United States Department of Labor
Employees' Compensation Appeals Board

V.M., Appellant	)	
and	)	
DEPARTMENT OF AGRICULTURE, FOOD & SAFETY INSPECTION SERVICE, OFFICE OF FIELD OPERATIONS, Minneapolis, MN, Employer	)	**Docket No. 09-1081** **Issued: December 22, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 3, 2009 appellant, through counsel, filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated June 24, 2008 and February 2, 2009 denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment.

On appeal, appellant alleged that he has daily pain in his shoulders, neck and back. He noted that the repetitiveness of his work activity caused him pain and fatigue which radiated down his legs from his back after long periods of standing. Appellant noted that he did not have medical insurance to cover his doctor's bills.

FACTUAL HISTORY

On March 31, 2008 appellant, then a 53-year-old inspector, filed an occupational disease claim alleging that as a result of the repetitive work he did inspecting 40 chickens per minute and working back to back shifts for 5 years (17 hours with a 3-hour rest between shifts), he sustained injuries to his back, shoulder, right and left arm and neck. He also indicated that he was "laid off." The employing establishment alleged that appellant was a part-time food inspector and was responsible for conducting post-mortem examinations on poultry carcasses that are presented to his inspection station at the rate of 35 carcasses per minute. They noted that he had specific hand motions that must be performed. The employing establishment noted that this job does require much repetition with his hands, but that appellant's description of the length of his workdays was incorrect.[1] The employing establishment also noted that appellant had not been laid off but rather was an intermittent employee that only can work 1280 hours during his 12-month work periods, and that, once this figure is reached, appellant was unable to work any more hours until his anniversary date, April 12, arrived. The employing establishment noted that appellant reached his maximum number of hours for the year in February.

In support of his claim, appellant submitted discharge instructions dated March 27, 2008 and signed by a nurse at Southwest Mississippi Regional Medical Center, indicating that he was seen by Dr. Rutz and that his diagnosis was lumbar/shoulder strain. He also submitted a nurse practitioner's prescription for medication.

By decision dated June 24, 2008, the Office denied appellant's claim as he failed to demonstrate that his claimed medical condition was related to the established work events.

On July 21, 2008 appellant requested an oral hearing. At the hearing held on December 10, 2008, he testified that the problems with his back, neck and shoulder started in 2000 when he had a work injury when a hydraulic hose in the lift stand came loose and hit him in the back of the neck. Appellant noted that the Office denied this claim.[2] He noted that he worked part time inspecting about 60 chickens a minute for an eight-hour shift. Appellant noted that in the 90s he used to work 17 hours straight for five years, but does not work those hours anymore. He stated that he cannot get recommended medical tests because he has no health insurance.

By decision dated February 2, 2009, the hearing representative affirmed the denial of his claim as appellant had not submitted medical evidence in support of a causal relationship between an injury and appellant's employment.

[1] The employing establishment reviewed appellant's work records and noted that he worked an average of 14.69 hours per week in 2004, 11.43 hours per week in 2005; 22.87 hours per week in 2006 and 29.92 hours/week in 2007. Appellant noted there was only one day when he worked over 10 hours and two days when he worked 9 hours. Accordingly, the employing establishment stated that it was unaware of the figures used by appellant to calculate that he worked back-to-back shifts for five years at 17 hours a day with 3 hours' rest between shifts.

[2] By decision dated September 28, 2004, the Board affirmed this denial in Office File No. xxxxxx370. Docket No. 04-1016 (issued September 28, 2004).

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[4] including that he is an "employee" within the meaning of the Act[5] and that he filed her claim within the applicable time limitation.[6] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[8]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[9]

Causal relationship is a medical issue[10] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty,[12] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[13]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[6] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[7] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[10] *Mary J. Briggs*, 37 ECAB 578 (1986).

[11] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[12] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[13] *See William E. Enright*, 31 ECAB 426, 430 (1980).

ANALYSIS

The Office accepted that appellant was exposed to the work conditions that he alleged caused his injury. However, the Office denied appellant's claim because he did not meet his burden to submit medical evidence establishing the existence of a disease or condition that was causally related to these established work factors. The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational injury in the performance of duty.

Appellant had the burden to submit medical evidence in support of establishing a causal relationship between his medical condition and the noted factors of his federal employment.[14] He submitted a prescription for medication and discharge instructions. Both of these documents were signed by a nurse. However, as a nurse is not defined as a physician under the Act,[15] these documents do not constitute competent medical evidence to support appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor, his belief that the condition was caused by his employment is sufficient to establish causal relationship.[16] The Board has held that the fact that a condition manifests itself or worsens during a period of employment[17] or that the work activities produce symptoms revelatory of an underlying condition[18] does not raise an inference of causal relationship between the two. As appellant failed to provide medical evidence establishing the causal relationship between his factors of employment and a medical condition, the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty causally related to factors of his federal employment.

[14] *See Elizabeth O. Kramm*, 57 ECAB 117 (2005).

[15] *See* 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007).

[16] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[17] *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[18] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 2, 2009 and June 24, 2008 are affirmed.

Issued: December 22, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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