

**United States Department of Labor
Employees' Compensation Appeals Board**

G.M., Appellant)

and)

DEPARTMENT OF LABOR, MINE, SAFETY &)
HEALTH ADMINISTRATION, Benton, IL,)
Employer)

Docket No. 06-1219
Issued: September 8, 2006

Appearances:
G.M., 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 May 2, 2006 appellant filed a timely appeal from a January 23, 2006 decision of the Office of Workers' Compensation Programs denying his claim of a right wrist injury. 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 established that he sustained a right wrist injury due to a March 22, 2001 employment incident.

FACTUAL HISTORY

On April 9, 2001 appellant, a 51-year-old mine inspector, filed a traumatic injury claim alleging that he injured his right hand on March 22, 2001 when he slipped on wet timbers in a mine shaft and fell. He did not receive medical treatment for this condition until May 1, 2001.

In reports dated May 3 and 7, 2001, Dr. James C. Chow, a treating Board-certified orthopedic surgeon, noted that appellant sustained an injury approximately two months prior

when he fell and landed on his right wrist. Dr. Chow opined that he had “hyperextended the right wrist.” Appellant presented with ulnar sided pain complaints and repeated locking at the right wrist. A physical examination revealed right wrist ulnar collateral ligament and ulnar styloid process tenderness and no swelling of the wrist joint. Dr. Chow suspected “the patient may have an ulnar collateral ligament injury.”

In a magnetic resonance imaging (MRI) scan dated May 25, 2001, Dr. Peter D. Franklin, a Board-certified radiologist, reported “degenerative changes within the distal radioulnar joint, with evidence of a tear of triangular fibrocartilage and a sprain of the ulnar collateral ligament” and chondromalacia.

On June 6, 2001 Dr. Chow noted that the MRI scan revealed a complex tear of the triangular fibrocartilage and indicated that appellant might require a wrist arthroscopy if his symptoms continued.

In a letter dated July 2, 2001, the Office informed appellant that the claim must be formally adjudicated as a surgical request had been submitted. The Office asked various questions and advised him as to the type of medical evidence required to support his claim.

In a decision dated August 13, 2001, the Office denied appellant’s claim on the grounds that the evidence of record was insufficient to establish that his right wrist condition was causally related to the March 22, 2001 incident.

In an August 16, 2001 report, Dr. Chow diagnosed a triangular fibrocartilage complex tear which was employment related. He concluded that at the time of the injury appellant hyperextended his right wrist and “[i]t is quite possible that this type of injury could sustain a t[riangular] f[ibro]c[artilage] c[omplex] tear.”

In a letter dated November 29, 2001, appellant requested a review of the written record and noted that he had sent in an appeal on September 11, 2001.

On November 20, 2001 appellant underwent right wrist fibrocartilage central flap tear debridement surgery.

In a decision dated January 22, 2002, the Office’s Branch of Hearings and Review denied appellant’s request for a review of the written record on the grounds that he failed to file his request within 30 days of the August 13, 2001 decision.

On January 30, 2002 the Office received a copy of appellant’s September 6, 2001 letter requesting a review of the written record.

On March 12, 2002 the Office received an October 25, 2001 report by Dr. Chow which diagnosed triangular fibrocartilage complex tear and progress notes for the period November 14, 2001 to March 4, 2002, by Dr. Joon Anh, a treating Board-certified orthopedic surgeon with a subspecialty in hand surgery.

In November 14, 2001 progress notes, Dr. Anh related appellant hyperextended his right wrist when he fell onto the wrist and that an MRI scan revealed a tear of the triangular

fibrocartilage complex tear. A physical examination revealed tenderness at the “ulnar aspect of the wrist, especially on the volar aspect of the wrist” and a positive ulnar compression test. In subsequent progress notes, Dr. Anh reported that appellant was healing well from the surgery and “regained good range of motion.” However, in progress notes dated February 4, 2002, he reported that appellant was “experiencing residual symptoms secondary to the cartilage damage to the lunage and ulnar impaction syndrome.” A physical examination on February 4, 2002 revealed “[h]is tenderness is exquisite exactly at the location of the chondral lesion.”

In a decision dated November 14, 2002, the Office hearing representative affirmed the denial of appellant’s claim. He found that the record contained no rationalized medical opinion explaining how appellant’s condition was causally related to the accepted March 21 2001 incident.

In a letter dated October 31, 2003, appellant requested reconsideration and submitted medical evidence, including a January 6, 2003 report and progress notes for the period August 1 to November 18, 2002 by Dr. Anh; an August 29, 2003 report by Dr. David W. Strege, Board-certified orthopedic surgeon with a subspecialty in hand surgery; and an August 15, 2003 electromyograph study by Dr. Tomasz Kosierkiewicz.

Dr. Anh reported that appellant was seen for a “reinjury of the right wrist.” He noted that appellant had been previously treated for a triangular fibrocartilage complex tear and he currently has positive variance and, a lunate chondral lesion due to the ulnar positive various. On January 6, 2003 Dr. Anh noted that appellant sustained an injury on March 22, 2001 and under went arthroscopic treatment of a triangular fibrocartilage complex tear. He reported that appellant currently had significant pain due to a reinjury due to a fall. Dr. Anh stated:

“[I]t is a separate injury from the prior injury, in the sense that [appellant] fell again and sustained recurrent trauma. But it is somewhat connected, in the sense that it is the same structure that is getting damaged and also both injuries stem from the fact that [he] had a recurrent fall and also that [appellant] has ulnar positive variance in the wrist.”

In a report dated August 29, 2003, Dr. Strege noted that appellant sustained a right wrist injury on March 22, 2001 when he fell. He diagnosed several right upper extremity problems after several surgeries for ulnar impaction syndrome. A physical examination of the right forearm and wrist revealed “some distal tenderness at the palpable distal end of the ulnar stump,” pain upon manipulation and “marked moderate weakness of the intrinsic muscles.

In a report dated November 12, 2003, the Office medical adviser reviewed the medical evidence of record. He noted that the hearing representative had previously found Dr. Chow’s opinion to be speculative regarding the causal relationship between appellant’s triangular fibrocartilage complex tear and the March 22, 2001 incident. The Office medical adviser advised that the additional evidence did not correct this. Appellant sustained a fall on November 18, 2002 which led to a recommendation for additional surgery in 2003. The Office medical adviser opined that there was no medical rationale explaining how appellant’s wrist condition was causally related to the March 22, 2001 incident.

On November 21, 2003 the Office received a copy of the April 24, 2003 operative report by Dr. Anh.

By decision dated January 22, 2004, the Office denied modification of the November 14, 2002 decision. It found that the medical evidence submitted by appellant failed to contain a rationalized opinion explaining how his condition was causally related to the March 22, 2001 incident.

On November 26, 2004 appellant requested reconsideration.

On December 20, 2004 the Office denied modification of the January 22, 2004 decision.

On November 21, 2005 the Office received appellant's January 14, 2005 request for reconsideration and evidence including reports dated July 26, 2004 and January 14, 2005 from Dr. Chow and a statement by appellant.

Dr. Chow noted that a May 23, 2001 MRI scan revealed a triangular fibrocartilage complex tear and joint destruction involved at the lunate. He opined that given the patient's injury was at the triangular fibrocartilage complex tear and the distal radialulnar joint area, obviously [his] injury pattern is consistent with the injury that was sustained" and was employment related.

By decision dated January 23, 2006, the Office denied modification of the December 20, 2004 decision. It found that insufficient medical opinion explaining how appellant's wrist condition was causally related to the March 22, 2001 employment incident or why he waited until May 1, 2001 to receive medical treatment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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 applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

¹ 5 U.S.C. §§ 8101-8193.

² *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Elaine Pendleton*, 40 ECAB 1143 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004); *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁷

ANALYSIS

There is no dispute that on March 22, 2001 appellant fell in a mine as alleged. The Board finds, however, that he has not submitted sufficient medical evidence to establish a causal relationship between his right wrist and the March 22, 2001 employment incident.

Appellant submitted several reports from Dr. Chow. In reports dated May 3 and 7, 2001, he noted that appellant sustained an injury approximately two months ago when he fell and landed on the right wrist which caused a hyperextension of the right wrist. A physical examination revealed right wrist ulnar collateral ligament and ulnar styloid process tenderness and “no swelling of the wrist joint *per se*.” Dr. Chow suspected “the patient may have an ulnar collateral ligament injury.” In reports dated June 6, 2001 and July 26, 2005, he noted that the May 23, 2001 MRI scan revealed a tear of the triangular fibrocartilage complex tear, but provided no opinion as to the cause of the injury. Dr. Chow, in an August 16, 2001 report, diagnosed a triangular fibrocartilage complex tear which he attributed to appellant’s employment. In support of this conclusion, he noted that at the time of the injury appellant “hyperextended the right wrist” and “[i]t is quite possible that this type of injury could sustain a t[riangular] f[ibro]c[artilage] c[omplex] tear.” Dr. Chow, in the January 14, 2005 report, opined that, “[g]iven [appellant’s] injury was at the t[riangular] f[ibro]c[artilage] c[omplex] tear and the DRUJ area, obviously his injury pattern is consistent with the injury that was sustained” and was employment related. Initially, the Board notes that Dr. Chow’s opinion it was possible appellant’s injury caused the triangular fibrocartilage complex tear is speculative. Medical opinions which are speculative or equivocal are of diminished probative value.⁸ Furthermore, in

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995); *see also* *Ellen L. Noble, supra* note 3.

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Charles E. Evans*, 48 ECAB 692 (1997).

⁸ *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

his remaining reports, Dr. Chow merely provided a conclusion that appellant's triangular fibrocartilage complex tear was caused by the March 22, 2001 employment incident without any supporting rationale. He did not explain how the falling at work on March 22, 2001 and the hyperextension of the right wrist caused or contributed to appellant's diagnosed triangular fibrocartilage complex tear. Medical reports not containing supporting medical rationale and the physician's opinion are entitled to little probative value.⁹ The Board finds that the reports of Dr. Chow are not sufficient to establish the claim.

The record also contains various reports and progress notes by Dr. Anh. In November 21, 2001 progress notes he related that appellant hyperextended his right wrist when he fell onto the wrist and that an MRI scan revealed a tear of the triangular fibrocartilage complex tear. In subsequent progress notes, Dr. Anh reported that appellant was healing well from the surgery and "regained good range of motion." However, in progress notes dated February 4, 2002, he reported that appellant was "experiencing residual symptoms secondary to the cartilage damage to the lunage and ulnar impaction syndrome." A physical examination on February 4, 2002 revealed, "[h]is tenderness is exquisite exactly at the location of the chondral lesion." Dr. Anh noted in a November 18, 2002 progress note and a January 6, 2003 report, that appellant had reinjured his right wrist. In the January 6, 2003 report, he noted that he sustained an injury on March 22, 2001 and that he had significant pain due to a reinjury due to a fall. In this report, Dr. Anh opined that "both injuries stem from the fact that he had a recurrent fall and also that appellant has ulnar positive variance in the wrist." Dr. Anh, like Dr. Chow, merely provided a conclusion that appellant's condition was caused by his work without any supporting rationale.¹⁰ He did not explain how the falling at work on March 21, 2001 or the hyperextension of his right wrist caused or contributed to his diagnosed triangular fibrocartilage complex tear. Moreover, Dr. Anh reported a worsening of appellant's condition due to a nonwork fall and that subsequent to the fall he had significant pain. He opined that his current condition was due to both injuries and his recurrent fall. However, Dr. Anh provided insufficient medical rationale, explaining how appellant's current condition is due to the March 21, 2001 employment incident and not due to the subsequent nonwork fall. The Board finds that the reports of Dr. Anh are insufficient to establish the claim.

In a report dated August 29, 2003, Dr. Strege reported that appellant sustained a right wrist injury on March 22, 2001 when he fell. He diagnosed several right upper extremity problems "after several surgeries for ulnar impaction syndrome." A physical examination of the right forearm and wrist revealed "some distal tenderness at the palpable distal end of the ulnar stump," pain upon manipulation and "marked moderate weakness of the intrinsic muscles. However, Dr. Strege failed to provide any rationalized medical opinion explaining how appellant's medical condition was causally related to the March 21, 2001 employment injury.

⁹ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004). (A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is insufficient to meet the claimant's burden of proof.)

¹⁰ *Id.*

Medical reports containing no medical rationale on causal relationship are entitled to little probative value.¹¹ The Board finds the report of Dr. Strege insufficient to establish the claim.

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.¹² Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.¹³

As there is no rationalized medical evidence of record establishing that appellant sustained a right wrist injury while in the performance of duty on March 22, 2001 as alleged, the Board finds that he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a right wrist condition causally related to the March 22, 2001 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2006 is affirmed.

Issued: September 8, 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 *Mary E. Marshall*, 56 ECAB ____ (Docket No. 04-1048, issued March 25, 2005).

¹² *Kathryn E. Demarsh*, 56 ECAB ____ (Docket No. 05-269, issued August 18, 2005).

¹³ *Frankie A. Farinacci*, 56 ECAB ____ (Docket No. 05-1282, issued September 2, 2005).