

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

D.G., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer

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**Docket No. 07-2100
Issued: March 12, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 7, 2007 which denied appellant's claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he developed a left wrist and hand condition while in the performance of duty.

FACTUAL HISTORY

On March 13, 2006 appellant, then a 45-year-old mail handler and machine operator, filed an occupational disease claim alleging that he developed a left hand condition from performing repetitive motions required for his job. He became aware of his condition on March 22, 1982. Appellant did not stop work but began limited duty commencing March 7, 2006. On the CA-2, Kathy Blue, his supervisor, noted that appellant was working light

duty on the culling belt and his duties included patching and repairing damaged envelopes and facing machinable letters on the meter belt.

The employing establishment controverted the claim on March 16, 2006. It noted that appellant began working in 1986 and had preexisting and continuous problems with his left wrist subsequent to a fracture sustained in the military in 1982. The employing establishment submitted Veterans' Administration (VA) medical records from November 9, 1990 to December 2, 2005, which noted appellant's treatment for a left wrist scaphoid nonunion fracture sustained while he was in the military service in 1982. The records reveal that appellant underwent two left wrist surgeries in 1991 and 1992.

In a letter dated March 29, 2006, the Office advised appellant of the factual and medical evidence needed to establish his claim.

Appellant submitted a March 8, 2006 report from Dr. Masood Mirza, a Board-certified psychiatrist, who treated appellant for substance abuse and depression. Also on May 15, 2006 Dr. G. Khoungarian, a specialist in orthopedics, treated appellant for a left hand injury and advised that appellant was scheduled for hand surgery in June 2006. In a duty status report dated May 15, 2006, Dr. Khoungarian diagnosed left wrist pain with decreased motion and advised that appellant could return to limited duty subject to restrictions.

In a decision dated June 9, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by his employment duties.

Appellant requested reconsideration. In a December 2, 2005 treatment note, Dr. Raisa Kuchment, a Board-certified internist, treated appellant for chronic pain and stiffness in the left wrist. She indicated that appellant's history was significant for a left wrist fracture sustained during military service in 1982 and two subsequent surgeries. Dr. Kuchment diagnosed old left navicular fracture and post-traumatic osteoarthritis. Also submitted was a report from her dated July 13, 2006. Dr. Kuchment noted that appellant experienced a reinjury of his left wrist on October 29, 2005 and underwent left wrist surgery on June 12, 2006. She noted that appellant's job duties involved operating machines, lifting and handling pieces of mail. In a report dated March 20, 2006, Dr. Pamela Levine, a Board-certified orthopedic surgeon, noted that appellant had a previous left scaphoid fracture and developed advanced radiocarpal arthritis. She advised that left wrist motion exacerbated appellant's symptoms.

By decision dated August 22, 2006, the Office denied reconsideration without conducting a merit review of the claim.

Appellant requested reconsideration and submitted an employing establishment safety review analysis and job description for a mail processing machine operator. The description noted that the mail processing machine operator performed a sequence of task steps including setting up and emptying mail trays, starting machines, feeding mail from the buffer feeder, sweeping mail by taking it from stacker to the trays, removing full trays from rack onto general purpose mail container, dispatching and loading a general purpose mail container and clearing jams. In a September 18, 2006 report, Dr. Azer Emil, a Board-certified orthopedic surgeon,

noted that appellant was status post left wrist surgery. He advised that appellant's condition was due to a left wrist fracture that occurred in 1982 and opined that it "was likely" aggravated by appellant's daily duties at the employing establishment. On January 4, 2007 Dr. Chow H. Ng, a Board-certified physiatrist, noted that appellant was status post left scaphoid fracture in 1982, and recently status post left proximal wrist carpectomy, neurectomy, tenosynectomy and third and fourth compartment tendon transposition on June 12, 2006. He stated that appellant attempted to return to work but his work activities aggravated his left wrist. Appellant reported work in which he used his hands, wrists and forearms to handle levers and other related equipment. Dr. Ng opined that these activities aggravated appellant's left wrist to the extent that he underwent surgery. In a January 8, 2007 report, Dr. Lee Zuckerman, a Board-certified orthopedist, noted that appellant could not work as a mail processing machine operator but anticipated that appellant could work in a light-duty capacity in two months.

In a decision dated January 18, 2007, the Office denied modification of the prior decision on the grounds that the medical evidence of record was insufficient to establish a causal connection between the claimed condition and the specific work-related activity.

On February 1, 2007 appellant requested reconsideration. He submitted a report from Dr. Ng dated January 29, 2007. Dr. Ng noted that appellant's job required him to use both hands, wrists and forearms to handle levers of the automatic face canceller and other equipment. He noted that, when operating the equipment, appellant was required to feed the mail on the right side and handle the levers with his left side. Dr. Ng opined that as a result of these repetitive stress activities appellant aggravated his left wrist which resulted in musculoskeletal conditions and surgery in 1982 and 2006. On March 12, 2007 Dr. Levine advised that appellant could not return to work in his mail processing position but would be reevaluated in two months.

In a decision dated May 7, 2007, the Office denied modification of its prior decisions. It found the medical evidence of record was insufficient to establish that appellant's left wrist condition was caused or worsened by his federal duties. The Office noted that the duties alleged to have caused the claimed condition were not sufficiently described.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 the injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

When an employee claims that he sustained an 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. Appellant must also establish that such

¹ Gary J. Watling, 52 ECAB 357 (2001).

event, incident or exposure caused an injury.² An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.³ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁴ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁵ Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,⁶ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.⁷

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) 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 causal relationship is generally 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.⁸

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *D.B.*, 58 ECAB ____ (Docket No. 07-440, issued April 23, 2007); *V.F.*, 58 ECAB ____ (Docket No. 06-1497, issued January 30, 2007); *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁴ *Id.*, *Barbara R. Middleton*, 56 ECAB 634 (2005) (a consistent history of the injury, as reported on medical reports to the claimant's supervisor and on the notice of injury, can be evidence of the occurrence of the incident).

⁵ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

⁶ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁷ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

The Office denied appellant's claim on the grounds that he failed to describe or establish work factors alleged to have caused his claimed condition. The Board finds that the evidence supports that appellant's duties as a mail handler/machine operator involved using repetitive hand motions including repeatedly feeding mail into a machine and removing mail from a mail stacker which involved using both hands and wrists. Ms. Blue, appellant's supervisor, did not dispute appellant's work duties or that appellant was performing his work duties on or about March 7, 2006. She noted on the CA-2 form that appellant was working light duty on the culling belt and his duties included patching and repairing damaged envelopes and facing machinable letters on the meter belt. On March 29, 2006 the Office requested that appellant provide detailed employment-related activities which he believed contributed to his condition and he submitted a job description of a mail processing machine operator which noted his duties included setting up and emptying mail trays, feeding mail from the buffer feeder, sweeping mail by taking it from stacker to the trays, loading a general purpose mail container and clearing jams. Additionally, appellant provided a consistent description of his work duties as listed in the medical evidence. Dr. Khoungarian's July 13, 2006 report noted that appellant's job duties involved operating machines, lifting and handling pieces of mail. Dr. Ng's reports of January 4 and 29, 2007 noted that appellant's work duties included using his hands, wrists and forearms to handle levers and feed mail into machines.⁹ The Board finds that the evidence supports that appellant performed his work duties as a mail handler which included performing some repetitive activities using both hands and wrists.

The Board finds, however, that the medical evidence is insufficient to establish that appellant's left hand condition and post-traumatic osteoarthritis were caused or aggravated by the accepted employment factors. On March 29, 2006 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit adequate rationalized medical evidence from an attending physician explaining how the specific employment factors caused or aggravated his left wrist condition.

Appellant submitted reports from Dr. Khoungarian dated May 15 and July 13, 2006. Dr. Khoungarian diagnosed left wrist pain and decreased motion and noted that appellant's job duties involved operating machines and lifting and handling pieces of mail. However, he failed to explain with rationale the process by which the specific employment duties would cause or aggravate appellant's left hand condition.¹⁰ Dr. Khoungarian did not address the prior surgeries to the wrist or how appellant's duties could aggravate the preexisting condition. Therefore, these reports are insufficient to meet appellant's burden of proof.

Dr. Emil advised that appellant's condition was due to a left wrist fracture which occurred in 1982 and opined that it "was likely" aggravated by appellant's work at the

⁹ See *Paul Foster*, 56 ECAB 208 (2004); *Deborah S. Stein*, 56 ECAB 494 (2005) (to establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action).

¹⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

employing establishment. Although his report provides some support for causal relationship he opined that it “was likely” that an aggravation occurred. At best, this report provides only speculative support for causal relationship. Dr. Emil qualified his support by noting that appellant’s employment “likely” caused his condition.¹¹ He provided insufficient medical reasoning to support his stated conclusion. Therefore, this report is insufficient to meet appellant’s burden of proof.

Appellant submitted reports from Dr. Ng dated January 4 and 29, 2007, who noted that appellant was status post left scaphoid fracture in 1982 and left proximal wrist carpectomy on June 12, 2006. He used his hands, wrists and forearms to handle levers and other related equipment. Dr. Ng opined that repetitive stress activities aggravated appellant’s left wrist which resulted in musculoskeletal conditions and surgery in 1982 and 2006. The Board finds that, although he supported causal relationship in a conclusory statement, he did not provide a rationalized explanation on the left wrist condition was aggravated by the work duties.¹² For example, the physician did not explain the process by which repetitive activities would cause the diagnosed condition and why such condition would not be due to nonwork factors. Therefore, these reports are insufficient to meet appellant’s burden of proof.

The remainder of the medical evidence, including reports from Drs. Kuchment, Levine, Mirza and Zuckerman, fail to provide a specific opinion on the causal relationship between appellant’s job and his diagnosed left hand condition. For this reason, this evidence is not sufficient to meet appellant’s burden of proof.¹³ Therefore, these reports are insufficient to meet appellant’s burden of proof.

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 her employment is sufficient to establish causal relationship.¹⁴ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant’s claim for compensation.

CONCLUSION

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

¹¹ See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician’s statement that appellant’s complaints “could have been” related to an employment incident to be speculative and of limited probative value).

¹² See *Jimmie H. Duckett*, *supra* note 10.

¹³ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

¹⁴ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: March 12, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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