

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

A.B., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
College Park, GA, Employer)

**Docket No. 09-470
Issued: September 4, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 8, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 5, 2008 denying his occupational disease 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 has met his burden of proof to establish that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On August 19, 2008 appellant, a 43-year-old aviation safety inspector, filed an occupational disease claim alleging that he developed "multi[-]level degenerative disc disease in

his neck” and sustained “aggravated lower lumbar and aggravated bilateral degenerative disc disease in his knees” due to employment activities.¹ He retired on disability on May 14, 2007.

Appellant submitted numerous reports from his treating physician, Dr. Samuel O. Teniola, a Board-certified internist. On June 2, 2005 Dr. Teniola stated that he had sustained injuries to his knees while playing volleyball in 1994 and had undergone right knee surgery in 1995 and left knee surgery in 1997. Appellant reported continued knee pain, which he attributed to employment activities. On examination, Dr. Teniola found reduced range of motion due to pain, pain and swelling in both knees and tenderness over areas of the tibia tubercles bilaterally.

On January 26, 2007 Dr. Teniola diagnosed carpal tunnel syndrome. He indicated that appellant had been experiencing depression since June 2006, as a result of his work environment, and that he suffered from chronic pain in his neck, lower back, wrists, knees and ankles, which was aggravated by his stressful work duties.

In an August 24, 2007 report, Dr. Teniola related that he began treating appellant in May 2005 for conditions related to injuries sustained while he was on military duty in 1982, including a bulging disc in the lower back, degenerative joint disease in the knees bilaterally and ankle and wrist pain. He stated that appellant had also developed bilateral carpal tunnel syndrome, cervical disc disease, generalized pain and numbness in the right arm and hand and mental health issues as a result of increased work duties. Dr. Teniola explained that appellant’s administrative tasks of filing, data entry, writing, lifting, preparing reports, sending faxes and copying caused his carpal tunnel syndrome condition, which was aggravated by his keyboarding duties during a transition period at work requiring “double tasking.” He opined that appellant’s degenerative joint disease, cervical disc disease and lower back bulging disc condition had been exacerbated by his increased employment duties, including climbing in and out of aircraft, climbing up and down stairs, bending, walking, standing, reaching and pulling.

The record contains a report of a September 11, 2006 magnetic resonance imaging (MRI) scan of the cervical spine, reflecting multi-level degenerative disc disease.

By letter dated August 27, 2008, the Office informed appellant that the information submitted was insufficient to establish his claim, noting that the record did not contain objective findings supporting Dr. Teniola’s opinion. It advised appellant to submit objective medical evidence documenting his diagnosed conditions both before and after the alleged aggravation, as well as an explanation as to how his conditions had worsened due to employment activities.

Appellant submitted an August 19, 2008 statement entitled “employee statement for medical condition (multi-level degenerative disc disease in neck and aggravated lower limb disc and aggravated bilateral degenerative joint disease in knees).” He stated that he continued to cope with pain associated with lower back, knee and wrist conditions, which developed while he was serving in the military. Appellant alleged that his pain was aggravated by an increase in

¹ In a September 9, 2008 letter, appellant stated that he filed two previous claims (File No.s xxxxxx924 and xxxxxx149), which were accepted on May 16 and August 14, 2008 respectively. The record does not contain copies of claim forms or letters of acceptance associated with these claims.

work assignments, including driving long distances more often, performing excessive amounts of computer data entry and climbing in and out of aircraft more frequently.

In a September 20, 2006 report, Dr. Teniola stated that appellant suffered from back, wrist and leg complications. He indicated that a September 11, 2006 MRI scan revealed multilevel degenerative disc disease along the vertebrae in the neck, which he opined that would account for appellant's headaches. The record contains numerous examination notes for the period June 12, 2006 through August 22, 2008 reflecting Dr. Teniola's findings of decreased cervical range of motion, increased headaches and increased pain in appellant's neck, arms, knees and back. The record also contains reports of August 25, 2006 x-rays of the lumbar spine and of the bilateral knees.²

On October 3, 2008 the Office informed appellant and Dr. Teniola that the information submitted remained insufficient to establish his claim, as it failed to show a specific worsening of the neck, back and bilateral knee conditions attributable to federal employment. It requested objective medical findings to support the physician's opinion that appellant's diagnosed conditions had worsened as a result of employment activities.

By decision dated November 5, 2008, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed medical conditions were causally related to the established work-related events.³

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

² The record contains reports from psychiatrists and psychologists which address appellant's psychological condition. As his emotional condition is not at issue in this case, it is not necessary to address these reports in this decision.

³ Appellant submitted additional evidence after the Office's November 5, 2008 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record which was before it at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 opinion evidence. 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 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.⁷

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁸ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁹

Dr. Teniola, who began treating appellant in 2005, reflected an understanding of his job requirements and the nature of his job duties. He opined that appellant's degenerative joint disease, cervical disc disease and lower back bulging disc condition had been exacerbated by his increased employment duties, which included climbing in and out of aircraft, climbing up and down stairs, bending, walking, standing, reaching and pulling. Dr. Teniola also opined that appellant's administrative tasks of filing, data entry, writing, lifting, preparing reports, sending

⁷ *Id.*

⁸ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 8; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

faxes and copying had caused his carpal tunnel syndrome condition, which was aggravated by his keyboarding duties during a transition period at work requiring “double tasking.” Interpreting a September 11, 2006 MRI scan report, he diagnosed multilevel degenerative disc disease along the vertebrae in the neck, which he explained would account for appellant’s headaches.

The Office found that Dr. Teniola did not provide any examination findings or objective evidence of a worsening of appellant’s conditions. However, the September 11, 2006 MRI scan report reflecting multilevel degenerative disc disease represents a worsening of the previously diagnosed cervical condition, which Dr. Teniola opined was due to appellant’s employment activities. Additionally, numerous examination notes for the period June 12, 2006 through August 22, 2008 reflect Dr. Teniola’s findings of decreased cervical range of motion, increased headaches and increased pain in his arms, knees and back.

The Board notes that, while none of Dr. Teniola’s reports are completely rationalized, they are consistent in indicating that appellant sustained an aggravation of previously diagnosed conditions and they are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant’s burden of proof to establish his claim, they raise an uncontroverted inference between his claimed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.¹⁰

On remand, the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held, specific functions performed by appellant in each position and the restrictions imposed by his treating physicians. It should submit the statement of accepted facts to appellant’s treating physician or to a second opinion examiner, in order to obtain a rationalized opinion as to whether his current condition is causally related to factors of his employment, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

¹⁰ See *Virginia Richard*, supra note 8; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: September 4, 2009
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