

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

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D.U., Appellant)	
)	
and)	Docket No. 10-144
)	Issued: July 27, 2010
DEPARTMENT OF VETERANS AFFAIRS,)	
VIRGINIA MEDICAL CENTER, St. Louis, MO,)	
Employer)	
_____)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2009 appellant, through his representative, filed a timely appeal of June 12 and September 25, 2009 decisions of the Office of Workers' Compensation Programs. 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 met his burden of proof to establish that he sustained bilateral carpal tunnel syndrome causally related to factors of his employment.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 19, 2008, the Board affirmed an August 24, 2007 Office decision that denied appellant's claim for bilateral carpal tunnel syndrome. By decision dated December 20, 2006, the Board affirmed an August 4, 2006 Office decision denying his claim. In a March 15, 2006 decision, the Board affirmed

October 21 and August 5, 2005 Office decisions also denying appellant's claim. The facts of this case, as set forth in the prior decisions, are incorporated herein by reference.¹

On May 25, 2005 appellant, then a 42-year-old medical technologist, filed an occupational disease claim alleging that he sustained injury to his hands caused by repetitive tasks. His duties included entering data into a computer, opening bottles, setting up specimens and reading culture plates. These tasks involved wrist bending and other stressful hand postures. Appellant moved a 75-pound gas tank three times a week. He performed these tasks for 11 years at the employing establishment. Because the staff of medical technologists had been reduced, appellant experienced increased use of his hands.

A July 3, 2008 disability certificate from Dr. Dale M. Henselmeier advised that appellant was disabled from July 3 to 6, 2008. No cause for the disability was discussed.

In a June 16, 2009 report, Dr. S. Vic Glogovac, an attending hand surgeon, stated that he first evaluated appellant on June 13, 2005 for nocturnal paresthesia with numbness involving both hands. The Phalen's test for carpal tunnel syndrome was positive. Two-point discrimination was abnormal. Appellant provided a history that, beginning at work in 2004, he noticed his hands becoming numb and clumsy. He underwent surgical decompression in both hands which revealed significant flattening of the median nerve. Appellant's hand symptoms improved following surgery. The diagnosis was bilateral carpal tunnel syndrome status post surgical decompression. Dr. Glogovac noted that there were 10 employees working in the laboratory in 1993. The number was reduced to three and appellant's workload increased significantly. Appellant used his hands frequently and moved gas tanks weighing more than 75 pounds three times a week. He used his hands in a repetitive grasping motion for 14 years in his job before developing carpal tunnel syndrome. Appellant's hand numbness and tingling work at work caused him to seek medical treatment. Dr. Glogovac opined that appellant's work situation was the significant aggravating factor that led to his bilateral carpal tunnel syndrome.

By decisions dated June 12 and September 25, 2009, the Office denied appellant's claim on the grounds that the medical evidence did not establish that his bilateral carpal tunnel syndrome was caused or aggravated by his employment.²

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical

¹ See Docket No. 07-2326 (issued March 19, 2008); Docket No. 06-1999 (issued December 20, 2006); Docket No. 06-328 (issued March 15, 2006).

² Subsequent to the September 25, 2009 Office decision, additional evidence was submitted to the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.³ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical 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.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of employment, nor his belief that his condition was aggravated by his employment, is sufficient to establish causal relationship.⁵

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained bilateral carpal tunnel syndrome causally related to factors of his employment.

Dr. Glogovac first evaluated appellant on June 13, 2005 for nocturnal paresthesia with numbness involving both hands. The Phalen's test for carpal tunnel syndrome was positive. Two-point discrimination was abnormal. Appellant provided a history that, beginning at work in 2004, he noticed his hands becoming numb and clumsy. He underwent surgical decompression in both hands which revealed significant flattening of the median nerve. Dr. Glogovac noted that appellant's workload increased significantly when the 10 employees working in the laboratory were reduced to three. Appellant used his hands repetitively and moved gas tanks weighing more than 75 pounds three times a week. Dr. Glogovac opined that appellant's work situation was the significant aggravating factor that led to the development of his bilateral carpal tunnel syndrome, but he did not provide a well-rationalized opinion on the causal relationship between the specific work factors and appellant's bilateral carpal tunnel syndrome.

Dr. Glogovac identified only one specific work factor, moving gas tanks. He noted appellant's repetitive hand use, but did not describe the specific nature of the repetitive work duties involved. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.⁶ Dr. Glogovac's opinion on causal relationship is not based on a complete and accurate factual background. He stated that appellant's work increased significantly when the laboratory staff was reduced. Dr. Glogovac did not identify specific work duties which allegedly increased.

³ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB __ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁶ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

However, appellant's supervisor had advised that the number of tests performed was reduced from 50,000 a year to 20,000 or 30,000 when the staffing level decreased. Dr. Glogovac noted that appellant moved gas tanks weighing more than 75 pounds three times a week, but appellant supervisor had advised that gas tanks were moved only twice a week and appellant had not performed this task in some time. Lacking a complete and accurate factual background and sufficient medical rationale, Dr. Glogovac's opinion on causal relationship is of diminished probative value. Therefore, his report is not sufficient to establish that appellant's bilateral carpal tunnel syndrome was causally related to his employment.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that his bilateral carpal tunnel syndrome is causally related to factors of his employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 25 and June 12, 2009 are affirmed.

Issued: July 27, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Groom, M. Alternate Judge, concurring:

I concur in the finding of the majority that Dr. Glogovac did not provide sufficient medical opinion to establish that appellant's carpal tunnel syndrome condition was caused or contributed to by his federal employment as medical technologist. The reports of record provided by the physician are largely one page statements that do not provide a detailed history of appellant's medical condition, treatment, tests on examination or diagnostic studies.

The decisions of the Board have also critiqued the physician's opinion on causal relation with regard to his description of appellant's work activities and repetitive duties. Here, Dr. Glogovac is at a disadvantage. The Office has never prepared a statement of accepted facts delineating the nature or extent of the repetitive duties performed by appellant in his federal employment. There is no framework provided the physician on which to base his opinion regarding causal relation.¹

Appellant provided the Office with a description of those duties to which he attributes his medical condition. The Office requested additional information from the employing establishment as to the frequency and length of time spent on certain activities during the workday. On June 27, 2005 appellant's supervisor noted that 90 percent of his work duties involved use of the hands and wrists and that staff reductions had reduced the standard employee breaks. On July 27, 2007 another supervisor disputed appellant's description of his work duties stating that she had not personally observed him moving gas cylinder tanks. She acknowledged, however, that seven employees performed 20,000 to 30,000 tests a year. Previously, 10 employees performed approximately 50,000 tests a year. Having gathered information from the employer, it is incumbent on the Office to determine the facts in evidence as they pertain to the duties performed by appellant in his employment and the period of his exposure to such activities.²

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.2(b) (September 2007).

² *Id.* at Chapter 2.809.3. While the employee has the burden of proof to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and must do so in a fair manner. See *Melvin James*, 55 ECAB 406 (2004).