

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

A.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Pittsburgh, PA, Employer)

Docket No. 10-615
Issued: October 6, 2010

Appearances:

Alan J. Shapiro, Esq., for the appellant
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 January 4, 2010, appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 1, 2009 merit decision denying his occupational disease 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 he sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 12, 2009 appellant, a 53-year old housekeeping aid, filed an occupational disease claim form (CA-2) alleging that he sustained injuries to his back and neck as a result of washing walls with his left arm. He described the nature of his condition as strain and

overworked muscles. Appellant first became aware that his condition was related to his employment on March 9, 2009.

In a March 16, 2009 report, Dr. Erik C. Holt, Board-certified in the field of emergency medicine, described appellant's complaints of right shoulder and neck pain, which began on September 11, 2008 and increased over the prior two-week period. On examination of the right upper extremity, there was tenderness to palpation on the dorsal lateral surface of the shoulder, as well as in the axilla and along the medial portion of the scapula. Dr. Holt found full range of motion, with increased pain with shoulder adduction. X-ray of the right shoulder revealed no fracture or dislocation. Spinal x-ray showed no evidence of stenosis. Noting a prior rotator cuff repair, Dr. Holt stated that appellant might have reinjured his rotator cuff. He diagnosed acute and chronic shoulder pain.¹

In a letter dated April 24, 2009, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to submit factual information describing the employment activities he believed contributed to his condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis, and an opinion with an explanation as to how the identified employment activities caused the diagnosed conditions.

In a statement dated May 18, 2009, appellant noted that his original injury occurred on June 23, 2008 when he sustained a rotator cuff tear, which required surgery on September 11, 2008. He sustained an injury to his neck, back and left shoulder on March 9, 2009 (File No. xxxxxx813) as a result of washing wall guards from February 9 through March 20, 2009.²

By decision dated June 9, 2009, the Office denied appellant's claim on the grounds that he did not establish fact of injury. The evidence was insufficient to establish that the events occurred as alleged, and there was no medical evidence to support a causal relationship between factors of employment and a diagnosed condition.

On June 27, 2009 appellant requested a telephonic hearing, which was held on September 29, 2009. Appellant's representative stated that appellant had two prior claims. A July 2, 2008 occupational disease claim was accepted for a right rotator cuff tear (File No. xxxxxx650). A February 26, 2009 occupational disease claim for left shoulder, neck and back injuries was denied on May 26, 2009 (File No. xxxxxx813). Counsel opined that the hearing was not necessary because he believed the matter had been resolved. He noted that appellant had been paid compensation for time lost under File No. xxxxxx650, and that this claim was "part and parcel of that claim," as both claims involved washing walls beginning March 9, 2009. Appellant testified that "really there is no new injury." The Office hearing representative referred to a March 12, 2009 report from Dr. David C. Neuschwander, a Board-certified

¹ The record contains a July 7, 2008 report of a right elbow x-ray, a July 7, 2008 and March 16, 2009 reports of right shoulder x-rays and a March 16, 2009 report of a cervical spine x-ray.

² Although the statement reads "2008," the context clearly refer to "2009."

orthopedic surgeon, who related appellant's claim that he had increased symptomatology after washing walls, but did not clarify whether a diagnosed condition resulted.³

By decision dated December 1, 2009, the Office hearing representative affirmed the June 9, 2009 decision. He accepted that appellant performed the duties of washing walls from March 9 through 12, 2009, but found that the medical evidence was insufficient to establish that either his back or shoulder condition was causally related to the established employment activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,⁵ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁸

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment,

³ Appellant's July 2, 2008 occupational disease claim was accepted for a right rotator cuff tear. (File No. xxxxxx650).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁹

ANALYSIS

The Office accepted that appellant engaged in washing walls in his position as a housekeeping aid. The medical evidence of record is insufficient, however, to establish that he developed a diagnosed condition as a result of the established employment activities. Therefore, he failed to meet his burden of proof.

The March 16, 2009 report from Dr. Holt is insufficient to establish appellant's claim. Dr. Holt described appellant's complaints of right shoulder and neck pain, which began on September 11, 2008, and increased over the prior two-week period. He provided examination findings and diagnosed acute and chronic shoulder pain. Noting a prior rotator cuff repair, Dr. Holt stated that appellant might have reinjured his rotator cuff. He did not provide a definitive diagnosis or an opinion as to the cause of appellant's condition. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.¹⁰ The value of this report is further diminished by the physician's failure to describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition.

The remaining medical evidence of record, such as the reports of x-rays, do not provide any opinion on the cause of appellant's condition, is of limited probative value and insufficient to establish appellant's claim.¹¹

Appellant expressed his belief that his conditions resulted from his employment activities. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹² Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, he did not meet his burden of proof to establish

⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Dennis M. Mascarenas*, supra note 4 at 218.

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

¹¹ The Board notes that Dr. Neuschwander's March 12, 2009 report, which was submitted in File No. xxxxxx650, does not contain an opinion as to whether appellant's accepted activity of washing walls either caused or aggravated a diagnosed condition. Therefore, it is of limited probative value.

¹² See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

that he sustained an occupational disease in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 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