United States Department of Labor
Employees' Compensation Appeals Board

W.A., Appellant	)	
and	)	**Docket No. 10-529**
	)	**Issued: October 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
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 December 18, 2009 appellant filed a timely appeal from a December 2, 2009 merit decision 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 this case.

ISSUE

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

FACTUAL HISTORY

On September 2, 2009 appellant, a 55-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) for "left leg weakness," a "tingling sensation in left leg that will not go away" and a pinched nerve in his back. He first became aware of his condition on August 24, 2009 and realized his condition was caused by his employment on September 1, 2009. In an undated supplemental statement, appellant attributed his condition to

"continuous bending and lifting" employment activities he performed to distribute parcels and mail.

On September 1, 2009 Dr. David Nguyen, a Board-certified physiatrist, diagnosed lumbar radiculopathy, recommended appellant be restricted to modified duty for a period of time and provided work restrictions.

Appellant submitted unsigned medical reports, a magnetic resonance imaging (MRI) scan examination instruction form and a report signed by a physical therapist.

By letter dated October 6, 2009, the Office notified appellant that the evidence of record was insufficient to establish his claim. It advised him that he needed to submit additional evidence and provided guidance concerning the type of evidence required. Appellant submitted an undated and unsigned note in which he described his leisure activities.

In a note dated October 12, 2009, appellant described his employment duties and history of injury.

On October 26, 2009 appellant filed a wage-loss claim for the period September 7 through October 31, 2009 seeking leave without pay (LWOP) and "night differential."

By decision dated December 2, 2009, the Office accepted the employment factors appellant deemed responsible for his condition but denied the claim because the medical evidence of record did not demonstrate that these employment factors caused a medically-diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[2] 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.[3] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[4] 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.[5]

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

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

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

[5] *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.[6]

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.

ANALYSIS

The Office accepted the employment factors appellant deemed responsible for his condition. Appellant's burden is to demonstrate that these employment factors caused a medically-diagnosed condition. The medical opinion evidence of record lacks the detail and reasoning required to establish causal relationship and, consequently, the Board finds appellant has not established he sustained an injury in the performance of duty, causally related to his federal employment.[7]

Appellant submitted unsigned reports and a report signed by a physical therapist. Healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered physicians under the Act and, therefore, their reports and opinions have no probative value.[8] Similarly, reports and notes that are unsigned or that bear illegible signatures are not considered probative evidence because they lack proper identification concerning their author's identity.[9] This evidence does not establish the required causal relationship between the accepted employment factors and appellant's condition.

Dr. Nguyen diagnosed radiculopathy, but did not present findings on examination, did not review appellant's medical history, did not describe appellant's employment duties and did not explain how the accepted employment factors caused the condition he diagnosed. As such,

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

[7] On appeal, appellant submitted additional evidence. 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 ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.)

[8] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

[9] *See e.g., Willie M. Miller*, 53 ECAB 697 (2002).

his report has little probative value on the issue of causal relationship. For these reasons, Dr. Nguyen's opinion and report do not establish the required causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.[10] Neither the fact that appellant'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.[11] The fact that a condition manifests itself or worsens during a period of employment[12] or that work activities produce symptoms revelatory of an underlying condition[13] does not raise an inference of causal relationship between a claimed condition and identified employment factors.

The Board finds appellant has not established the essential element of causal relationship because appellant has not submitted medical opinion evidence explaining how the accepted employment factors caused or aggravated a firmly diagnosed medical condition.

CONCLUSION

The Board finds appellant has not established he sustained an injury in the performance of duty, causally related to his federal employment.

[10] *Edgar G. Maiscott,* 4 ECAB 558 (1952).

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

[12] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[13] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson,* 12 ECAB 155, 157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 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