United States Department of Labor
Employees' Compensation Appeals Board

K.H., Appellant	)	
and	)	**Docket No. 09-376**
	)	**Issued: February 18, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Jensen Beach, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2008 appellant filed a timely appeal from the October 26, 2007 merit decision of the Office of Workers' Compensation Programs, denying his claim for disability compensation and a hearing representative's May 1, 2008 decision affirming this decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has established that he was disabled commencing July 7, 2006.

FACTUAL HISTORY

Appellant's December 12, 2005 occupational disease claim was accepted by the Office for bilateral carpal tunnel syndrome and trigger finger of the right hand fifth digit and left hand third finger. On April 4, 2006 he underwent a right carpal tunnel release. On May 19, 2006 appellant underwent a left carpal tunnel release.

In a January 5, 2007 report, Dr. Edward J. Rossario, a Board-certified orthopedic surgeon, advised that appellant had been under his care for several work-related injuries since April 21, 2004. He first examined appellant on April 21, 2004 for symptoms of trigger fingering in his right hand fifth digit as well as left hand third digit, which was related to appellant's occupation. Dr. Rossario noted that appellant had surgical release of his trigger fingers on June 18, 2004, cubital and carpal tunnel release on April 4, 2006 and surgery on his left side on May 19, 2006. Appellant last visited his office on June 5, 2006 and remained asymptomatic at the present time. Based on his most recent visit, Dr. Rossario stated, "[I]t is my professional opinion and with a reasonable degree of medical probability that [appellant] has sustained numerous upper extremity injuries and conditions directly [related to his] occupation.… All treatment rendered, diagnostic tests and future medical needs will be directly related to his occupation." Dr. Rossario noted that it was common to see triggering occur in other digits due to appellant's work which required repetitive use of his digits on a daily basis.

On April 25, 2007 appellant filed a claim for compensation commencing December 5, 2005. By letter dated April 30, 2007, the employing establishment controverted his claim. It noted that appellant retired on July 7, 2006 and had used sick leave prior to his retirement.

In a decision dated May 10, 2007, the Office denied appellant's claim for wage-loss compensation commencing December 5, 2005. It found that he worked from November 26 to December 6, 2005, six hours a day and used two hours a day sick leave. From December 7, 2005 through July 6, 2006, appellant used eight hours a day of sick leave and retired as of July 7, 2006.

On June 4, 2007 appellant requested an oral hearing. By letter dated June 7, 2007, appellant, through his attorney, requested that the claim for wage loss be amended to July 7, 2006. Counsel argued that, although appellant elected retirement, he sustained disability commencing July 7, 2006. He also noted that, prior to his retirement, appellant was forced to work outside of his restrictions.

By decision dated August 22, 2007, the hearing representative remanded the case for further development of the medical evidence.

In a June 28, 2007 report, received by the Office on October 4, 2007, Dr. Rossario stated that he had reviewed appellant's January 27, 2006 description of his work duties. Due to these activities and appellant's diagnosed condition, he advised that appellant should "no longer work performing any repetitive type duties with his upper extremities." Dr. Rossario opined that these restrictions were permanent.

In an October 26, 2007 decision, the Office denied appellant's claim for compensation beginning July 7, 2006. It found that he failed to submit medical evidence in support of his claim for disability.

On October 31, 2007 appellant requested an oral hearing. At the hearing held on February 11, 2008, he testified that he began working at the employing establishment in 1975 and had no problems with his hands or wrists. Appellant indicated that, between his surgery on

April 4, 2006 and the date he retired, he had restrictions of no repetitive motion. Since July 6, 2006, his symptoms became a little worse. Appellant stated that he applied for retirement in April 2006 because he did not think he could claim disability.

In a letter dated February 13, 2008, appellant advised that he expressed constant pain in his fingers and wrists.

In a May 1, 2008 decision, the Office hearing representative affirmed the October 26, 2007 decision.

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act[1] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[2] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[3] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[4] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[5] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is 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 certainty

[1] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[2] *Paul E. Thams*, 56 ECAB 503 (2005).

[3] *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

[4] *Paul E. Thams*, *supra* note 2.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

[6] *G.T.*, *supra* note 5; *Fereidoon Kharabi*, *supra* note 3.

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

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 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]

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and trigger finger of the right hand fifth digit and left hand third digit. Appellant stopped work on December 12, 2005 and retired as of July 7, 2006.[10] Prior to this his retirement, he used sick leave for the time missed from work.

The medical evidence of record is insufficient to establish that appellant was disabled commencing June 7, 2006, due to residuals of his accepted conditions. Appellant has the burden to establish the relationship between his disability and his employment through the submission of rationalized medical evidence.[11] In a January 5, 2007 report, Dr. Rossario stated that appellant last visited his office on June 5, 2006 had sustained numerous upper extremity injuries related to his employment. However, he did not find that appellant was disabled for work. In an addendum dated June 28, 2007, Dr. Rosario stated that appellant could no longer work performing any repetitive duties with his upper extremities. He based his opinion on appellant's January 27, 2006 letter, in which he listed his duties and his belief that they were the cause of his current problem. Dr. Rossario advised that appellant should no longer work performing any repetitive type duties with his upper extremities. However, a physician's opinion is of diminished probative value if it is based on a claimant's belief of causal relation rather than the physician's independent judgment.[12] Dr. Rossario indicated that he last examined appellant on June 5, 2006, prior to the date of his retirement on July 7, 2006. While generally supportive of appellant's claim for disability, he merely provided a conclusory statement regarding appellant's disability and the issue of causal relation. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician.[13] The opinion of a physician supporting causal relationship must be based on a complete and accurate medical and factual background, supported with affirmative evidence and

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[10] Although appellant's claim was initially filed for compensation commencing December 5, 2005 and the Office initially denied his claim for compensation commencing as of December 5, 2005. He, through his attorney, requested that the date for lost wages be amended to commence July 7, 2006. Both the October 26, 2007 decision by the Office and the May 1, 2008 decision by the hearing representative deny compensation for the period commencing July 7, 2006.

[11] *Laurie S. Swanson*, 53 ECAB 517 (2002).

[12] *Earl David Seale*, 49 ECAB 152 (1997).

[13] *Jean Culliton*, 47 ECAB 728, 735 (1996).

explained by medical rationale.[14] Dr. Rossario did not address appellant's residuals following surgery or the nature of the work he performed on December 7, 2005. He did not adequately explain the extent of any physical restrictions following surgery or other wise describe appellant's capacity for modified duty.

Appellant has not submitted rationalized medical evidence explaining how he became disabled beginning July 7, 2006 due to the accepted injury. The Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant has not established that he was disabled commencing July 7, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 1, 2008 and October 26, 2007 are affirmed.

Issued: February 18, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[14] *Robert Broom*, 55 ECAB 339 (2004); *Patricia J. Glenn*, 53 ECAB (2001).