United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 10-892**
	)	**Issued: November 26, 2010**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from the January 12, 2010 merit decision of the Office of Workers' Compensation Programs' denying his request to expand the acceptance of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his ischemic myelopathy is causally related to his November 24, 2003 employment injury.

FACTUAL HISTORY

On December 1, 2003 appellant, then a 44-year-old welder, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2003 he sustained a back injury after lifting damper housing. He obtained a clinic pass and sought medical treatment on November 25, 2003 at the employing establishment's health clinic. Marshall E. Walker, a physician's assistant, reported that appellant felt a "catch" in the middle of his back when he was lifting damper housing off a

buggy. He recommended that appellant be sent home to rest for two days and return to the clinic, go to the emergency room or see his private physician if his symptoms worsened.

On November 26, 2003 appellant was admitted to Baptist Health System. His attending physician, Dr. Katisha Vance, a Board-certified internist, discharged him on December 5, 2003 with a diagnosis of transverse myelitis and referred him to physical therapy.

On January 15, 2004 the employing establishment controverted appellant's claim. While it did not challenge the fact that appellant injured his back while at work, it contended that he was hospitalized for transverse myelitis due to a viral infection and not his on-the-job injury. Dr. Ting J. Tai, a Board-certified occupational medicine specialist and employing establishment physician, stated that there was no documented direct trauma to appellant's back and that his diagnosis of transverse myelitis was unlikely to result from an episode of lifting.

On April 19, 2004 the Office accepted appellant's claim for cervical strain and advised him on the procedures to claim disability.

In a report dated May 6, 2004, Dr. Vance stated that appellant was discharged from Baptist Health System on January 8, 2004 with a diagnosis of transverse myelitis. She stated that "[b]ecause of the two separate complaints it is reasonable that [appellant] did suffer a lumbar strain related to a lifting injury that was a completely separate complaint from his transverse myelitis."

On May 19, 2004, February 28, 2007 and September 24, 2008 appellant was treated at the neurology clinic at Johns Hopkins. On February 28, 2007 Dr. Douglas A. Kerr, a Board-certified neurologist, reported that appellant "had an acute myelopathy in November 2003 one day status post heavy lifting and immediately after a routine stretching movement." On September 24, 2008 he indicated that appellant was "on the job" at the time he suffered a fibrocartilaginous embolism and an acute ischemic myelopathy on November 24, 2003. Dr. Kerr noted that "[t]his type of myelopathy is rare, but can be triggered by elevated intrathoracic pressure lifting heavy things." In a January 10, 2009 report, he reiterated that appellant had a fibrocartilaginous embolism resulting in an ischemic myelopathy on November 24, 2003 and was left with a permanent partial impairment.

On May 13, 2009 the Office requested additional factual and medical information from appellant. It advised him that the reports of Drs. Vance and Kerr were insufficient to establish any employment-related back condition or transverse myelitis and ischemic myelopathy. The Office allotted appellant 30 days to submit additional evidence.

On May 20, 2009 appellant explained that he was misdiagnosed with transverse myelitis by Dr. Vance at Baptist Health System. He subsequently was diagnosed with fibrocartilaginous embolism and an acute ischemic myelopathy by Dr. Kerr at Johns Hopkins.

By decision dated June 18, 2009, the Office denied appellant's claim finding that the medical evidence was not sufficiently detailed to establish a causal relationship between his accepted cervical strain and the claimed conditions of lumber strain, transverse myelitis or ischemic myelopathy.

On June 26, 2009 appellant requested an oral hearing before an Office hearing representative, at which he testified on October 6, 2009. He argued that his claim should be expanded to include ischemic myelopathy.

By decision dated January 12, 2010, an Office hearing representative affirmed the June 18, 2009 decision on the grounds that appellant did not submit sufficient medical opinion explaining how his ischemic myelopathy was due to the November 24, 2003 employment injury.

LEGAL PRECEDENT

An individual seeking compensation benefits has the burden of establishing the essential elements of his claim. A clamant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of his duties, which disabled him for employment.[1] Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The physician's opinion must be rationalized based on a complete and accurate factual and medical background, 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 appellant.[2]

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[3] The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[4] Neither the fact that the disease became apparent during a period of employment, nor the belief of an employee that the disease was caused or aggravated by employment conditions is sufficient to establish causal relation.[5]

ANALYSIS

The Office accepted that appellant sustained a cervical strain in the performance of duty on November 24, 2003. Appellant subsequently requested that his claim be expanded to include ischemic myelopathy. As the Office did not accept this condition as employment related, appellant has the burden of proof to establish causal relationship.[6] The Board finds that appellant

[1] *See e.g., J.P.*, 59 ECAB 178 (2007); *Nathaniel Milton*, 37 ECAB 712 (1986).

[2] *Jennifer Atkerson*, 55 ECAB 317 (2004). *See also* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[3] *See James Mack*, 43 ECAB 321 (1991).

[4] *Nathaniel Milton, supra* note 1.

[5] *See Paul Foster* 56 ECAB 208 (2004)*; Louis T. Blair, Jr.*, 54 ECAB 348 (2003).

[6] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009); *JaJa K. Asaramo*, 55 ECAB 200 (2004).

did not meet his burden of proof to establish that his ischemic myelopathy condition was due to his accepted injury.

Appellant sought medical treatment on November 26, 2003 at Baptist Health System and was discharged on December 5, 2003 by his attending physician, Dr. Vance, with a diagnosis of transverse myelitis. The employing establishment's medical director, Dr. Tai, reported on January 15, 2004 that appellant's diagnosis of transverse myelitis was "unlikely to result from an episode of lifting."

Dr. Vance reported on May 6, 2004 that it was reasonable that appellant suffered a lumbar strain related to a lifting injury, but that it was "a completely separate complaint from his transverse myelitis." Her medical opinion addresses the issue of lumbar strain and transverse myelitis, neither of which are conditions accepted by the Office. Dr. Vance's reports do not directly address the issue of causal relationship between the accepted employment injury, cervical strain and the condition for which compensation is claimed, ischemic myelopathy. Therefore, her reports are not sufficient to meet appellant's burden of proof.

Dr. Kerr's reports support acute ischemic myelopathy as resulting from the November 24, 2003 employment injury. However, the Office did not accept ischemic myelopathy as appellant's condition. Although Dr. Kerr provided an accurate description of the employment incident and a secure diagnosis in his reports, the evidence of record is not clear whether appellant's cervical strain at work was competent to cause his ischemic myelopathy. He reported that appellant was at work on November 24, 2003 and had an acute myelopathy "post heavy lifting and immediately after a routine stretching movement" and indicated that this rare type of myelopathy "can be triggered" by "lifting heavy things." The Board finds this opinion to be speculative.[7] Dr. Kerr offered his observations of the temporal connection between appellant's lifting and stretching movements and the possibility of acute myelopathy as a result, but he failed to provide detailed medical rationale explaining the causal relationship between ischemic myelopathy and his employment injury of cervical strain. Furthermore, he provided his medical opinions four to six years after the employment incident which diminishes the reliability and probative value of the medical evidence.[8] Dr. Kerr did not adequately address the causal relationship between the claimed condition and the employment injury.

CONCLUSION

The Board finds that appellant did not submit sufficient rationalized medical opinion evidence to establish that the accepted employment injury on November 24, 2003 was causally related to the ischemic myelopathy. Therefore, appellant failed to meet his burden of proof.

[7] *Kathy A. Kelly*, 55 ECAB 206 (2004).

[8] *See Mary S. Ceglia*, 55 ECAB 626 (2004); *Ricky S. Storms*, 52 ECAB 349 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 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