

FACTUAL HISTORY

On June 21, 2005 appellant, then a 57-year-old tractor-trailer operator, filed an occupational disease claim alleging that he injured his back, knees, arm and hands from poor suspension in his truck. He first realized that his condition was caused or aggravated by his employment activities on July 10, 2004. Appellant stopped work on July 7, 2006 when he retired on disability. The employing establishment indicated that his truck had been properly maintained.

On June 29, 2005 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

Appellant submitted an undated statement noting that he had driven a truck for the employer since June 10, 1995. The truck had an extremely small cabin with no leg room, horrible suspension, no armrests and poor seating. Appellant stated that from 1995 to 2003 he drove for 10 hours a day and six days a week. He noted hitting his head on the truck's ceiling whenever hitting a bump in the road and that he had to outstretch his hands to hold the steering wheel since there were no armrests. Appellant experienced numbness of his hands and elbows that started two years prior and progressively became worse. He also complained of back problems for the past five years. Appellant had no prior knee, back or hand conditions or injuries.

In an August 9, 2005 decision, the Office denied appellant's claim finding that, although the factual evidence supported that the claimed work exposure occurred, there was no medical evidence to establish that he sustained a medical condition causally related to his employment activities.

Appellant requested reconsideration and submitted a September 28, 2005 physician's assistant report stating that his back, hand and knee injuries were more likely than not related to many years of truck driving for the employing establishment. In an August 12, 2005 report, Dr. Susy Alias, a Board-certified physiatrist, indicated that he was informed at his annual physical examination on July 14, 2005 that he could not return to work due to knee, upper extremity and back pain. She noted appellant's complaint of neck, knee and low back pain from truck driving and lifting boxes of mail. Dr. Alias opined that due to limitation in his functional activity from back pain and knee pain from arthritis and upper extremity impairment due to neuropathy, he was unable to return to work as a truck driver. She diagnosed chronic back pain, bilateral carpal tunnel syndrome, polyneuropathy, degenerative joint disease involving the knees, hypertension and heart murmur.

In a January 11, 2006 merit decision, the Office denied appellant's claim finding that the additional medical evidence did not establish that he sustained conditions causally related to his work duties.

In a January 24, 2006 report, Dr. Francis Jana, a Board-certified internist, reviewed appellant's medical records diagnosing low back pain, bilateral carpal tunnel syndrome and bilateral knee arthritis. He opined that appellant's conditions were probably more likely than not related to his many years as a truck driver for the employing establishment.

On June 15, 2006 appellant requested reconsideration and indicated that he would provide a medical report through his primary care physician.

In a September 15, 2006 decision, the Office denied modification of its prior decisions.

On August 6, 2007 appellant requested reconsideration. In a June 8, 2007 report, Dr. Gary Miller, a Board-certified orthopedic surgeon, noted that appellant had multiple orthopedic issues and diagnoses. He advised that appellant was working at the employing establishment and because of the responsibilities of his job he had job-related conditions. Dr. Miller noted that appellant had lower back pain which showed disc spaces reduced at L5-S1 consistent with degenerative discs. He also noted that spurs were seen from the anterior and lateral articular margins of the lumbar vertebral bodies at all levels consistent with degenerative changes. Dr. Miller indicated that gout contributed to appellant's knee and elbow pain due to gouty crystals depositing in the joints, which was worsened by appellant's job activities. Appellant also had carpal tunnel syndrome from repeated activities at his job. Dr. Miller opined that all of appellant's conditions were becoming more symptomatic because of his work responsibilities and that job modification was not an option as he had multiple joint indolent.

In an October 9, 2007 decision, the Office denied modification of its prior decisions.

On August 18, 2008 appellant requested reconsideration. In an August 15, 2008 report, Dr. Miller noted that the orthopedic service at his facility had evaluated appellant's musculoskeletal condition. The orthopedic service was treating appellant for left upper extremity and bilateral knee conditions. Dr. Miller noted that appellant had undergone left carpal tunnel and cubital tunnel releases. He opined that appellant's conditions were caused by repetitive motion from driving a tractor trailer. Dr. Miller listed appellant's assertion that repetitive opening and closing of a heavy truck door aggravated his condition and Dr. Miller indicated that this was possible. He also reported appellant's belief that poor suspension in the tractor trailer and constant bumping aggravated his left upper extremity, knees and back condition. Dr. Miller stated that x-rays showed "mild progressive degenerative disease of the knee joints. Which could have been aggravated by [appellant's] job responsibilities?"

In a November 14, 2008 decision, the Office denied modification of its prior decisions.

Appellant requested reconsideration on February 12, 2009. In a March 17, 2008 report, Dr. Miller opined that there was a correlation between appellant's musculoskeletal conditions and his job as a tractor-trailer operator. He reiterated that appellant was being seen by the orthopedic department for his left upper extremity and both knees. Appellant underwent left carpal tunnel and cubital tunnel release on February 13, 2006 and both conditions were caused by repetitive motion that he stated was from driving a mail truck and the repetitive opening and closing the back of the truck. According to appellant, poor suspension on the tractor trailer and constant bumping in the truck aggravated his left upper extremity, knees and back conditions. Dr. Miller noted that x-rays showed mild progressive degenerative joint disease which was aggravated by activity,² but was not the entire etiology of the problem.

² The Board notes this typographical error and that, based on the context of the sentence, Dr. Miller intended to use the word "activity."

In a July 24, 2009 decision, the Office denied modification of its prior decisions finding that the evidence submitted did not establish causal relationship between appellant's diagnosed conditions and accepted his work activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific conditions 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 on a traumatic injury or an occupational disease.³

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 diagnosed condition is causally related to the employment factors identified by the claimant.⁴

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁵

ANALYSIS

The record reflects that appellant was a tractor-trailer operator who alleged injuries to his back, knees, arms and hands due to poor suspension while driving a tractor trailer in the performance of duty. The record supports that he drove a truck daily as part of his duties; however, the medical evidence is not sufficient to establish these activities caused or aggravated his diagnosed medical conditions.

In reports dated March 17 and August 15, 2008, Dr. Miller provided an opinion based on appellant's belief of causal relation. He indicated that appellant's left carpal and cubital tunnel

³ *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁵ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

syndromes were caused by repetitive motion that appellant reported was from driving and opening and closing the truck door. Dr. Miller also reported appellant's belief that poor suspension aggravated his diagnosed conditions. His reliance on appellant's belief of causal relationship to form his own opinion on causal relationship is insufficient to establish appellant's claim. Dr. Miller failed to provide an independent and rationalized opinion explaining how appellant's activities as a truck driver caused or contributed to the diagnosed conditions.⁶ On March 17, 2008 he provided a vague opinion by stating that appellant's degenerative joint disease was aggravated by activity but that this was not the entire etiology of the problem. Dr. Miller failed to identify the specific activities that aggravated appellant's joint condition or whether such activity was work related. Moreover, he did not elaborate on what other factors contributed to the etiology of the problem or discuss whether such etiology derived from appellant's employment activities. The Board has held that the opinion of a physician of reasonable medical certainty and supported by medical rationale explaining causal relationship.⁷

Similarly, Dr. Miller's June 8, 2007 report broadly opined that appellant had job-related conditions because of his job responsibilities. He generally addressed how appellant's job activities worsened his gout condition and that his carpal tunnel syndrome was from repeated job activities. Again, Dr. Miller did not identify any specific job activity or explain how appellant's work as a tractor-trailer operator caused or contributed to any diagnosed conditions. He indicated that appellant was working at the employing establishment, when in fact, he had retired on disability on July 7, 2006. Dr. Miller's failure to demonstrate an accurate history of appellant's employment or a specific understanding of his job duties renders his opinion of reduced probative value.⁸

In an August 12, 2005 report, Dr. Alias opined that appellant could not work due to functional limitations caused by his back and knee arthritic pain and upper extremity neuropathy. She did not specify, however, the cause of his back, knee and upper extremity conditions or explain whether his employment activities caused or aggravated these conditions. The Board has held that 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.⁹ Although Dr. Alias noted that appellant attributed his neck, knee and low back pain to truck driving and lifting boxes at work, she did not discuss whether these work activities were the cause of his condition.

On January 24, 2006 Dr. Jana noted that appellant's medical records diagnosed low back pain, bilateral carpal tunnel syndrome and bilateral knee arthritis. He opined that appellant's condition "probably more likely than not" related to his many years as a truck driver. To the extent Dr. Jana's report supports causal relationship, it is of diminished probative value as his

⁶ See *William Nimitz*, 30 ECAB 567 (1979) (where the Board has held that an award for compensation may not be predicated upon appellant's belief of causal relation as such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability).

⁷ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

⁸ See *supra* note 5.

⁹ *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

opinion is couched in speculative terms.¹⁰ He also did not base his opinion on his own evaluation of appellant's condition in which he explained the reasons particular aspects of driving a truck would cause or aggravate a diagnosed condition.

The record also contains a report from a physician's assistant. A physician's assistant is not a physician as defined under the statute and therefore any report from such individual does not constitute competent medical opinion which, in general, can only be provided by a qualified physician.¹¹

On appeal, appellant asserts that working for the employing establishment for 12 years driving a truck and loading heavy equipment caused his bilateral carpal tunnel, knee and back conditions. As noted, his burden of proof required that he submit rationalized medical evidence establishing that his diagnosed conditions were caused by his employment activities. The medical evidence of record does not provide a rationalized physician's opinion explaining the reasons why truck driving or heavy lifting at work caused or aggravated appellant's hand, knee or back conditions. Therefore, appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

¹⁰ *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant "may have ruptured" and that the condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion).

¹¹ *See George H. Clark*, 56 ECAB 162 (2004); *see also* 5 U.S.C. § 8101(2) (defining the term "physician").

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 24, 2009 and November 14, 2008 are affirmed.

Issued: July 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