

May 21, 2002.¹ He alleged that his modified work beginning May 21, 2002 required frequent lifting over 20 pounds, some lifting of objects over 40 pounds, repetitive grasping and twisting movements with his right hand and standing, stooping, bending and working in cramped and awkward positions for prolonged periods.² Appellant was removed from his federal job effective July 30, 2004 because of his medical limitations.

On June 14, 2006 the Office requested additional factual and medical evidence establishing that appellant's employment activities since May 21, 2002 caused a right upper extremity injury and consequential depression.

Following his return to modified duty, appellant was treated by Dr. Michael Moon, a Board-certified physiatrist, who diagnosed right upper extremity overuse syndrome and right carpal tunnel syndrome. In a June 13, 2002 report, Dr. Moon stated that appellant had been performing his modified duties without any significant difficulties. He stated that his right upper extremity pain was "well controlled with the work restrictions." Dr. Moon slightly modified appellant's restrictions to include no frequent lifting over 10 pounds and only occasional lifting over 20 pounds. On July 15, 2002 he stated that appellant was continuing his modified work and the employing establishment was respecting his physical restrictions. Appellant was able to tolerate his duties at work but experienced a significant amount of right upper extremity pain at home. On August 19 and September 18, 2002 Dr. Moon did not describe any significant change in appellant's right upper extremity findings on physical examination. Appellant was able to tolerate his work restrictions without significant difficulty. Dr. Moon noted that appellant was experiencing pain in his right hand and wrist as well as intermittent numbness and tingling in the right hand. He did not mention any causal relationship to appellant's work activities. In a report dated October 30, 2002, Dr. Moon stated that appellant's right upper extremity condition was permanent and stationary. Recent electrodiagnostic testing confirmed right carpal tunnel syndrome. Appellant's symptoms had significantly lessened with the modified duties provided to him and he was not considering right wrist surgery at that time. Dr. Moon indicated that appellant's condition was causally related to his April 1, 2001 employment injury.

In a March 8, 2005 report, Dr. Moon stated that he last examined appellant on October 30, 2002. He stated:

"[Appellant] reports that he was terminated from his position ... [because] the [employing establishment] [was] unable to accommodate his permanent work restrictions. [He] admits that he is having great difficulty performing his required work duties due to the chronic pain in the left upper extremity.... [Appellant] continues to experience persistent aching, numbness and tingling in the right wrist and hands, which have improved since discontinuing his work. He reports that he does not use any analgesic medications for pain."

¹ Appellant has a separate claim accepted for overuse syndrome of the right upper extremity sustained on April 1, 2001. He was off work April 15 to May 20, 2002 and returned to work with restrictions on May 21, 2002. Appellant underwent an amputation of his left forearm and hand following a motorcycle accident in 1978.

² Appellant's attending physician released him to work as of May 21, 2002 with restrictions, including no pushing, pulling, gripping or grasping with the right upper extremity and no lifting over 20 pounds. He noted that appellant had been experiencing anxiety and depression regarding his ability to return to work.

In an April 25, 2005 report, Dr. Moon opined that appellant was totally disabled for work. He stated:

“[Appellant] has permanent disability due to a left brachial plexus injury and left below-the-elbow amputation which occurred in a motorcycle accident in 1978. He suffers from chronic pain in the left upper extremity as a result of this injury. During the course of [appellant’s] employment ... he developed a cumulative trauma injury of the right hand and was diagnosed with severe carpal tunnel syndrome. The date of this industrial injury was April 1, 2001. [Appellant] attempted to continue his usual and customary duties despite his injuries, but, due to progressive worsening of his pain and symptoms, he has been unable to perform the duties required of him and he was therefore terminated on July 26, 2004. Due to [his] chronic pain, he has developed a reactive depression and has required treatment with antidepressants as well as continued psychiatric support.”

In an undated letter received by the Office on July 31, 2006, the employing establishment stated that appellant had been provided with modified work within his medical restrictions following his April 1, 2001 accepted right upper extremity overuse syndrome. During the course of his return to duty evaluation, he indicated that he became aware of pain problems after an April 12, 2002 encounter with his supervisor who informed him that he was scheduled to be transferred to a different facility. The notice of the job transfer was stressful for appellant. Attendance and leave information showed that he last worked on September 5, 2003.

By decision dated October 12, 2006, the Office denied appellant’s claim on the grounds that he failed to establish that he sustained a right upper extremity condition and depression causally related to his modified work activities between May 21, 2002 and September 5, 2003.

Appellant requested an oral hearing that was held on March 21, 2007. By decision dated May 14, 2007, an Office hearing representative affirmed the October 12, 2006 decision.

Appellant requested reconsideration and submitted additional evidence. In an April 7, 2007 report, Dr. John B. Dorsey, a Board-certified orthopedic surgeon, described the history of appellant’s upper extremity conditions. He stated that appellant developed a repetitive use syndrome involving the right upper extremity as a result of his work activities for 20 years. When appellant first returned to modified duty on May 21, 2002, the employing establishment accommodated his work restrictions. However, he was subsequently required to perform more repetitive work that resulted in increased pain and total disability. In a June 1, 2007 report, Dr. Harry C. Henderson, III, a psychiatrist, stated that he had treated appellant since November 2002 for recurrent major depression. He opined that the depression was causally related to appellant’s pain due to his employment activities. By decision dated November 19, 2007, the Office denied modification of the May 14, 2007 decision.

LEGAL PRECEDENT

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 causal relationship, generally, is rationalized medical evidence.³ 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 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.⁴

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 injury and his employment.⁵ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and his medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.⁶

ANALYSIS

Appellant alleged that he sustained an injury to his right upper extremity and developed depression after returning to modified work on May 21, 2002. He alleged that his modified work required frequent lifting over 20 pounds, some lifting of objects over 40 pounds, repetitive grasping and twisting movements with his right hand and standing, stooping, bending and working in cramped and awkward positions for prolonged periods. The employing establishment stated that appellant had been provided with modified work within his medical restrictions following his April 1, 2001 accepted right upper extremity overuse syndrome. There is no evidence of record corroborating appellant's allegations that his work restrictions beginning May 21, 2002 were not honored by the employing establishment. Therefore, the factual background of his claimed conditions is not established as accurate.

Following his return to modified duty, appellant continued to be treated by Dr. Moon who diagnosed right upper extremity overuse syndrome and right carpal tunnel syndrome. In reports dated June 13 to October, 2002 report, Dr. Moon noted that appellant was experiencing

³ *Michael S. Mina*, 57 ECAB 379 (2006).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁵ *Donald W. Long*, 41 ECAB 142 (1989).

⁶ *Id.*

pain in his right hand and wrist as well as intermittent numbness and tingling in the right hand. However, there is no objective evidence of a worsening of his April 1, 2001 accepted right upper extremity overuse syndrome. Contrary to the allegations in his claim form and attached statement, appellant advised Dr. Moon that the employing establishment was honoring his work restrictions. Dr. Moon did not indicate that there was any violation of appellant's work restrictions by the employing establishment that caused his conditions. He stated that appellant had been performing his modified duties without any significant difficulties. In fact, Dr. Moon noted that appellant's symptoms had significantly lessened with the modified duties provided to him by the employing establishment. He did not describe any significant change in appellant's right upper extremity findings on physical examination. Dr. Moon opined that appellant's right upper extremity overuse syndrome and right carpal tunnel syndrome were causally related to his April 1, 2001 employment injury. However, he did not provide any medical rationale explaining how appellant's accepted right upper extremity condition was aggravated by his modified work between May 21, 2002 and September 5, 2003 or how he sustained a new right upper extremity condition caused by his duties between May 21, 2002 and September 5, 2003. For these reasons, the 2002 reports of Dr. Moon are not sufficient to establish that appellant sustained an aggravation of his accepted right upper extremity overuse syndrome or a new right upper extremity injury causally related to his modified work between May 21, 2002 and September 5, 2003.

In a March 8, 2005 report, two and one-half years after he last saw appellant, Dr. Moon stated that appellant was having great difficulty performing his work duties due to chronic pain in his left upper extremity. However, the Office has not accepted a left upper extremity condition as work related. Appellant also experienced persistent aching, numbness and tingling in his right wrist and hands, but with improvement since discontinuing his work. However, Dr. Moon did not provide any rationalized opinion explaining how appellant's right upper extremity symptoms in 2005 were causally related to his work activities between May 21, 2002 and September 5, 2003. In an April 25, 2005 report, he opined that appellant had permanent total disability and chronic pain due to a left brachial plexus injury and left below-the-elbow amputation which occurred in a motorcycle accident in 1978. As noted the Office has not accepted any left upper extremity condition as work related. Dr. Moon indicated that appellant developed a cumulative trauma injury of the right hand and was diagnosed with severe carpal tunnel syndrome. Carpal tunnel syndrome is a condition that has not been accepted by the Office and Dr. Moon did not explain how this condition was caused or aggravated by appellant's work activities between May 21, 2002 and September 5, 2003. Dr. Moon indicated that appellant attempted to continue to perform his job but, due to progressive worsening of his pain and symptoms, he has been unable to perform the duties required of him. This statement contradicts Dr. Moon's 2002 reports, in which he stated that appellant had been performing his modified duties without any significant difficulties and, in fact, his symptoms had significantly lessened with the modified duties provided to him by the employing establishment. Dr. Moon did not explain this discrepancy between his 2002 reports and his 2005 reports. He opined that appellant developed a reactive depression due to chronic pain. However, the medical evidence does not establish that his chronic pain was work related. Therefore, appellant's depression is not a consequential injury of an accepted medical condition. Dr. Moon's 2005 reports fail to establish that appellant sustained an aggravation of his April 1, 2001 accepted right upper extremity injury or a new right upper extremity or depression, causally related to his work activities between May 21, 2002 and September 5, 2003.

In an April 7, 2007 report, Dr. Dorsey stated that appellant developed a repetitive use syndrome involving the right upper extremity as a result of his work activities for 20 years. However, appellant claimed that his condition in 2002 was caused only by his work activities between May 21, 2002 and September 5, 2003. Dr. Dorsey indicated that at some point the employing establishment stopped honoring his work restrictions. However, this allegation has not been established as factual and has even been contradicted in appellant's statements to Dr. Moon in 2002. In a June 1, 2007 report, Dr. Henderson stated that he had treated appellant since November 2002 for recurrent major depression causally related to pain due to his employment activities. However, he did not provide medical rationale explaining how appellant's pain and depression was caused by specific work activities between May 21, 2002 and September 5, 2003. Dr. Henderson did not explain why appellant's continuing depression was causally related to work activities performed between May 21, 2002 and September 5, 2002 in light of the fact that he had not worked at the employing establishment for almost four years. For these reasons, the reports of Dr. Dorsey and Dr. Henderson do not establish that appellant sustained a right upper extremity condition or depression causally related to his work activities between May 21, 2002 and September 5, 2003.

The medical evidence fails to establish that appellant sustained a new right upper extremity condition or an aggravation of his accepted right upper extremity overuse syndrome as a result of his work activities between May 21, 2002 and September 5, 2003. Accordingly, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a right upper extremity injury and depression causally related to his modified work performed between May 21, 2002 and September 5, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 19 and May 14, 2007 are affirmed.

Issued: September 18, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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