

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

M.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Carol Stream, IL, Employer**

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**Docket No. 07-744
Issued: September 26, 2007**

Appearances:
Appellant, pro se
No Appearance, for the Director

Oral Argument September 6, 2007

DECISION AND ORDER

Before:

MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2007 appellant filed an appeal of decisions of the Office of Workers' Compensation Programs dated February 22 and August 22, 2006 and January 5, 2007 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 the claim.

ISSUE

The issue is whether appellant has established that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On October 20, 2005 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2), alleging that he developed a number of medical conditions as a result of exposure to his employment environment, including skin irritations, red eyes, severe migraines, stomach pains, insomnia, depression and high blood pressure. He first realized the relationship between conditions of employment and his illnesses on October 11, 2005 when he attended a meeting on airborne paper fibers. The employing establishment indicated that

appellant's last day in pay status was May 11, 2001 and that he reported his alleged injury to his supervisor on October 24, 2005. In an undated statement, appellant alleged that he experienced body aches, weight gain, hair loss and strep throat, in addition to conditions previously described. He stated his belief that these conditions were all work related and that "this situation ruined [him] physically, mentally, emotionally and financially." Appellant alleged that he was fired because he became ill and that no one at the employing establishment would listen to or support him in his dilemma.

On October 27, 2005 the employing establishment controverted the claim, contending that it was untimely and that appellant had not provided medical rationale in support of his claim of exposure to air fibers.

In a November 7, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. It requested that appellant submit a detailed description of the work activities alleged to have caused or contributed to his condition. The Office emphasized the importance of submitting a rationalized statement from his attending physician explaining how and why the identified work factors would cause the claimed condition.

In a November 16, 2005 response, appellant stated that he knew for a fact that surface dust and paper fibers in the air contributed to his skin irritations and breakouts, his numerous strep throat dilemmas which led to his tonsillectomy and adenoid removal. He worked around filthy, bacteria-stricken bags for many years and had to unload them for hours at a time. Appellant complained that his supervisor had no compassion for his pain and suffering and unfairly refused to rehire him. He also stated that he wore a brace on his leg for several years after walking on a hard floor for 15 years, carrying heavy bags and equipment.

On December 28, 2005 the employing establishment submitted medical reports covering appellant's employment. In notes dated July 9, 1999 and February 10 and March 7, 2000, Dr. Elsa M. Merin, a Board-certified family practitioner, indicated that appellant experienced intestinal flu and diarrhea. On January 19 and March 15, 1999 she diagnosed chronic recurrent back pain and stated that appellant was unable to work from January 2 through March 16, 1999. On September 18, 1999 Dr. Merin stated that appellant could return to his regular job on September 22, 1999. The record contains notes from Dr. Keith L. Callahan, a Board-certified family practitioner, who diagnosed abdominal pain and constipation and stated that appellant was unable to work from May 14 through September 19, 2000. On October 3, 2000 he stated that he was treating appellant for high blood pressure. On January 9, 2001 Dr. Callahan indicated that appellant had a muscle strain and had been out of work since January 3, 2001. On March 1, 2001 he noted that appellant had been out of work on February 27 and 28, 2001 due to back pain from lifting at work. In notes dated April 12 and May 22, 2001, Dr. Callahan stated that appellant could work light duty until medically cleared. The record contains return-to-work slips dated July 11, 1990 and December 10, 1991 from Dr. P.A. Patel, a treating physician; a January 25, 1991 disability note from Anne Mascot, a registered nurse, indicating that appellant was unable to work from January 1 through 11, 1991; and a September 16, 1992 disability certificate, bearing an illegible signature, indicating that he was unable to work from September 16 through 21, 1992. The record also contains the employing establishment health unit case record for the period June 12, 1987 through March 22, 2002. Notes bearing illegible

signatures reflect that appellant suffered from high blood pressure, abdominal pain, diarrhea, constipation, back and muscle pain/strain, insomnia, headaches, depression, colds, superficial cuts, rashes and sore throats.

By decision dated February 22, 2006, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that he had sustained an injury. The Office accepted that he was exposed to a dirty and dusty work environment, but found that the medical evidence did not support a causal relationship between the established work factors and his claimed medical conditions.

On February 28, 2006 appellant requested a telephone hearing. He failed to contact the Office at the appointed date and time scheduled for the telephone hearing.¹ Accordingly, the Office hearing representative conducted a review of the written record. By decision dated August 22, 2006, the hearing representative affirmed the Office's February 22, 2006 decision, finding that the medical evidence did not establish a causal relationship between the accepted work exposure and a diagnosed condition.

By way of a narrative statement dated October 2006, appellant requested reconsideration, contending that the employing establishment purposefully withheld facts in order to "harm his case." He submitted a February 23, 2004 operative report of a tonsillectomy and adenoidectomy; a February 2, 2004 operative report of excisions of lip and scalp lesions; and copies of previously submitted health unit records. Appellant also provided a list of his physicians and medications.

By decision dated January 5, 2007, the Office denied modification on the grounds that the evidence submitted was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 alleged³ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

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

¹ Appellant alleged that, due to a difference in time zones, he contacted the Office an hour after the designated hearing time. The Office denied appellant's request to reschedule the telephone hearing, pursuant to 20 C.F.R. § 10.622.

² 5 U.S.C. §§ 8101-8193.

³ *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 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).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

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 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.⁵ 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 the 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.⁶ 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.⁷

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an occupational disease in the performance of duty. The Office accepted that appellant was exposed to dirt and dust at the employing establishment. However, appellant submitted insufficient medical evidence to establish that his diagnosed conditions were caused or aggravated by this exposure during his employment.

Medical evidence of record consists of notes and brief reports submitted by the employing establishment, covering appellant's period of employment, and operative reports of a tonsillectomy, adenoidectomy and excisions of lip and scalp lesions. The record is devoid of a narrative medical report from a physician containing findings on examination and a well-reasoned opinion on how the established employment exposure caused or contributed to appellant's diagnosed conditions. Dr. Merin's July 9, 1999 and February 10 and March 7, 2000 reports indicated that appellant experienced intestinal flu and diarrhea. In her January 19 and March 15, 1999 reports, she diagnosed chronic recurrent back pain and stated that appellant was unable to work from January 2 through March 16, 1999. On September 18, 1999 she stated that appellant could return to his regular job on September 22, 1999. However, none of her reports address the accepted employment exposure to dirt and dust or offers an opinion as to the cause of appellant's conditions. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁸

Dr. Callahan's reports also fail to support appellant's claim. He diagnosed abdominal pain and constipation, and stated that appellant was unable to work from May 14 through

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

September 19, 2000. On October 3, 2000 he stated that he was treating appellant for high blood pressure. On January 9, 2001 Dr. Callahan indicated that appellant had “muscle strain” and had been out of work since January 3, 2001. In notes dated April 12 and May 22, 2001, he stated that appellant could work light duty until medically cleared. These reports contain no opinion as to the cause of appellant’s conditions. Dr. Callahan did not address how any exposure to dust or dirt at work caused or contributed to the diagnosed conditions or specific periods of disability. These reports are of diminished probative value. On March 1, 2001 he noted that appellant had been out of work on February 27 and 28, 2001 due to back pain from lifting at work. However, Dr. Callahan did not provide a definitive diagnosis; nor did he address how appellant’s condition was causally related to the accepted employment exposure to dirt and dust.⁹ Therefore, the report is of limited probative value.

Insofar as the remaining medical evidence of record, including return-to-work slips, disability certificates, and notes from the employing establishment health unit, does not contain an opinion as to the cause of any diagnosed conditions, it is of limited probative value, and is insufficient to establish appellant’s claim. Notes and reports bearing illegible signatures, lacking proper identification, cannot be considered as probative evidence.¹⁰ The 1991 disability slip from Anne Mascot, is of no probative value, as registered nurses do not qualify as a “physician” under the Act.¹¹

The medical evidence of record is insufficient to establish a causal relationship between a diagnosed condition and the accepted employment exposure. The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is a causal relationship between his claimed condition and his employment.¹² To establish causal relationship, appellant must submit a physician’s report in which the physician reviews those factors of employment identified by appellant as causing his condition and, taking these factors into consideration, as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹³ He failed to submit such evidence and, therefore, failed to satisfy his burden of proof.

⁹ *Supra* note 5.

¹⁰ *Merton J. Sills*, 39 ECAB 572 (1988).

¹¹ 5 U.S.C. § 8101(2) of the Act provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.”

¹² *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹³ *Robert Broome*, 55 ECAB 339 (2004).

CONCLUSION

The Board finds that appellant has not established that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 5, 2007 and August 22 and February 22, 2006 are affirmed.

Issued: September 26, 2007
Washington, DC

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

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