United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	
DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND AFLOAT PERSONNEL MANAGEMENT CENTER, Norfolk, VA, Employer	)	**Docket No. 07-367** **Issued: May 15, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 9 and October 4, 2006 merit decisions, denying his occupational injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On June 24, 2004 appellant, a 64-year-old deck engineer/machinist filed an occupational disease claim (Form CA-2) alleging that he developed pain in the shin area, which he attributed

to an "old accident." He first realized that his condition was related to his employment on December 9, 2003.[1]

In support of his claim, appellant submitted a January 30, 2004 report of an electromyography (EMG), by Dr. Sudhakar Tummala, a Board-certified internist. The record also contains a January 29, 2004 report of a magnetic resonance imaging (MRI) scan of the cervical spine. In a February 2, 2004 medical summary form from the employing establishment, Dr. Jeffrey Weinberg, a treating physician, provided diagnoses of cervical spondylosis, cervical myelopathy and diffuse degenerative changes from C3 to T1. Dr. Weinberg indicated that appellant had a history of progressive loss of muscle in the left thumb and forefinger, as well as neck and back pain since 1990. A medical summary form bearing an illegible signature and date reflected diagnoses of spinal cord lesion and left-sided weakness. A December 9, 2003 medical summary form bearing an illegible signature reflected a diagnosis of spinal cord lesion.

In an April 9, 2004 attending physician's report, Dr. Flavia Thomas, a Board-certified osteopath, specializing in the field of family practice, stated that appellant had a history of left arm paresthesis, which was worsening. He indicated that an MRI scan of the cervical spine revealed a spinal cord lesion and that an audiogram showed moderate hearing loss. In response to the question as to whether he believed appellant's condition was caused or aggravated by his employment, Dr. Thomas placed a checkmark in the "no" box. In an accompanying medical summary, he diagnosed spinal cord lesion; left-sided weakness; moderate hearing loss; and mild cataracts. Dr. Thomas opined that appellant "should be permanently not fit for duty."

On July 27, 2004 the Office informed appellant that the evidence submitted was insufficient to establish his claim. It requested detailed information regarding the activities he believed contributed to his condition and a comprehensive medical report with a diagnosis, results of examinations and tests and a doctor's opinion with medical reasons on the cause of his condition. In response to the Office's request, appellant submitted a copy of a job description for a deck engineer.

By decision dated September 14, 2004, the Office denied appellant's claim, on the grounds that the medical evidence did not demonstrate that his claimed medical condition was causally related to established work-related events. The Office found that appellant had failed to provide adequate medical opinion on the issue of causal relationship.

On October 7, 2004 appellant requested reconsideration of the September 14, 2004 decision. He submitted a September 28, 2004 medical summary from Dr. Weinberg who diagnosed cervical spondylosis, cervical myelopathy and diffuse degenerative changes from C3 to T1. Dr. Weinberg stated that appellant was indefinitely disabled at that time. Appellant also submitted a copy of the January 30, 2004 EMG report, signed by Dr. Sudhakar Tummala, a

[1] On June 24, 2004 appellant filed a claim for a schedule award. On July 21, 2004 the Office informed appellant that his claim for a schedule award could not be adjudicated until a decision was made on his occupational disease claim. The Board has no jurisdiction to consider the merits of appellant's schedule award claim, as it is an interlocutory matter before the Office. *See* 20 C.F.R. § 501.2(c). (The Board has jurisdiction to consider and decide appeals from final decisions; there shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case). *See also Scott R. Walsh*, 56 ECAB ___ (Docket No. 04-1962, issued February 18, 2005); *Gloria Swanson*, 43 ECAB 161 (1991).

Board-certified internist and neurologist. In an undated statement, appellant indicated that he had experienced back pain ever since he sustained a traumatic injury in the course of his employment in 1996, when several doors fell and knocked him down to a lower deck. He noted that after reviewing his MRI scan reports, Dr. Weinberg concluded that his condition was caused by an "old injury."

By decision dated December 6, 2004, the Office affirmed its denial of appellant's claim. However, the Office modified the September 14, 2004 decision to reflect that appellant had not established the fact of injury, as the medical evidence was not sufficient to establish that the diagnosed conditions resulted from employment factors.

On February 25, 2005 appellant again requested reconsideration. He submitted a copy of a November 12, 1996 traumatic injury CA-1 claim form alleging injuries to his left shoulder and elbows when he was knocked to the deck of his ship and a door landed on top of him. In a November 13, 1996 occupational injury report, Walter R. Friday, medical services officer, stated that appellant was removing J-doors from an elevator when a door fell on him, knocking him to the deck. The report reflects that the incident resulted in tenderness to the left shoulder and loss of skin to both elbows. In a statement dated February 21, 2005, appellant noted that Dr. Thomas believed his condition was a result of an old injury.

By decision dated March 21, 2005, the Office affirmed the denial of appellant's claim, finding that the evidence established that appellant had sustained an accident in 1996 in the performance of duty, but failed to provide a diagnosis relating to this injury and did not establish a causal relationship between the incident and appellant's current condition.

On June 24, 2005 appellant again requested reconsideration. He submitted a narrative statement dated May 10, 2005, contending that his medical condition was a result of job duties performed as a deck engineer, including heavy lifting; continuous bending; climbing; and standing seven days a week, 12 to 16 hours per day. In a June 10, 2005 work-capacity evaluation, Dr. Thomas stated that appellant had weakness on the left side and was unable to sit for more than two hours without pain and stiffness. He also indicated that appellant had a disc at C3 that was applying pressure to his spinal cord, causing paralysis on the left side.

By decision dated August 3, 2005, the Office again denied modification, finding that the evidence did not contain a medical opinion explaining how appellant's conditions were causally related to factors of his federal employment.

On November 29, 2005 appellant submitted another request for reconsideration. In a November 29, 2005 letter, Dr. Thomas stated that he had been appellant's primary care physician since February 2002 and found that he was permanently disabled due to left-sided weakness.

By decision dated February 9, 2006, the Office denied modification of its August 3, 2005 decision, finding that Dr. Thomas' letter provided no opinion as to the etiology of appellant's medical condition and did not relate the diagnosed conditions to any work factors.

On July 8, 2006 appellant submitted a request for reconsideration. In a report dated December 12, 2003, Dr. Richard F. Barrett, a chiropractor,[2] indicated that his first examination of appellant occurred on May 16, 2006. Dr. Barrett reported that appellant suffered from cervical pain and pain between his shoulder blades as a result of an on-the-job injury which occurred about December 1990, when J-doors knocked him to the floor of his ship. He provided the following diagnoses: cervical disc degeneration; cervicobrachial syndrome; lumbar disc degeneration; short leg, acquired; lumbar segmental dysfunction; pelvic segmental dysfunction; laxity of ligamentation; muscular incoordination; muscular wasting or atrophy; and osteoarthritis. Dr. Barrett performed tonicity, neurological and orthopedic examinations. He stated that x-rays showed decreased straight cervical curve and narrowed intervertebral disc space at C3-7/T1. Thoracic spine x-rays revealed thoracic spondylosis wedging T6 on T7 on the left side. Lumbar spine x-rays revealed narrowed intervertebral disc space at L2-3, L4-5 and L5-S1. A pro-adjusting evaluation was performed for the purpose of utilizing current technology to analyze appellant's condition "based on physics." Dr. Barrett opined that the abnormal wave shape noted at C1-7, T1-12, L1-5 and S1-5, indicated the presence of one or more components of the vertical subluxation complex. He indicated that appellant's rapidly progressive degenerative changes were all signs of a past traumatic injury to the spine. Dr. Barrett opined, in summary, that appellant's spinal complaints and condition were the result of the trauma he suffered in 1990.

By decision dated October 4, 2006, the Office denied modification of the February 9, 2006 decision, finding that the medical evidence of record failed to establish that appellant's cervical condition was causally related to factors of employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged[4] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[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; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the

[2] The December 12, 2003 date on Dr. Barrett's letter appears to be a typographical error. In the body of the letter, Dr. Barrett refers to a May 16, 2006 examination of appellant, as well as various diagnostic tests performed after December 12, 2003.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[5] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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.[7] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[8]

ANALYSIS

The Office accepted that appellant sustained a work accident in 1996, although the medical records failed to provide a firm diagnosis related to the incident. Appellant further alleged that his medical condition was exacerbated by job duties performed as a deck engineer, including heavy lifting; continuous bending; climbing and standing seven days a week, 12 to 16 hours per day. The issue is whether the medical evidence submitted is sufficient to establish that any of his current diagnosed conditions are causally related to the employment factors identified. The Board finds that appellant has submitted insufficient medical evidence to establish that his cervical degenerative changes, left thumb or forefinger parenthesis, hearing loss or cataracts were caused or aggravated by factors of his federal employment.

In support of his claim, appellant submitted various medical reports tracing the progression of his cervical condition. These reports, however, did not explain which factors of appellant's employment caused or aggravated his condition or how the condition arose. In medical summaries dated February 2 and September 28, 2004, Dr. Weinberg diagnosed cervical spondylosis, cervical myelopathy and diffuse degenerative changes from C3 to T1. He indicated that appellant had a history of progressive loss of muscle in the left thumb and forefinger, as well as neck and back pain since 1990. However, Dr. Weinberg did not provide any opinion on the cause of appellant's condition. He did not explain how either the 1996 work incident or appellant's duties as a deck engineer caused or contributed to these conditions. Therefore, Dr. Weinberg's reports lack probative value. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value.[9] Dr. Thomas' reports do not support appellant's claim. On April 9, 2004 he stated that appellant had a history of left arm paresthesis, which was worsening and diagnosed spinal cord

[6] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[8] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 5, at 218.

[9] *Conard Hightower*, 54 ECAB 796 (2003).

lesion and left-sided weakness. However, Dr. Thomas did not provide an opinion as to the cause of appellant's condition, other than to indicate by placing a check mark in the "no" box, that he did not believe appellant's condition was caused or aggravated by his employment. His June 10, 2005 work-capacity evaluation reflected that appellant had a disc at C3 that was applying pressure to his spinal cord, causing paralysis on the left side. On November 29, 2005 Dr. Thomas stated that he had been appellant's primary care physician since February 2002 and opined that he was permanently disabled due to left-sided weakness. As he failed to provided an opinion as to the cause of appellant's condition, his reports are of diminished probative value.

In a November 13, 1996 occupational injury report, a medical services officer stated that appellant was removing J-doors from an elevator when a door fell on him, knocking him to the deck. The report reflects that the incident resulted in tenderness to the left shoulder and loss of skin to both elbows. This report does not constitute probative medical evidence. First, the medical services officer is not documented as a "physician" as defined under the Act.[10] Moreover, the report does not provide a firm diagnosis related to the 1996 injury.

The report from appellant's chiropractor is also insufficient to establish his claim. A chiropractor is only considered a physician for purposes of the Act where he diagnoses subluxation by x-ray.[11] Dr. Barrett diagnosed cervical disc degeneration; cervicobrachial syndrome; lumbar disc degeneration; short leg, acquired; lumbar segmental dysfunction; pelvic segmental dysfunction; laxity of ligamentation; muscular incoordination; muscular wasting or atrophy; and osteoarthritis. X-rays showed decreased straight cervical curve and narrowed intervertebral disc space at C3-7/T1; thoracic spondylosis wedging T6 on T7 on the left side and narrowed intervertebral disc space at L2-3, L4-5 and L5-S1. A pro-adjusting evaluation was performed for the purpose of utilizing current technology to analyze appellant's condition "based on physics." He opined that the abnormal wave shape noted at C1-7, T1-12, L1-5 and S1-5, indicated the presence of one or more components of the vertical subluxation complex. Dr. Barrett's subluxation diagnosis was not based on x-rays, but rather on "physics." As such, he is not considered a "physician" under the Act.

Several reports of record were unsigned or bore illegible signatures. The Board has previously held that reports submitted by appellant that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence, in that they lack proper identification.[12] The remaining medical evidence of record, including x-ray reports and reports

[10] The Act, at 5 U.S.C. § 8101(2), provides that medical opinion, in general, can only be given by a qualified physician. 5 U.S.C. § 8101(2) provides in pertinent part: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See David P. Sawchuk*, 57 ECAB ___ (Docket No. 05-1635, issued January 13, 2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

[11] *Id.* Section 8101(2) of the Act also provides in pertinent part: "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 and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *Merton J. Sills*, *supra* note 11.

of cervical myelograms, do not provide any opinion on causal relationship and are, of diminished probative value.[13]

Appellant expressed his belief that his condition resulted from repetitive work activities. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by work-related activities is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 4 and February 9, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 15, 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