United States Department of Labor
Employees' Compensation Appeals Board

W.D., Appellant	)	
and	)	**Docket No. 09-658**
	)	**Issued: October 22, 2009**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, Employer	)	

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 January 8, 2009 appellant filed a timely appeal from a December 24, 2008 merit decision of the Office of Workers' Compensation Programs and an August 26, 2008 decision of an Office hearing representative denying his claim for a recurrence of disability. 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 is whether appellant established that he sustained a recurrence of disability from June 15 through July 18, 2006 causally related to his September 22, 2005 employment injury.

On appeal, appellant contends that the Office did not review all of the medical records, including a September 18, 2006 report from Dr. Fatima Abrantes-Pais, a neurologist.

FACTUAL HISTORY

On October 11, 2005 appellant, then a 55-year-old nondestructive tester, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to his head, neck, shoulders and

right wrist on September 22, 2005 at work. He picked up a pallet with a pallet jack when it was struck and broke apart. The pallet jack rolled behind appellant and while stepping back to pull the pallets apart he fell backward on the cement floor. On January 11, 2006 the Office accepted his claim for sprain or strain of the neck and right wrist, headache and other complications of medical care. Appellant returned to work on September 26, 2005.

On October 27, 2006 appellant filed a claim for leave buy back (Form CA-7) for the period June 15 through July 18, 2006.

Appellant submitted medical reports and chart notes dated June 15 through 20, 2006 related to his hospitalization for an aneurysm and subarachnoid hemorrhage. In a June 15, 2006 medical report, Dr. Robert Wienecke, a Board-certified neurosurgeon, stated that appellant had a long history of cerebrovascular disease and, in 2004, began to develop a left eye drop. A magnetic resonance imaging (MRI) scan showed evidence of an unruptured left posterior artery aneurysm, which was confirmed by an angiography and coiled. A follow-up arteriogram showed residuals but appellant did not return for a follow-up. Subsequently, he sustained a closed-head injury in September 2005 on the job and experienced a headache ever since. Appellant awoke on June 15, 2006 with a headache significantly worse than previous episodes, including a 45-minute spell where he was incoherent. He was admitted to the emergency room where a computerized tomography (CT) scan was positive for a diffuse subarachnoid hemorrhage.

On June 16, 2006 appellant underwent an arteriogram with coiling of the posterior communicating artery aneurysm. He was discharged to home care on June 20, 2006 and returned to work on July 19, 2006 with a restriction on lifting over 50 pounds.

In a September 18, 2006 medical report, Dr. Abrantes-Pais stated that appellant was status post subarachnoid hemorrhage and had recently experienced a comeback of an aneurysm with bleeding. She reported that in January 2003 appellant experienced headaches for about three months and eventually developed a third nerve palsy. Appellant was diagnosed with a left posterior communicating artery aneurysm and was treated intravascularly with coiling and experienced good results. He did well until September 22, 2005 when he suffered head trauma at work after hitting his head on the ground. Appellant began having headaches which he stated he had not experienced since January 2003. In June 2006, he had a sudden worsening of the headache with severe mental confusion and difficulties walking. Appellant was diagnosed with acute subarachnoid hemorrhage and recurrence of left posterior communicating artery aneurysm. On June 16, 2006 he underwent another endovascular correction of the aneurysm, which was again coiled. A follow-up angiogram revealed a successful closure of the aneurysm and appellant had not experienced a headache since. Dr. Abrantes-Pais diagnosed status post intravascular closure of the left posterior communicating artery in January 2003 and June 2006, left third nerve palsy, mild right hemiparesis and headaches, now resolved.

In a November 1, 2006 letter, the Office notified appellant that his claim for compensation was deficient and requested additional information.

In a November 4, 2006 statement, appellant contended that on the morning of June 15, 2006 he was unable to get up for work and could not move. His son took him to a medical facility where he lost consciousness. Appellant was transported to a hospital and was

unconscious for four days. Doctors informed him that he had a tear in his old aneurysm, caused by head trauma that slowly leaked into his brain causing severe health issues. Appellant returned to work on July 19, 2006 with physical restrictions.

By decision dated December 11, 2006, the Office denied appellant's claim for compensation from June 15 through July 18, 2006. It found that he did not submit sufficient medical evidence to establish that he was disabled due to his September 22, 2005 employment injury.

On December 28, 2006 appellant requested an oral hearing before an Office hearing representative, which took place on September 18, 2007.

In an October 30, 2007 medical report, Dr. Timothy L. Tytle, a Board-certified diagnostic radiologist, stated that appellant had a complicated history relative to his brain aneurysm. From what he could determine, the condition began in 2004 when appellant sustained a ruptured left posterior communicating artery aneurysm, which was treated with a coiling procedure. On September 22, 2005 appellant tripped over a pallet jack at work and fell backwards striking his head on concrete. Other than soreness over the injury area, no other abnormalities were found. A CT scan of the head was negative for any acute pathology. Then, on June 15, 2006, appellant awoke with a severe headache and was unable to get up. He was treated at a hospital where a doctor found bleeding that was likely as a residual from the same aneurysm. More coils were placed in this aneurysm. Appellant had some confusion postsurgery but made a relatively full recovery. Dr. Tytle opined that, based on appellant's medical history coupled with his knowledge of brain aneurysms in general, the employment injury did not cause the intracranial bleed. He noted that his conclusion was based on the negative CT scan the day after the September 22, 2005 employment injury together with the nearly nine-month interval between the injury and the rebleed.[1]

By decision dated August 26, 2008, the Office hearing representative affirmed the December 11, 2006 decision on the grounds that appellant failed to provide sufficient medical evidence supporting a causal relationship between the September 22, 2005 work injury and the aneurysm that developed on June 15, 2006.

On October 3, 2008 appellant filed a request for reconsideration. He disagreed with Dr. Tytle's opinion that the aneurysm was not related to his work injury and contended that Dr. Tytle only treated him on the date of the work injury and refused any further medical follow-ups.

[1] The Board notes that the first medical report received by Dr. Tytle read: "My review of the events above … leads me to the conclusion that the most likely scenario is the on[-]the[-]job injury did cause the intracranial bleed." The medical report was investigated by the Office of the Inspector General who determined that appellant altered the medical report, using white out to delete the word "not" in the above sentence. Appellant entered a guilty plea in open court on August 14, 2008 to the charge of knowingly making a materially false statement or representation in connection with application for a benefit under Chapter 81, Title 5, of the U.S. Code, (5 U.S.C. §§ 8101-8193), a violation of Title 18, U.S. Code, Section 1920 (18 U.S.C. § 1920). On November 13, 2008 the Office advised the Office of Inspector General that, based on the investigative memorandum, appellant forfeited his benefits after November 13, 2008.

By decision dated December 24, 2008, the Office denied modification of the August 26, 2008 decision on the grounds that appellant did not submit sufficient medical evidence to establish a recurrence of disability from June 15 through July 18, 2006 due to the accepted injury.

LEGAL PRECEDENT

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[2] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3] Where no such rationale is present, medical evidence is of diminished probative value.[4]

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.[5] 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 she 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.[6] 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.[7]

ANALYSIS

The Office accepted that on September 22, 2005 appellant fell at work and sustained a sprain or strain of the neck and right wrist, headache and other complications of medical care. On June 15, 2006 appellant stopped work and was admitted to a hospital for subarachnoid hemorrhage and an aneurysm, which was coiled. He returned to work on September 26, 2005

[2] *R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

[3] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[4] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

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

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

[7] *G.T., id*.; *Fereidoon Kharabi, supra* note 5.

and later filed a claim for wage-loss compensation. The issue is whether appellant established that he was totally disabled for the period June 15 through July 18, 2006 due to his September 22, 2005 employment injury.

The Board finds that the medical evidence does not establish that appellant's disability, commencing June 15, 2006, was related to the September 22, 2005 fall at work. In an October 30, 2007 medical report, Dr. Tytle stated that appellant had a complicated history relative to his brain aneurysm, beginning in 2004, when he sustained a ruptured left posterior communicating artery aneurysm which was treated with a coiling procedure. On September 22, 2005 appellant tripped at work and struck his head on concrete. He was disabled for three days prior to returning to work on September 26, 2005. Subsequently, on June 15, 2006 appellant woke up with a severe headache. He was treated at a hospital for an emergency bleed which was attributed as a residual from the prior aneurysm. Surgery was performed. Dr. Tytle opined that based on this medical history and his knowledge in the treatment of brain aneurysms, the employment injury did not cause the intracranial bleed. He stated that a negative CT scan of the head obtained a day after the 2005 employment injury and the nearly nine-month interval between the injury and the rebleed, supported his conclusion that appellant's treatment and disability were not employment related.

Dr. Tytle's medical report does not support appellant's contention that his disability commencing June 15, 2006 condition was related to his September 22, 2005 work-related fall. Appellant disagreed with Dr. Tytle's opinion and noted his belief that his aneurysm and subarachnoid hemorrhage in 2006 was related to his employment injury. However, his belief that his employment caused the injury is not sufficient to establish causal relationship.[8] Causal relationship is a medical issue. The medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9]

Appellant did not submit any other medical evidence directly addressing his June 15, 2006 aneurysm or the need for his hospitalization. Although Drs. Wienecke and Abrantes-Pais did include the September 22, 2005 head injury in their description of appellant's medical history, neither doctor specifically related this event to the subarachnoid hemorrhage or subsequent aneurysm.[10] In the September 18, 2006 report, Dr. Abrantes-Pais stated that appellant had recently experienced a comeback of a January 2003 aneurysm with bleeding. She discussed appellant's medical history, including the September 22, 2005 employment injury, and the June 2006 hemorrhage and aneurysm. Dr. Abrantes-Pais did not discuss the cause of appellant's June 2006 condition or describe any causal relationship between the condition and the September 22, 2005 employment injury.[11] She appeared to relate appellant's recent aneurysm to his preexisting condition in 2003 rather than the September 22, 2005 employment injury.

[8] *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990).

[9] *I.J.*, *supra* note 3.

[10] *See Dennis E. Twardzik*, 34 ECAB 536 (1983).

[11] *See Linda I. Sprague*, 48 ECAB 386 (1997).

Moreover, Dr. Wienecke, in the June 15, 2006 medical report, stated that appellant had a long history of cerebrovascular disease and in 2004 he sustained an aneurysm, which was coiled. He further reported that in September 2005 appellant fell at work and experienced a continuing headache thereafter. On June 15, 2006 appellant woke up with a significantly worse headache and was admitted to the emergency room where a CT scan showed a diffuse subarachnoid hemorrhage. Dr. Wienecke did not address the cause of appellant's June 15, 2006 condition or discuss any relationship between the aneurysm to the September 22, 2005 employment injury.[12] He discussed appellant's history of aneurysm but did not address whether the September 22, 2005 employment injury aggravated or worsened this preexisting condition resulting in the subsequent aneurysm.

The Board finds that the medical evidence of record does not support appellant's claim that he was totally disabled from June 15 through July 18, 2006 due to his work-related fall. Appellant did not submit medical evidence relating his June 15, 2006 subarachnoid hemorrhage or aneurysm to the September 22, 2005 employment injury, nor did he provide any evidence establishing that he was totally disabled during the claimed period due to his employment injury. Dr. Tytle's medical report does not support appellant's recurrence of disability claim, as he opined that the September 22, 2005 fall was unrelated to appellant's aneurysm in June 15, 2006.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of disability from June 15 through July 18, 2006 causally related to his September 22, 2005 employment injury.

[12] *See id.*

ORDER

IT IS HEREBY ORDERED THAT the December 24 and August 26, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 22, 2009
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