

you go home, take a good hot shower, put on some Ben Gay and rest.” Appellant did not immediately stop work. For six weeks, starting March 9, 2009, the employing establishment placed him on temporary limitations that included no pushing, no pulling, no carrying and no twisting while standing with more than five pounds of force.

In a letter dated March 27, 2009, the Office informed appellant that the evidence submitted was insufficient to establish his claim and advised him of the type evidence needed to establish his claim. It requested that he provide a comprehensive medical report from the treating physician describing symptoms, test results, diagnosis, effect of treatment provided and the physician’s medically-reasoned opinion on the cause of his condition.

In an April 14, 2009 letter, appellant authorized his attorney to represent him. No additional evidence accompanied the letter.

In an April 27, 2009 letter, the employing establishment controverted the claim. It asserted that appellant implicated a traumatic injury instead of an occupational disease. The employing establishment also noted that appellant had worked since January 2, 2006 and had cervical surgery on January 16, 2009.

In a decision dated May 21, 2009, the Office denied appellant’s claim for compensation benefits. It found that, while the work activity did occur, appellant did not provide sufficient medical evidence to establish that his cervical condition was caused by the work activity.

On May 27, 2009 appellant requested a telephonic hearing, which was held on September 9, 2009. At the hearing, he testified that he gradually began to feel soreness a couple months before September 1, 2008, but sought medical treatment only on that date because the pain had become unbearable. Appellant advised that there was no single incident that caused his condition. He stated that he did not have any neck or back problems prior to working for the employing establishment. Appellant was referred to a neurosurgeon who diagnosed a severe crushed spinal cord. He did not stop work until January 16, 2009, when he underwent an operation. Appellant was out of work for six weeks and returned on restricted duty. He reiterated his belief that his cervical condition was a result of his three-and-a-half-year federal employment as a sheet metal worker. Appellant estimated that approximately 75 to 80 percent of riveting work involved lifting at or above shoulder height, with 30 percent of his work comprised of shooting rivets and the other 70 percent comprised of holding a heavy bucking opposite steel rivets to flatten them after they are shot from the riveting gun. He described bucking between 100 and 500 rivets for 10 to 16 hours daily. The hearing representative informed appellant that the record contained no medical evidence and requested that he submit medical records from his initial treating physician and his surgeon. The hearing representative held the record open for 30 days to allow the submission of medical evidence.

In October 2, 2009 comments, the employing establishment noted that appellant worked a maximum 10-hour day if he worked overtime; less than 20 percent of riveting work required overhead lifting; and the average sheet metal worker shot and bucked rivets 15 to 20 percent of the time. It also described how a person’s body was positioned while working.

In a decision dated December 14, 2009, the Office hearing representative affirmed the May 21, 2009 decision. She found that appellant failed to provide medical evidence demonstrating that his cervical condition was caused by the accepted work-related activities of riveting.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, 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.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete 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 the claimant.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184 (2007).

⁵ *See R.R.*, 60 ECAB ____ (Docket No. 08-2010, issued April 3, 2009) at n.12; *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 3.

ANALYSIS

The evidence supports that appellant performs shooting and bucking of rivets on a daily basis as part of his job. However, appellant has not submitted any medical evidence to establish both the existence of his neck, shoulder or back condition or that any condition is causally related to the shooting and bucking of rivets at work.

The Office first advised appellant of the medical evidence needed to establish his claim in a March 27, 2009 letter. Appellant did not furnish any medical evidence and the Office denied his claim on May 21, 2009. At the September 9, 2009 telephonic hearing, the hearing representative requested that appellant submit medical documentation and allowed 30 days for submission. The record establishes that appellant did not submit any medical evidence before the hearing representative's December 14, 2009 decision. The Board notes that the employing establishment stated that appellant underwent cervical surgery several months prior to the submission of his claim. Appellant did not submit any medical records pertaining to treatment of his condition or a narrative report from a physician addressing how his federal employment caused or contributed to the need for surgery. In this regard, he has failed to establish a *prima facie* claim for compensation.⁷ Appellant has not submitted any medical evidence diagnosing a medical condition and explaining how employment factors caused or aggravated a diagnosed condition. Consequently, he has not met his burden of proof to establish an occupational disease related to his federal employment as a sheet metal worker.

Although counsel, on appeal, asserts that the Office's decision is contrary to fact and law, the Board finds that the Office properly found that appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an occupational disease in the performance of duty.

⁷ See Donald W. Wenzel, 56 ECAB 156 (2005).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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