as demonstrating degenerative changes. Dr. Bursick opined that to a certain degree appellant's condition was job related in terms of repetitiveness and to a certain degree related to the underlying degenerative cervical changes. He recommended cervical myelogram.

By decision dated August 24, 2005, the Office denied modification of the August 4, 2004 decision, noting that Dr. Bursick's report was insufficient to overcome the impartial evaluation of Dr. Nettrour.

LEGAL PRECEDENT

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[1] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[2] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[3]

Section 8123(a) of the Federal Employees' Compensation Act[4] provides that, 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] When 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 on a proper factual background, must be given special weight.[6]

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[1] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[2] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[3] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

[6] *Manuel Gill*, 52 ECAB 282 (2001).

ANALYSIS

In this case, the Office determined that a conflict in the medical opinion arose between appellant's attending physicians and Dr. Bailey, who provided a second opinion evaluation for the Office, regarding whether appellant's cervical condition was employment related. The Office properly referred appellant to Dr. Nettrour for an impartial evaluation.[7]

The Board finds Dr. Nettrour's report sufficiently well rationalized to support a finding that appellant's cervical condition was caused by his underlying degenerative disc disease and not by employment factors.[8] In a comprehensive November 12, 2004 report, the physician noted appellant's complaints and history of injury. Dr. Nettrour reviewed the record, including MRI scan and myelogram findings which confirmed the diagnosis of multilevel cervical degenerative disc disease which preceded appellant's reported work-related condition. Dr. Nettrour advised that appellant's current complaints were secondary to the preexisting degenerative condition and unrelated to any work injury. Although, appellant had a mild permanent impairment of function of his neck and left arm region based on his degenerative disc disease, he could perform full-time light duty with restrictions to his physical activity. The Board finds this report sufficiently rationalized to accord it special weight,[9] and the Office properly found in its December 10, 2002 decision that appellant failed to establish that he sustained an employment-related injury.

While appellant subsequently submitted additional medical evidence, regarding the unsigned notes dated March 22 and December 19, 1992, to be of probative value, medical evidence must be in the form of a reasoned opinion by a qualified physician and based upon a complete and accurate factual and medical history.[10] There is no evidence that these notes were rendered by a physician and are, therefore, not competent medical evidence. Neither Dr. Brock in his October 24, 2003 report nor Dr. Maroon in his April 27, 2004 report, proffered any opinion regarding the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11] The Board therefore finds these reports insufficient to meet appellant's burden to establish that his cervical condition was caused by employment factors.

With regard to Dr. Bursick's April 19, 2002 report, medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relationship.[12] The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by

[7] *Supra* note 5.

[8] *Manuel Gill, supra* note 6.

[9] *Id.*

[10] *William D. Farrior*, 54 ECAB 566 (2003).

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

[12] *Albert C. Brown*, 52 ECAB 152 (2000).

medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[13] The physician must support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.[14] Furthermore, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.[15] In his report, Dr. Bursick opined that to a certain degree appellant's condition was job related in terms of repetitiveness and to a certain degree related to the underlying degenerative cervical changes. He, however, did not explain with sufficient specificity how appellant's job duties caused his cervical condition, and his report, although not submitted to the Office until June 2005, predated the impartial evaluation of Dr. Nettrour. In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[16] The Board therefore finds this report insufficient to establish that appellant's condition was causally related to factors of his employment. Appellant therefore failed to meet his burden of proof as he failed to submit a reasoned medical opinion supporting causal relationship.[17]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his cervical or upper extremity conditions were causally related to his federal employment.

[13] *Patricia J. Glenn*, 53 ECAB 159 (2001).

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

[15] *Patricia J. Glenn, supra* note 13.

[16] *Anna M. Delaney*, 53 ECAB 384 (2002).

[17] *Albert C. Brown, supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2005 be affirmed.

Issued: June 1, 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