

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

N.F., Appellant)	
)	
and)	Docket No. 07-865
)	Issued: July 23, 2007
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Southeastern, PA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 8, 2007 appellant, through his attorney, filed a timely appeal from an August 16, 2006 merit decision of the Office of Workers' Compensation Programs denying his occupational disease 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 established that he sustained a left upper extremity condition causally related to factors of his federal employment.

FACTUAL HISTORY

On June 28, 2004 appellant, then a 52-year-old automated flat sorter machine clerk, filed an occupational disease claim alleging that he sustained problems with his left hand, wrist and arm due to factors of his federal employment. In a statement accompanying his claim, he attributed his left hand and arm condition to working on an automated flat sorter machine. Appellant lifted and loaded tubs of mail and fed mail into the machine "at a fast pace." He

performed repetitive work on the flat sorter machine for 17 years. Appellant experienced pain, numbness and tingling in his left hand beginning in 2003.¹ He currently worked in a limited-duty capacity.

In a report dated May 24, 2004, Dr. Scott M. Fried, an osteopath, described in detail appellant's job duties on the flat sorter machine. He noted that appellant experienced bilateral problems, right side more than left, with his shoulder, upper trapezius, thumb, thenar area and carpometacarpal joint in 2001. Dr. Fried stated:

“By 2003, [appellant] noted gradual and progressively increased symptoms on the left. He was overusing the left to compensate for the right and actually would switch right and left hand on casing and sorting. [Appellant] was stopped on the flat sorter machine at this point and [has] been on manual sorting. He feels what really se[n]t him over the edge was the fact that the job required overhead lifting and reaching to bring down tubs of mail as well as putting them back up. These weighed 40 [to] 50 [pounds] and [appellant] had to bring these up and down for sorting and loading the machine. He feels the machine did increase in pace and keeping up with the high pace significantly stressed his upper back and arms.”

Dr. Fried described the onset and progression of appellant's symptoms and listed findings on physical examination. He diagnosed a repetitive strain injury on both sides with trapeziometacarpal synovitis and moderate arthrosis greater on the right side, flexor tenosynovitis “with median neuritis and radial neuritis bilaterally secondary to repetitive work activities” and tendinitis of the rotator cuff “right side greater than left with brachial plexitis right, moderate left secondary to repetitive lifting of bins and repetitive sorting activities on a flat sorter.” Dr. Fried listed work restrictions. He concluded, “I have concern that [appellant] has a combination of a musculoskeletal disorder, repetitive strain injury and also underlying neurogenic involvements.”²

In a statement received September 20, 2004, the employing establishment described appellant's work duties on the flat sorter machine, which included pulling flats of mail off a conveyor belt, loading the mail into a hamper and lifting tubs of mail. The employing establishment indicated that for four hours per day he bent, loaded, lifted, pushed and pulled mail. Appellant began working in the manual section rather than on the flat sorter machine beginning April 2004.

On October 4, 2004 appellant again described in detail, the employment duties to which he attributed his left upper extremity conditions. He related that he bent down to get tubs of mail which he lifted above shoulder level. Appellant also “work[ed] off a rack grabbing handful[s] of magazines, bulk mail and first class flat mail. This is continuous throughout [an] eight-hour workday five days a week.”

¹ Appellant noted that he had previously filed a claim for a right hand and thumb condition, assigned file number 032004002.

² Dr. Fried interpreted an x-ray of appellant's hands and wrists as showing trapeziometacarpal articulations, spurring and joint space narrowing. An x-ray of the elbows and forearms was unremarkable.

By decision dated November 17, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to show that he sustained a condition due to the accepted employment factor of working on a machine. The Office found that Dr. Fried did not adequately explain his diagnoses in view of the results of diagnostic testing or provide an unequivocal opinion on causal relationship.

On November 18, 2004 appellant, through his attorney, requested an oral hearing. Following the June 28, 2005 hearing, by decision dated September 27, 2005, the Office hearing representative affirmed the November 17, 2004 decision.

In a report dated September 21, 2005, received by the Office on November 28, 2005, Dr. Fried reviewed appellant's statement describing his employment duties. He noted that appellant lifted mail out of tubs. Dr. Fried noted:

“[Appellant] also had to work off of racks, grabbing hands full of magazines, bulk mail and first-class flat mail. This is continuous work of a repetitive basis throughout an 8-hour day dispatching over 100 tons of mail off the flat sorter machine into equipment called [the] [b]ulk [m]ail [c]ontainer. There is aggressive and repetitive hand, wrist and arm activity with grasping, pulling, pushing, lifting and the like.”

Dr. Fried analyzed the diagnostic studies and his objective findings on physical examination. He asserted:

“Objectively on [appellant's] clinical examination findings on the left indicated a positive Tinel or compression test at the radial nerve in the left forearm. This is consistent with inflammation and swelling which is palpable as well as appropriate radiation of nerve symptoms into the forearm. This is consistent with a lateral epicondylor problem and radial nerve problem. The radial nerve is involved in grasping and wrist extension activity again which were performed on a repetitive basis from [appellant's] work activities.”

Dr. Fried further listed objective findings consistent with flexor tenosynovitis of the wrist and brachial plexus nerve irritation “consistent with the repetitive overhead reaching and regular reaching and pulling, pushing and grasping activities that [appellant] performed.” He concluded:

“In summary, [appellant] has a well-documented repetitive strain injury in his right upper extremity and left upper extremity is involved as well. Although his initial symptoms were worse on the right, [appellant] continued to overuse the left to compensate for the right and actually continued to switch hands back and forth. [Appellant] had progressive symptoms in the left upper extremity and this resulted in permanent involvement. Specifically, his diagnoses are trapezial metacarpal arthrosis with synovitis and subluxation with instability on the left. [Appellant] has a flexor tenosynovitis with median neuritis and radial nerve involvement [and] also left wrist and forearm secondary to these work activities with objective findings as noted above. He has rotator cuff tendonovitis with

brachial plexus and inflammation [on the] left side as well, secondary to his repetitive reaching and lifting activities.

“I hope the above is helpful in providing medical documentation explanation of the same. This is a classic repetitive strain injury with 17 years of cumulative traumas each providing microtraumas subsequently resulting in pain, discomfort, dysfunction and disability. There is direct cause and relationship between the repetitive activities performed on the flat sorter machine and the above diagnoses. The objective findings are consistent with [appellant’s] history of work, the history of work pathology, the progressive development of his injuries and his present clinical complaints as well as objective findings on examination. There is a high degree of consistency and correlation between the history of injury, work as described and present and ongoing complaints. The cause and effect relationship is absolute and clear cut.”

In a report dated May 15, 2006, Dr. Fried listed findings on examination and recommended a pain management program.

On August 2, 2006 appellant, through his attorney, requested reconsideration of the claim. By decision dated August 16, 2006, the Office denied modification of its September 27, 2005 decision. It stated that Dr. Fried inaccurately described appellant’s employment duties as repetitive in nature as a “flat sorter keys flats, he does not sort them.” The Office further determined that Dr. Fried did not support his conclusions with objective studies or explain the effect of any preexisting condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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; 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 are causally related to the employment injury.⁴ 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.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing 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.⁸

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.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

Appellant attributed his left hand and arm condition to bending and lifting tubs of mail and working on the automated flat sorter machine. In a statement received by the Office on October 4, 2004, he related that he performed these activities continuously throughout an eight-hour workday. The employing establishment confirmed that appellant worked on a flat sorter machine bending, loading, lifting, pushing and pulling mail but maintained that he performed these duties for only four hours per day. The employing establishment did not provide information regarding his work duties for the remainder of the workday. Appellant submitted a comprehensive medical report dated September 21, 2005 from his attending physician, Dr. Fried, who diagnosed trapeziometacarpal arthrosis with synovitis, flexor tenosynovitis with median neuritis and radial nerve involvement and rotator cuff tendinitis. Dr. Fried explained that the objective findings on examination, work history and the progression of injury supported a causal relationship between the diagnosed conditions and his employment. He relied, however, on a history of appellant working on a flat sorter machine for eight hours per day performing repetitive work duties.¹³

Although it is appellant's burden to establish his claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

¹³ Medical conclusions based on inaccurate or incomplete histories are of little probative value and are insufficient to satisfy a claimant's burden of proof. *John W. Montoya*, *supra* note 11.

government source.¹⁴ In order to properly adjudicate the claim, it is important to secure evidence regarding appellant's actual employment duties. While the employing establishment provided a statement to the Office, the statement did not contain a full description of appellant's work duties for eight hours per day, but instead described his work for four hours per day on the flat sorter machine. The Board, therefore, will remand the case to the Office to request additional information from the employing establishment regarding appellant's work duties. Upon securing the information, the Office should prepare a statement of accepted facts and request an opinion from Dr. Fried based on a complete and accurate factual history addressing the causal relationship between any diagnosed conditions and the accepted work factors. After such further development as is deemed necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2006 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 23, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ See *Claudia A. Dixon*, 47 ECAB 168 (1995).