United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 09-1746**
	)	**Issued: March 17, 2010**
U.S. POSTAL SERVICE, SAGINAW POST OFFICE, Saginaw, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 30, 2009 appellant, through his representative, filed a timely appeal from a June 8, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed a November 14, 2008 decision denying his claim for compensation. 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 established that he sustained a left hand injury on March 7, 2007, as alleged.

FACTUAL HISTORY

This case was previously before the Board.[1] On March 7, 2007 appellant, then a 50-year-old mail processor sustained injury when he picked up a tray of mail and his left hand went numb. The Office accepted that he picked up a mail tray on March 7, 2007 and experienced numbness in his left hand, but denied the claim on the grounds that he did not submit sufficient medical evidence to establish an injury. By decision dated November 14, 2008, the Board

[1] Docket No. 08-1443 (issued November 14, 2008).

affirmed the March 27, 2008 Office decision, finding that appellant did not provide a rationalized medical opinion establishing that he sustained an injury causally related to the March 7, 2007 employment event. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On May 6, 2009 appellant, through his representative, filed a request for reconsideration.

In a March 27, 2008 medical report, Dr. Branislav Behan, a Board-certified orthopedic surgeon, opined that appellant sustained symptoms of cubital tunnel syndrome while working as a letter carrier. He stated that appellant's position entailed a good amount of sorting, lifting and flexing at his elbow. Dr. Behan opined that, although cubital tunnel syndrome could occur in people that are not letter carriers, a job entailing repetitive hyperflexing and lifting could cause or aggravate this condition. He maintained that appellant had signs and symptoms consistent with cubital tunnel syndrome.

In a medical report dated April 9, 2009, Dr. Jeffrey F. Wirebaugh, Board-certified in family medicine, stated that he evaluated appellant on March 5, 2009. He noted that appellant worked as a distribution clerk for approximately 30 years, during which time he sorted mail by hand. Dr. Wirebaugh stated that appellant's employment duties included picking up trays of mail with a variety of other lifting and reaching activities that involved constant and repetitive flexion and extension of the elbows. On March 9, 2007 appellant developed sudden numbness and tingling in his left forearm and hand while picking up a tray of mail at work. Diagnostic studies established a diagnosis of cubital tunnel syndrome. Dr. Wirebaugh stated that appellant continued to experience episodic tingling and numbness and that he lost some grip strength in the left hand. He reported that appellant worked for 30 years in a position requiring continually picking up trays of mail and flexing and extending the elbow to sort mail. Dr. Wirebaugh opined that this type of activity is an accepted etiology of cubital tunnel syndrome. Appellant claimed that he was not performing any outside activity that would place any kind of stress on the elbow and there was no evidence of an arthritic change in the elbow or elsewhere in the body. Dr. Wirebaugh opined that it was certainly more likely than not that appellant's left cubital tunnel syndrome was a result of his job duties as a distribution clerk for the employing establishment.

By decision dated June 8, 2009, the Office again found that the medical evidence did not establish that appellant sustained an injury causally related to the March 7, 2007 employment incident. It noted that, if appellant believed his condition was due to repetitive work duties over time, he could file an occupational disease claim (Form CA-2).

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

the Act[4] and that he filed his claim within the applicable time limitation.[5] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[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 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.[9]

ANALYSIS

The issue is whether appellant established that he sustained a left hand injury causally related to the March 7, 2007 employment incident. The Board finds he has not met his burden of proof.

In a March 27, 2008 medical report, Dr. Behan stated that appellant experienced symptoms of cubital tunnel syndrome while working as a letter carrier. He reviewed appellant's employment duties including sorting and lifting and flexing at the elbow. Dr. Behan opined that repetitive hyperflexing and lifting could cause or aggravate cubital tunnel syndrome. He did not provide a rationalized opinion that appellant's employment caused his cubital tunnel syndrome. Although Dr. Behan noted that repetitive hyperflexing and lifting could cause the condition, this

[4] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[5] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[6] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

opinion is equivocal in nature and insufficient to establish appellant's claim.[10] Further, the fact that appellant experienced symptoms of cubital tunnel syndrome during his employment does not establish causal relationship.[11] Moreover, Dr. Behan did not mention the March 7, 2007 employment incident or discuss how appellant's lifting a tray of mail on this date caused an injury. Therefore, the Board finds this report is insufficient to establish appellant's claim.

Further, in an April 9, 2009 medical report, Dr. Wirebaugh stated that, during appellant's 30-year employment as a distribution clerk, he repeatedly picked up trays of mail and performed a variety of other lifting and reaching activities involving constant and repetitive flexion and extension of the elbows. He reported that on March 9, 2007 appellant developed sudden numbness and tingling in his left forearm and hand while picking up a tray of mail at work and that appellant continued to experience episodic numbness and tingling and loss of left hand grip strength. Dr. Wirebaugh opined that appellant's repetitive work duties were an accepted etiology of cubital tunnel syndrome and that it was more likely than not appellant's left cubital tunnel syndrome was a result of his employment duties. He did not provide a comprehensive medical opinion explaining how appellant's lifting a tray of mail on March 7, 2007 caused the diagnosed cubital tunnel syndrome. Rather, Dr. Wirebaugh only provided a speculative and unrationalized opinion that appellant's condition was likely related to his repetitive employment duties. Thus, the Board finds that this report is similarly insufficient to establish appellant's claim.[12]

The Board notes that the medical evidence of record suggests that appellant sustained cubital tunnel syndrome as an occupational disease related to his repetitive employment duties over a period of time greater than one work shift. However, this is not the issue in this case. Appellant filed a traumatic injury claim alleging that he lifted a tray of mail on March 7, 2007 and experienced left hand numbness. Although advised on several occasions that he could file a separate claim of occupational injury appellant has pursued his claim as a traumatic injury.[13] There is no evidence that appellant intended to file other than a traumatic injury claim.[14]

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[10] Medical opinions which are speculative or equivocal in character have little probative value. *Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[11] Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by an employment condition, is sufficient to establish causal relationship. *See Ruby I. Fish*, 46 ECAB 276 (1994); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990).

[12] *See Linda I. Sprague, supra* note 10; *Victor J. Woodhams, supra* note 9.

[13] In a July 31, 2007 letter, the Office requested that appellant clarify whether he intended to file a claim for an occupational disease or a traumatic injury. It again attempted to clarify the claim in an August 2, 2007 telephone call, which was referenced in the September 5, 2007 its decision. Further, at the February 5, 2008 oral hearing, the Office hearing representative addressed the issue of whether the claim should be adjudicated as an occupational disease and requested appellant's representative provide additional clarification. Moreover, the Board noted in the November 14, 2008 decision that appellant may consider filing an occupational disease claim. No additional statements or amplifying documents were filed.

[14] *Compare Barbara A. Weber*, 47 ECAB 163 (1995) where appellant's representative clarified on reconsideration that he believed that the issue in the case was whether the factors of the appellant's employment caused an injury instead of whether appellant established an injury in the performance of duty. The Board held that this statement amplified the case, such that the Office should have adjudicated the issue of an occupational disease. In the instant case, no such statements were provided to show that appellant intended to claim an occupational disease.

CONCLUSION

The Board finds that appellant did not establish that he sustained a left hand injury on March 7, 2007, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2009 and November 14, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 17, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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