

By letter dated June 3, 2008, the Office requested additional factual and medical information from appellant as the initial information submitted was insufficient to establish his claimed injury.

Appellant came under the treatment of Dr. Bruce E. Bray, a Board-certified family practitioner. In a June 6, 2008 attending physician's report, Dr. Bray diagnosed myalgia and myositis and noted with a checkmark "yes" that appellant's condition was caused or aggravated by a work injury. He reported that on May 15, 2008 appellant was lifting a bag and felt a sudden sharp pain in the left and right arms. Dr. Bray recommended that appellant return to work with restrictions. In an April 21, 2008 report, he diagnosed unspecified myalgia and myositis and advised that appellant could return to work with restrictions.

In a July 17, 2008 decision, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that his claimed conditions were caused by the employment incident.

On August 10, 2008 appellant requested a review of the written record. He submitted reports from Dr. Bray dated December 29, 2006 to June 6, 2008 previously of record. On July 25, 2008 Dr. Bray treated appellant for a longstanding history of myalgia pain and radial head bursitis bilaterally. He diagnosed chronic neck, shoulder myofascial-type pain, recurrent flares and bilateral radial head bursitis. On August 5, 2008 appellant was treated for arm, shoulder and neck pain by Dr. Brian K. Konowalchuk, Board-certified in occupational medicine. Appellant reported sustaining overuse injuries at work to his neck, shoulder and right hip dating back to 1995 and a recent injury on May 15, 2008 when he was lifting a 40-pound bag of parcels over his head. Dr. Konowalchuk diagnosed acute myofascial strain resulting from overhead lifting. He released appellant to work with restrictions.

In a November 17, 2008 decision, an Office hearing representative found that the medical evidence was not sufficient to establish that appellant's claimed conditions were caused by the May 15, 2008 work incident.

On November 16, 2009 appellant requested reconsideration. On April 21, 2009 Dr. Konowalchuk saw appellant for a two-month follow-up after a rotator cuff repair. Appellant reported that on the date of injury he was lifting a 40- to 50-pound parcel above his head and injured his shoulder. Dr. Konowalchuk noted that it was impossible to say whether appellant had preexisting rotator cuff thinning or subacromial bursitis due to the natural history of the disease. He advised that repetitive lifting with an outstretched arm and overhead activity could exacerbate or aggravate shoulder symptoms. Dr. Konowalchuk advised that the mechanism of injury that occurred in appellant's case could be considered a direct aggravation if a preexisting condition existed. He noted that it was reasonable to conclude that appellant's daily activity led to an aggravation of the subacromial bursitis and potential rotator cuff thinning. On May 26, 2009 Dr. Konowalchuk saw appellant for follow-up of his right shoulder surgery and for chronic right thoracolumbar back pain. Appellant reported returning to work and experiencing a flare-up of back pain due to prolonged standing at work. Dr. Konowalchuk diagnosed right rotator cuff tear, surgically repaired and chronic thoracolumbar junction back pain. On June 12, 2009 he treated appellant for back pain and diagnosed mild degenerative changes in the lumbar spine.

On May 21, 2009 appellant was treated by Dr. Troy D. Erickson, an osteopath, who diagnosed status post right shoulder arthroscopy with extensive debridement, arthroscopic subacromial decompression, distal clavicle excision and open rotator cuff repair. Dr. Erickson returned appellant to work with restrictions. A magnetic resonance imaging (MRI) scan of the lumbar spine revealed multilevel degenerative changes. Appellant also submitted evidence from a physician's assistant.

On October 31, 2009 Dr. Konowalchuk treated appellant for recurrent right upper lumbar spine pain and diagnosed myofascial discomfort. He opined that appellant developed work related myofascial low back pain related to workplace posture and activity. Dr. Konowalchuk stated that he had previously addressed causal relationship and advised that appellant related that he sustained a right shoulder injury after lifting a bag of parcels weighing 40 to 50 pounds onto a cart. Appellant believed that this lifting episode and repetitive use of his shoulders was instrumental to his right shoulder injury and subsequent surgery. Dr. Konowalchuk opined that this was a reasonable assessment of appellant's condition. He noted that "occupational disease" with repetitive overhead and outstretched work while carrying weight "could lead one to a position of an eventual rotator cuff tear." Dr. Konowalchuk advised that he was not aware of any activities outside of appellant's workplace that would have contributed to his shoulder condition. He advised that, on a more likely than not basis, appellant's description of injury contributed to his need for right shoulder rotator cuff repair.

In a decision dated January 14, 2010, the Office denied modification of the November 17, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 of the Act, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

Appellant alleged that he sustained a back, neck and right shoulder injury while lifting a mail parcel at work on May 15, 2008. The Board notes that the Office accepted that the May 15, 2008 incident occurred as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a back, neck or right shoulder injury causally related to the May 15, 2008 work incident. Appellant did not submit sufficient medical evidence addressing how the May 15, 2008 work incident caused or aggravated his claimed conditions.

In a June 6, 2008 attending physician's report, Dr. Bray diagnosed myalgia and myositis. He checked a box "yes" that appellant's condition was caused or aggravated by appellant's work indicating that on May 15, 2008 appellant was lifting a bag and felt a sudden sharp pain in the left and right arms. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁷ In a July 25, 2008 report, Dr. Bray treated appellant for a longstanding history of myalgia pain, radial head bursitis bilaterally and diagnosed chronic neck, shoulder myofascial-type pain, recurrent flares and bilateral radial head bursitis. Appellant reported exacerbating his symptomology at work. This report is insufficient to establish appellant's claim as Dr. Bray did not provide a full history of appellant's preexisting condition or provide a rationalized opinion addressing how the May 15, 2008 work incident caused or contributed to the diagnosed

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

conditions.⁸ Appellant also submitted treatment notes from Dr. Bray that predated the May 15, 2008 incident and is not relevant to whether it caused injury.

In an August 5, 2008 report, Dr. Konowalchuk diagnosed acute myofascial strain resulting from overhead lifting and arm, shoulder and neck pain. Appellant reported a history of working for the employing establishment and sustaining overuse injuries to his neck, shoulder and right hip dating back to 1995 and a recent injury on May 15, 2008 when he was lifting a bag of parcels over his head. However, Dr. Konowalchuk repeated the occupational history as reported by appellant without providing his own opinion regarding whether appellant's condition was caused or contributed to by the accepted incident at work. Dr. Konowalchuk failed to provide a rationalized opinion explaining why any diagnosed conditions were caused or aggravated by the May 15, 2008 work incident.⁹

On April 21, 2009 Dr. Konowalchuk noted that it was impossible to say whether appellant had preexisting rotator cuff thinning or subacromial bursitis due to the natural history of the disease. He advised that repetitive lifting with an outstretched arm and overhead activity could exacerbate or aggravate shoulder symptoms. Dr. Konowalchuk further noted that it was reasonable to conclude that appellant's daily activity led to an aggravation of the subacromial bursitis and potential rotator cuff thinning. While he provided general support for causal relationship, Dr. Konowalchuk did not adequately explain how the May 15 2008 traumatic incident caused appellant's conditions. Rather, he attributed appellant's conditions to work factors occurring over a period of time and not to the May 15, 2008 lifting incident. The present claim is one for a traumatic injury.¹⁰ Dr. Konowalchuk also did not provide sufficient medical reasoning in support of his conclusion on causal relationship.

On October 31, 2009 Dr. Konowalchuk diagnosed myofascial discomfort and opined that appellant had work related myofascial low back pain causally related to workplace posture and activity. With regard to his right shoulder condition, appellant reported an episode of lifting a bag of parcels onto a cart as well as performing other repetitive uses as the cause of his shoulder injury. Dr. Konowalchuk opined that, on a more likely than not basis, appellant's description of injury contributed to his need for right shoulder rotator cuff repair. Although this report also provides some support for causal relationship, he provided insufficient medical reasoning to support his opinion. Dr. Konowalchuk did not adequately explain the reasons why the May 15, 2008 lifting incident would cause or aggravate appellant's back or shoulder conditions. Again, he generally related the conditions to work factors occurring over a period of time. Dr. Konowalchuk also advised that he was not aware of any activities outside of appellant's workplace that would have contributed to his shoulder condition. The Board has held that the mere fact that a disease manifests itself during a period of employment does not raise an

⁸ *Supra* note 6.

⁹ *Id.*

¹⁰ Office regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(ee). Office regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of a claimant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relation.¹¹ Other reports from Dr. Konowalchuk either did not address causal relationship or addressed it in the same manner. Thus, his reports are insufficient to establish that appellant sustained a traumatic injury due to the May 15, 2008 lifting incident.

The remainder of the medical evidence, including diagnostic test reports and a May 21, 2009 report from Dr. Erickson, is insufficient as it fails to address causal relationship between appellant's diagnosed condition and the May 15, 2008 work incident.¹²

Appellant also submitted evidence from a physician's assistant. However, this evidence is of no probative medical value as the Board has held that physician's assistants are not competent to render a medical opinion under the Act.¹³

Consequently, the medical evidence is insufficient to establish that the May 15, 2008 lifting incident caused or aggravated a diagnosed medical condition.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back, neck and right shoulder injury causally related to his May 15, 2008 employment incident.

¹¹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

¹³ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2010
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