United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
and	)	**Docket No. 09-1377**
	)	**Issued: February 24, 2010**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Las Vegas, NV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' September 12, 2008 and April 3, 2009 merit decisions 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 the claim.

ISSUE

The issue is whether appellant sustained a traumatic injury to his right shoulder and neck on July 13, 2008.

FACTUAL HISTORY

On July 15, 2008 appellant, a 45-year-old transportation security screener, filed a traumatic injury claim alleging that he sustained injuries to his right upper arm, shoulder and neck when he lifted a bag onto a conveyor belt on July 13, 2008. Coworker David Cubbage

stated, "I was in the search work station and saw [appellant] lift the bag and he told me [he] felt pain."

Appellant submitted a July 15, 2008 disability slip from Dr. James S. Forage, a Board-certified neurological surgeon, indicating that he was unable to work from July 14 through August 30, 2008. He also submitted a July 23, 2008 report of a magnetic resonance imaging (MRI) scan of the right shoulder.

On July 30, 2008 the Office informed appellant that the evidence and information submitted was insufficient to establish that he had experienced the incident as alleged, or that he had a diagnosed condition that resulted from the incident. Appellant was advised to submit medical evidence which provided a diagnosis and a rationalized opinion explaining how the alleged incident caused the diagnosed condition.

The record contains a July 13, 2008 emergency room report from Dr. Mathew Vanderwoude, a treating physician, who provided a history of injury reflecting that appellant experienced a sudden onset of sharp-shooting pain down the right arm into the neck, with limited range of motion and weakness when he lifted a piece of luggage in the course of his duties as a baggage handler. Examination revealed some right-sided paraspinal tenderness and spasm within the cervical spine. Dr. Vanderwoude observed that appellant had a small left upper extremity, secondary to a congenital anomaly. An MRI scan of the cervical spine showed scoliosis and multilevel degenerative disc disease, resulting in compression of the right side of the cord at the C3-4 level, mild marrow edema in the C4-5 vertebra, likely due to degenerative disc disease, rather than subtle compression fractures. Dr. Vanderwoude diagnosed cervical radiculopathy with multilevel degenerative disc disease and compression of the right side of the cord at the C3-4 level.

Appellant submitted a July 30, 2008 report from Dr. Drake Rothstein, Board-certified in the field of emergency medicine. Dr. Rothstein diagnosed soft tissue injury of the right upper extremity. He noted that appellant worked as a baggage handler and was experiencing intractable pain in his right shoulder. Examination of the right upper extremity revealed pain with extension above 90 degrees and pain with external rotation. Dr. Rothstein indicated that an MRI scan of the neck showed some cord edema in the C3-4 area. He recommended that appellant remain "off work."

Appellant submitted an August 12, 2008 report from Dr. Patrick S. McNulty, a Board-certified orthopedic surgeon, who related that appellant had sustained a work injury on July 13, 2008, when he lifted a heavy bag onto a belt in his capacity as a security screener. Appellant stated that he had noted an acute onset of pain at the time of the injury, and had been experiencing right upper extremity weakness, numbness and "pins and needles" ever since. Dr. McNulty indicated that appellant had "no significant symptoms similar to this previously." He noted that appellant suffered from Poland syndrome, a congenital deformity involving absence of ribs, radius, pectoralis muscle and a nonformed clavicle. Dr. McNulty underwent brain surgery in 2000, as well as multiple surgeries for his Poland syndrome condition. Physical examination revealed hypoplasia of his left forearm, with significantly shortened left upper extremity. Dr. McNulty found: significant weakness (approximately 3-4/5) with right shoulder

abduction, external rotation, elbow flexion, and supination; decreased light touch about the right thumb; positive Spurling's recreating paresthesias into the right thumb and index finger; negative clonus, Babinski and Hoffman's; and no hyperreflexia in the upper or lower extremities. X-rays of the cervical spine show left-sided thoracic curvature, with secondary left-sided cervical scoliosis and a right-sided upper thoracic scoliosis. An MRI scan of the cervical spine showed right focal disc bulge causing moderately severe right canal stenosis, as well as foraminal narrowing. The MRI scan also revealed disc osteophyte complex abutting the cord at C4-5, causing relative stenosis, mild, consistent with concentric disc osteophyte complex at C5-6, with no significant neurologic compression. Dr. McNulty stated that appellant had significant neurologic dysfunction with right upper extremity weakness and numbness that "is of significant dysfunction to this patient because of his congenital left upper extremity limited function due to Poland's syndrome involving a shortened left upper extremity." He recommended urgent, expedient surgical intervention to relieve symptomatic stenosis C3-4, C4-5. In an accompanying work capacity evaluation, Dr. McNulty indicated that appellant was unable to perform the duties of his usual position.

The employing establishment controverted appellant's claim. In support of its contention, it submitted a July 11, 2008 report from Dr. Forage, which reflected that he treated appellant on that date for neck and shoulder pain, which radiated down his right arm and forearm, and produced numbness in the thumb and index finger of the right hand. In an August 25, 2008 "Physician Review Report," Dr. Marianne Cloerman, an employing establishment physician, opined that appellant's condition was not work related, but rather was preexisting, as evidenced by the fact that he was treated by Dr. Forage on July 11, 2008 for numbness and weakness in the right hand and forearm.

On July 15, 2008 Dr. Forage noted that appellant had been treated in a hospital emergency room due to severe pain. He found severe weakness in abduction of the right arm and in the biceps. An MRI scan of the cervical spine showed right-sided disc herniation at L3-4 and right-sided foraminal stenosis at the C3-4 and C4-5 levels. In an August 5, 2008 report, Dr. Forage noted continued severe deltoid and bicep weakness, and recommended C3-4 and C5-6 anterior cervical discectomy and fusion.

By decision dated September 12, 2008, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his claimed condition was causally related to the established work-related event. On September 17, 2008 appellant requested an oral hearing.

At a January 15, 2009 telephonic hearing, appellant testified that he had sought treatment by Dr. Forage on July 11, 2008 for numbness in his right hand. He stated, however, that his visit to Dr. Forage on July 13, 2008 pertained to his work injury on that date and the severe pain he experienced in his shoulder when he lifted a bag onto the conveyor belt.

Subsequent to the hearing, appellant submitted a January 12, 2009 report from Dr. Alexander Imas, a Board-certified physiatrist, who stated that appellant's pain was a result of his employment.

In a report dated December 23, 2008, Dr. Forage noted complaints of severe, agonizing pain in the neck, radiating to the arm and the hand. He opined that appellant was temporarily totally disabled as a result of his work-related injury from July 2008 until February 2009.

In a narrative report dated February 10, 2009, Dr. Forage stated that appellant saw him initially on July 11, 2008 for a brain-related issue and was complaining of very mild symptoms in the shoulder and neck. He related that appellant was at work lifting bags when he had severe exacerbation of his pain two days after the July 11, 2008 visit. "The pain was sudden, severe and unrelenting," and was quite different from his previous symptoms. Dr. Forage indicated that there were new findings of severe abduction weakness in the right arm and weakness in the biceps. He opined that appellant's symptoms and his need for surgery were directly related to the lifting of the bags on July 13, 2008.

By decision dated April 3, 2009, the hearing representative affirmed the September 12, 2008 decision. The representative found that the evidence was sufficient to establish that the July 13, 2008 incident occurred as alleged. However, the medical evidence was not sufficiently rationalized to establish that his condition was causally related to the established event.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[2]

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place,

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Robert Broome*, 55 ECAB 339 (2004).

and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

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 employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] 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 a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[9]

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.[10] However, it is well established that proceedings under the Act are not

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] 20 C.F.R. § 10.303(a).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

[10] *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).

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.[11]

The Office accepted that the July 13, 2008 lifting incident occurred as alleged, but found that the medical evidence of record was insufficient to establish that his condition was causally related to the established event. The Board finds, however, that the medical evidence of record supports that appellant sustained a work-related injury on July 13, 2008.

Dr. Forage provided an accurate factual and medical history. He diagnosed right-sided disc herniation at L3-4 and right-sided foraminal stenosis at the C3-4 and C4-5 levels. Noting that appellant had previously experienced very mild symptoms in the shoulder and neck, he indicated that appellant was at work lifting bags when he had severe exacerbation of his pain on July 13, 2008. Dr. Forage stated that "the pain was sudden, severe and unrelenting," and was quite different from his previous symptoms. He also indicated that there were new findings of severe abduction weakness in the right arm and weakness in the biceps. Dr. Forage opined that appellant's symptoms and his need for surgery were directly related to the lifting of the bags on July 13, 2008.

The remaining medical evidence of record also supports appellant's claim. Dr. Vanderwoude provided emergency room treatment on July 13, 2008. Dr. Vanderwoude provided a history of injury reflecting that appellant experienced a sudden onset of sharp shooting pain down the right arm into the neck, with limited range of motion and weakness when he lifted a piece of luggage in the course of his duties as a baggage handler. He diagnosed cervical radiculopathy with multilevel degenerative disc disease and compression of the right side of the cord at the C3-4 level. An MRI scan of the cervical spine reportedly showed scoliosis and multilevel degenerative disc disease, resulting in compression of the right side of the cord at the C3-4 level, mild marrow edema in the C4-5 vertebra, likely due to degenerative disc disease, rather than subtle compression fractures. However, Dr. Vanderwoude's description of the July 13, 2008 work incident and appellant's concomitant onset of pain, supports appellant's claim that the incident exacerbated his condition.

Reports from Dr. Rothstein and Dr. McNulty also contained histories of injury reflecting that appellant began experiencing intractable pain in his right shoulder after lifting a bag onto a conveyor belt on July 13, 2008. Dr. Rothstein diagnosed a soft tissue injury and some cord edema in the C3-4 area by MRI scan. Dr. McNulty provided detailed examination findings. He stated that appellant had a right focal disc bulge causing moderately severe right canal stenosis, as well as foraminal narrowing. An MRI scan also revealed disc osteophyte complex abutting the cord at C4-5, causing relative stenosis. Dr. McNulty recommended urgent, expedient surgical intervention to relieve symptomatic stenosis. Although neither physician explains how appellant's current condition is causally related to the July 13, 2008 incident, their reports strongly suggest that appellant's condition was at least aggravated by the accepted incident.

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 10; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained an employment-related upper extremity injury and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted employment incident, and are sufficient to require the Office to further develop the medical evidence and the case record.[12] On remand the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incident, and shall issue an appropriate decision in order to protect his rights of appeal.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained a traumatic injury in the performance of duty on July 13, 2008.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2009 September 12, 2008 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: February 24, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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