

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

R.M., Appellant)	
)	
and)	Docket No. 08-2108
)	Issued: February 17, 2009
DEPARTMENT OF THE INTERIOR, NPS-)	
NATIONAL CAPITOL PARK CENTRAL,)	
Washington, DC, Employer)	
)	

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

Oral Argument January 6, 2009

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 28, 2008 appellant filed a timely appeal from the July 17, 2007 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury on April 1, 2008 in the performance of duty.

FACTUAL HISTORY

On April 8, 2008 appellant, then a 60-year-old laborer, filed a traumatic injury claim alleging that he developed pain in his right wrist and elbow while in the performance of duty on April 1, 2008. He attributed his symptoms to repetitive use of a trash grabber and flipping metal trash cans during trash removal. On May 9, 2008 the Office received appellant's description of

how he injured his right wrist. In an April 10, 2008 statement, Howard Jenkins, appellant's supervisor, confirmed that on April 1, 2008 appellant was picking up trash with a paper grabber and complained of pain in his right hand.

By letter dated June 9, 2008, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested a comprehensive medical report from a treating physician which provided a reasoned explanation as to how the specific incident identified by appellant had contributed to his claimed injury.

In a June 11, 2008 statement, appellant stated that the pain in his hand on April 1, 2008 was constant and aggravated by lifting, flipping and emptying trash cans and water buckets.

In a May 13, 2008 duty status report, Dr. Angus Worthing, a Board-certified internist specializing in rheumatology, noted that appellant was working on April 1, 2008 using a green color paper picker and experienced pain in his right arm. He opined that appellant's epicondylitis condition was due to the April 1, 2008 incident. In a May 30, 2008 report, Dr. Worthing advised that appellant had tendinitis of the right wrist, shoulder and around the elbow (triceps or epicondyle). This was an ongoing condition and appellant was unable to perform any work-related services involving repetitive use of his right arm. Dr. Worthing recommended that appellant not work in any capacity until further treatment was provided. He noted that appellant also had degenerative arthritis of the lower back and knees.

In an April 29, 2008 progress note, the rheumatology outpatient clinic recorded a history of injury as right arm pain starting approximately one month prior, which coincided with increased activity at work. Appellant used a paper picker, which required hand squeezing motion, and lifted/dumped trash cans with his right arm. Copies of Dr. Worthing's May 13 and 30, 2008 progress notes were provided.

In a May 29, 2008 progress note, Dr. Addie Dissick, a rheumatology fellow, provided an assessment of right rotator cuff tendinitis with right triceps tendinitis versus medial epicondylitis versus joint abnormality. He noted that the event "happened while working" and appellant had been symptomatic since with no improvement following naproxen/ice or from being on leave from work.

By decision dated July 17, 2008, the Office denied the claim, finding that the medical evidence was not sufficient to establish that appellant sustained right arm conditions caused or aggravated by the April 1, 2008 work incident.¹

¹ The Board notes that the record contains additional evidence after the Office rendered its July 17, 2008 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, this new evidence cannot be considered by the Board on appeal. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 filed within the applicable time limitation; that an injury was sustained while 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.³ 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.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an incident at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 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 causal relationship.⁹

² 5 U.S.C. §§ 8101-8193.

³ *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

It is not in dispute that on April 1, 2008 appellant was using a trash grabber and flipping metal trash cans in the performance of duty. The issue is whether the medical evidence establishes that this employment activity caused an injury to his right arm.

Dr. Worthing indicated that appellant's right arm pain commenced April 1, 2008 while using a paper picker. On May 13, 2008 he opined that appellant's epicondylitis condition was due to the April 1, 2008 injury. However, Dr. Worthing failed to explain how appellant's employment activities that day caused or contributed to his diagnosed condition. He did not address the process by which grabbing trash or lifting trash cans would cause epicondylitis. Lacking through medical rationale on the issue of causal relationship, his opinion is not sufficient to establish that appellant sustained an injury on April 1, 2008.¹⁰ On May 30, 2008 Dr. Worthing diagnosed tendinitis of the right wrist, shoulder and around the elbow. However, he did not specifically address whether the April 1, 2008 employment incident caused or contributed to these conditions.¹¹ Dr. Worthing stated that appellant's tendinitis was an ongoing condition and recommended that he avoid any work involving repetitive use of his right arm. He did not explain how appellant's work activities on April 1, 2008 would cause or aggravate the diagnosed tendinitis. Dr. Worthing's reports are not sufficient to establish that appellant sustained a work-related injury on April 1, 2008.

The progress notes from rheumatology outpatient are also insufficient to establish appellant's claim. Neither Dr. Worthing nor Dr. Dissick offer any opinion regarding the cause of appellant's diagnosed condition.¹² Although they note a proper history of injury, neither physician addresses how appellant's work activities on April 1, 2008 caused or contributed to his right arm conditions. These progress notes are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the mere fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹³ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied his claim for compensation.

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).

¹¹ *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).

¹² *Id.*

¹³ *Dennis M. Mascarenas*, *supra* note 9.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury causally related to his April 1, 2008 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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