United States Department of Labor
Employees' Compensation Appeals Board

E.Z., Appellant	)	
and	)	**Docket No. 10-728**
	)	**Issued: November 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, 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 January 25, 2010 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 8, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue is whether appellant established he sustained an injury in the performance of duty, causally related to his employment.

[1] Under Office File No. xxxxxx298 appellant filed a traumatic injury claim (Form CA-1) for the same date of injury. The Office adjudicated this claim as an occupational disease (Form CA-2). By decision dated July 28, 2008, it denied the claim because appellant had not demonstrated that his alleged condition, cubital tunnel syndrome, was causally related to his employment.

FACTUAL HISTORY

On April 9, 2009 appellant, a 39-year-old mail handler, filed an occupational disease claim (Form CA-2) for bilateral cubital tunnel syndrome and decreased muscle strength in his hands. He attributed this condition to repetitive employment tasks he performed while sorting mail. Appellant first became aware of his condition on April 10, 2008, and that it was caused by his federal employment on April 17, 2008. His supervisor controverted his claim. She reported that appellant was assigned to limited-duty work following being off work from June 21, 2008 through January 31, 2009 due to foot condition.[2]

In a supplemental statement dated April 6, 2009, appellant described his employment duties and explained how they caused his condition. He alleged that he was placed on limited duty repairing damaged letters and magazines because of a prior employment injury. Appellant alleged that on March 2008 his employer changed his limited-duty assignment from patching mail to hand scanning mail. He alleged the chair he sat in while performing this duty assignment had only one armrest and that, despite his repeated requests, he was never provided a chair with armrests. Later, appellant was assigned additional limited-duty employment duties, working with label cases, which he performed in a different chair. He alleged that this chair was not the correct height for the desk at which he worked and consequently, his arms were placed at awkward positions.

Appellant submitted results from diagnostic tests and a document which concerned the causes, symptoms and diagnosis of cubital tunnel syndrome.

On April 3, 6 and May 26, 2009 Dr. David A. Stone, an orthopedic surgeon, reviewed appellant's course of treatment and diagnosed cubital tunnel syndrome. He wrote:

> "Cubital tunnel syndrome is often seen in jobs requiring repetitive elbow motion and this condition is likely related to his job and would be made worse by his job."

Dr. Stone also provided work restrictions.

In letters dated April 9 and 22, 2009, appellant's supervisor noted that appellant had not worked his bid position for six years. She stated that she never once considered the notion that appellant needed a chair with armrests to perform a limited-duty position associated with a foot condition. Appellant's supervisor disputed appellant's allegations concerning the number of hours he worked.

By decision dated July 8, 2009, the Office accepted the employment factors appellant deemed responsible for his condition. It denied the claim because the evidence of record did not demonstrate that the accepted employment factors caused a medically-diagnosed condition.

On July 24, 2009 Dr. Stone diagnosed cubital tunnel syndrome. He explained that, when an elbow is bent, the ulnar nerve is stretched several millimeters and, moreover, when the hand is

[2] OWCP File No. xxxxxx415.

rotated, the nerve is stretched even further. Dr. Stone noted that the nerve can also shift or snap over the bony medial epicondyle, causing a "painful event." Furthermore, he explained that, over time, performing these motions repeatedly in the workplace will cause the ulnar nerve to become inflamed and irritated. Dr. Stone opined that such constant irritation may result in scarring of the ligament over the cubital tunnel, thereby trapping the nerve and causing additional problems. He described the arm, hand and finger movements appellant performed while separating and stapling label packages, repairing damaged letters and keying labels at forehead height. Dr. Stone concluded that these tasks required extensive use of both hands and arms. He opined that the employment factors he discussed caused, aggravated, exacerbated, precipitated or accelerated appellant's condition. Dr. Stone also noted that prior to being employed by the employing establishment appellant did not have elbow, hand or finger pain.

On August 7, 2009 appellant requested an oral hearing.

On October 13, 2009 appellant requested review of the written record in lieu of an oral hearing.

By decision dated December 8, 2009, the Office hearing representative affirmed the Office's July 8, 2009 decision because the evidence of record did not demonstrate that the accepted employment factors caused a medically-diagnosed condition.[3]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[5] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[6] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[7] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

[3] Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB 293 (2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

[4] 5 U.S.C. §§ 8101-8193.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[8] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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 evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[9]

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.[10]

ANALYSIS

The Board finds this case is not in posture for decision.[11]

The Office accepted the limited-duty employment factors appellant deemed responsible for his condition. On April 3, 2009 Dr. Stone diagnosed cubital tunnel syndrome. He opined that cubital tunnel syndrome is often seen in jobs requiring repetitive elbow motions and this condition is likely related to appellant's job. In a subsequent report dated July 24, 2009, Dr. Stone described how arm, elbow, hand and wrist movements affect the ulnar nerve. He explained the long-term affect of performing such repetitive arm, elbow, hand and wrist movements. Dr. Stone described appellant's employment duties and explained the arm, elbow, hand and wrist movements associated with these employment tasks. He concluded that it was more probable than not that the employment tasks he discussed caused, aggravated, exacerbated, precipitated or accelerated appellant's condition. Dr. Stone reasoned that appellant's cubital tunnel syndrome became further aggravated after he returned to work in February 2009, when his employment duties required him to key overhead for up to several hours per day.

The Board finds that Dr. Stone's reports provide a consistent diagnosis of cubital tunnel syndrome and while his reports are not sufficient to meet appellant's burden of proof they do provide a consistent medical explanation as to how appellant's accepted limited work duties caused the diagnosed condition.

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

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] Appellant submitted an article concerning the causes, symptoms, and how to diagnose cubital tunnel syndrome. Newspaper clippings, medical texts and excerpts from publications have no evidentiary value in establishing the necessary causal relationship between a claimed condition and an employment incident because such materials are of general application and are not determinative of whether the specifically-claimed condition is related to the particular employment factors. Thus, this evidence does not establish the requisite causal relationship. *Eugene Van Dyk*, 53 ECAB 706 (2002); *William C. Bush*, 40 ECAB 1064, 1075 (1989).

It is well established that proceedings under the Federal Employees' Compensation Act[12] are not adversarial in nature[13] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[14] The Office has an obligation to see that justice is done.[15]

Accordingly, the Office's December 8, 2009 decision is set aside and the case remanded for further development and a proper merit decision. On remand, it shall obtain a rationalized opinion from an appropriate Board-certified physician concerning whether appellant's claimed condition is causally related to his factors of employment.

Following this and such other development as is deemed necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds this case is not in posture for decision concerning whether appellant established he sustained an injury in the performance of duty, causally related to his employment.

[12] 5 U.S.C. § 8101 *et seq*.

[13] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

[14] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[15] *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: November 3, 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