United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 07-1751**
	)	**Issued: June 6, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, Employer	)	

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

Oral Argument April 8, 2008

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 19, 2006 and April 17, 2007 merit decisions regarding his claims for a recurrence of disability and a new occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after May 20, 1999 due to his November 1, 1994, October 17, 1996 or February 17, 1997 employment injuries; and (2) whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty which caused total disability on or after May 20, 1999.

FACTUAL HISTORY

On August 11, 2000 appellant, then a 35-year-old modified mail handler, filed a claim alleging that he sustained an occupational disease of his low back which caused total disability beginning May 20, 1999. The Office had previously accepted that appellant sustained a lumbar

sprain on November 1, 1994, lumbar and cervical strains on October 17, 1996 and a lumbar strain on February 17, 1997. In a decision dated January 28, 1999, the Office terminated appellant's compensation on the grounds that he refused an offer of suitable work.

Appellant also filed a claim alleging that he sustained a recurrence of total disability on or after May 20, 1999 due to his November 1, 1994, October 17, 1996 and February 17, 1997 employment injuries. Appellant submitted several reports of Dr. Neil Spiegel, an attending Board-certified physical medicine and rehabilitation physician, who generally indicated that appellant's work stoppage beginning May 20, 1999 was work related.

In a September 19, 2006 decision, the Office denied appellant's recurrence of disability and occupational disease claims on the grounds that he did not submit sufficient medical evidence in support thereof.

Appellant requested a telephone hearing with an Office hearing representative. He submitted an August 10, 2000 report of Dr. Spiegel, who stated that appellant's deteriorating condition on May 20, 1999 was due to an employment-related back condition. Appellant also submitted several chiropractor reports.

In an April 17, 2007 decision, the Office hearing representative affirmed the Office's September 19, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "A partially disabled employee who ... refuses or neglects to work after suitable work is offered ... is not entitled to compensation."[1] The Board has held that section 8106(c) of the Act serves as a bar to receipt of further compensation under section 8107 of the Act for a period of disability arising from the accepted employment injury. This includes cases where a claimant who has had compensation terminated under 5 U.S.C. § 8106(c)(2) claims later periods of disability for conditions that were accepted prior to the termination.[2]

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained a recurrence of total disability on or after May 20, 1999 due to his November 1, 1994, October 17, 1996 and February 17, 1997 employment injuries. However, since these claims were accepted prior to the termination of his compensation for refusal of suitable work, his recurrence of disability claim is barred.[3]

[1] 5 U.S.C. § 8106(c)(2).

[2] *See Ronald M. Jones*, 52 ECAB 190 (2000).

[3] *See supra* notes 1 and 2 and accompanying text.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Act 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon 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; (2) a factual statement identifying 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 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. The medical evidence required to establish a causal relationship 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. 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]

ANALYSIS -- ISSUE 2

The Board notes that there is no provision of the Act barring appellant's occupational disease claim as it arose after the termination of compensation for refusal of suitable work. The Board notes, however, that appellant did not submit sufficient medical evidence to establish that he sustained an occupational disease in the performance of duty which caused total disability on or after May 20, 1999.

In support of his occupational disease claim, appellant submitted several reports of Dr. Spiegel, an attending Board-certified physical medicine and rehabilitation physician. Dr. Spiegel generally indicated that appellant's work stoppage beginning May 20, 1999 was work related. However, these reports are of limited probative value on the relevant issue of the present case because they lack sufficient medical rationale. Appellant also submitted several

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[6] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

chiropractor reports, but these reports do not constitute medical evidence because the chiropractor did not diagnose a spinal subluxation as demonstrated by x-rays.[7]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after May 20, 1999 due to his November 1, 1994, October 17, 1996 or February 17, 1997 employment injury. The Board further finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty which caused total disability on or after May 20, 1999.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 17, 2007 and September 19, 2006 decisions are affirmed.

Issued: June 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[7] Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See Jack B. Wood,* 40 ECAB 95, 109 (1988).