

Appellant also experienced numbness and tingling in his right arm. On the reverse of the claim form, June Brandt, a supervisor, stated that, based on the information relayed by appellant, he injured himself while in the performance of duty.

In an October 4, 2007 form report, Dr. George R. Zimmerman, an attending Board-certified internist, obtained a history that appellant was lifting a box from a hamper when he felt a pop in his neck which was followed by severe right shoulder pain. He advised that appellant sustained cervical radiculopathy and indicated with an affirmative mark that this condition was caused by an employment activity. In another form report dated October 4, 2007, Dr. Zimmerman reiterated the history obtained from appellant regarding the October 2, 2007 incident. He advised that appellant suffered from right shoulder pain and arm paresthesia. Dr. Zimmerman listed appellant's physical restrictions and advised that he could not perform his regular work duties. In prescriptions dated November 12 and 16, 2007, he advised that appellant sustained herniated nucleus pulposus at C5-6 and neck pain. Dr. Zimmerman reiterated that appellant was unable to perform his letter carrier work duties.

Treatment notes from appellant's physical therapists addressed the treatment of appellant's neck and right upper extremity pain from November 27 to December 8, 2007.

By letter dated December 20, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence, including a rationalized medical report from an attending physician which described the history of his claimed injury, provided a firm diagnosis and an opinion on whether the October 2, 2007 incident caused or aggravated his claimed condition.

Treatment notes from appellant's physical therapist addressed the treatment of his neck and right upper extremity pain from December 10 to 31, 2007.

In a November 23, 2007 report, Dr. Monte B. Weinberger, an attending neurosurgeon, obtained a history that on October 2, 2007 appellant was lifting a hod which weighed 20 pounds out of a hamper when he heard and felt a pop in his neck. Appellant experienced discomfort that radiated to his right shoulder and blade area. He also experienced constant pain which was exacerbated when he lifted his head or turned it to the left. Dr. Weinberger listed his findings on physical examination and reviewed an October 10, 2007 magnetic resonance imaging (MRI) scan, which were consistent with cervical myofascial pain.¹ In reports dated December 14 and 28, 2007, he noted appellant's complaints of pain in his right shoulder and forearm. Dr. Weinberger listed his findings on physical examination which indicated that appellant remained symptomatic of cervical myofascial pain. Imaging studies revealed only minor spondylosis at C5-6 which did not require surgical intervention. In a December 28, 2007 disability certificate, Dr. Weinberger reiterated that appellant suffered from cervical myofascial pain. He released him to return to full-duty work with restrictions on January 2, 2008.

¹ In an October 10, 2007 MRI scan report of appellant's cervical spine, Dr. Gautam P. Patel, a Board-certified radiologist, found a moderate posterior disc bulge at C5-6. The rest of the cervical discs and spinal cord appeared to be normal.

In a January 8, 2008 statement, Zack Loper, an employee, advised that he witnessed appellant sustain a neck injury on October 2, 2007 as a result of lifting a hod of "ADVO" which weighed 30 to 35 pounds out of a hamper.

In an October 4, 2007 progress note, Dr. Zimmerman reiterated his prior history of the October 2, 2007 incident. He listed his findings on physical examination and diagnosed right posterior shoulder pain and right arm dysesthesias. Dr. Zimmerman planned to review an MRI scan of appellant's cervical spine to determine whether he had underlying C6 radiculopathy. In progress notes dated October 22 and November 16, 2007, he listed his findings on physical examination which demonstrated neck and shoulder pain. Dr. Zimmerman reiterated that appellant sustained a herniated disc at C5-6.

In a January 21, 2008 letter, appellant described the October 2, 2007 incident. While preparing to load his vehicle, he attempted to lift a hod which was filled with "ADVO" and weighed approximately 35 to 45 pounds out of a hamper. Appellant felt something pop in his neck. He was in extreme pain but finished loading his vehicle. Appellant informed Dave Trainer, a supervisor, about his injury. He was able to deliver his route and returned to work on October 3, 2007. On that date, something again popped in appellant's neck as he attempted to lift a large parcel out of a hamper. He completed a Form CA-1 and was treated by Dr. Zimmerman on October 3, 2007. Appellant continued to experience pain for which he received treatment. He returned to limited-duty work on January 2, 2008.

By decision dated January 28, 2008, the Office denied appellant's claim. It found the evidence sufficient to establish that the October 2, 2007 incident occurred as alleged. However, the medical evidence was insufficient to establish an injury causally related to the accepted employment incident.

In a January 11, 2008 report, Dr. Weinberger noted appellant's persistent cervical and right shoulder pain. He listed his findings on physical examination which indicated that appellant remained symptomatic of focal myofascial pain and muscle spasm. In a January 30, 2008 form report, Dr. Weinberger indicated with an affirmative mark that appellant's cervical myofascial and neck pain were caused by an October 3, 2007 work incident. In a February 22, 2008 report, he stated that appellant's myofascial pain was improving.

On April 7, 2008 appellant requested reconsideration of the Office's January 28, 2008 decision. In reports dated March 18 and 28, 2008, Dr. Weinberger reiterated a history of the October 2, 2007 employment incident. He reviewed a history of appellant's medical treatment. Dr. Weinberger opined that he sustained a muscular neck injury involving the right trapezius muscle at the time of the October 2, 2007 employment incident. Imaging studies revealed focal degenerative changes at C5-6 which were not a direct sequelae of appellant's claimed work-related injury. These changes were reflective of long-standing degenerative arthritis. Dr. Weinberger advised that appellant remained symptomatic of focal right medial trapezius pain and spasm with discomfort radiating to the shoulder area. Following pain treatment in February 2008, he released him to his preinjury work duties while continuing to undergo treatment. Dr. Weinberger also released appellant from his care. He did not have anything more to offer from a neurosurgical point of view as there were no issues related to the spinal cord or nerve roots.

In a March 26, 2008 report, Dr. Zimmerman reiterated his prior history of the October 2, 2007 employment incident and appellant's medical treatment. He reviewed Dr. Weinberger's opinion that appellant sustained a right trapezius muscle injury on October 2, 2007.

By decision dated June 11, 2008, the Office denied modification of the January 28, 2008 decision. The medical evidence was found insufficient to establish that appellant sustained an injury causally related to the October 2, 2007.

By letter dated May 31, 2009, appellant requested reconsideration. In a September 18, 2008 report, Dr. Zimmerman noted that appellant was involved in a motor vehicle accident approximately one month ago, which exacerbated his right posterior shoulder and neck pain for which he was being treated. He agreed with Dr. Weinberger's opinion that appellant sustained a right trapezius muscle injury on October 2, 2007.

In an August 20, 2009 decision, the Office denied modification of the June 11, 2008 decision finding that the medical evidence submitted by appellant was insufficient to establish that he sustained an injury causally related to the October 2, 2007 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that, the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation period of the Act, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty the Office must first determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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 of the claimant, must be one of reasonable medical certainty and must be supported by medical

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Id.*

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁷

ANALYSIS

The Board notes that appellant lifted a hod of "ADVO" from a hamper on October 2, 2007 while in the performance of duty as a letter carrier at the employing establishment. The Board finds, however, that the medical evidence submitted is insufficient to establish that his diagnosed cervical conditions were caused or aggravated by the October 2, 2007 employment incident.

Dr. Zimmerman's October 4, 2007 report indicated with an affirmative mark that appellant's cervical radiculopathy was caused by the October 2, 2007 employment incident. Reports which only address causal relationship with a checkmark without more by way of medical rationale explaining how the incident caused the injury are insufficient to establish causal relationship and are of diminished probative value.⁸ Dr. Zimmerman did not explain how the diagnosed condition was caused or contributed to by the accepted employment incident. The Board finds that Dr. Zimmerman's report is of diminished probative value as the physician did not adequately address the issue of causal relation.

In another October 4, 2007 report, November 12 and 16, 2007 prescriptions and October 4 to November 16, 2007 progress notes, Dr. Zimmerman found that appellant had right shoulder and neck pain, right arm paresthesia and dysesthesias and herniated nucleus pulposus at C5-6. He advised that appellant was unable to perform his letter carrier work duties. Pain is a symptom, not a compensable medical diagnosis. Moreover, Dr. Zimmerman did not provide an opinion on the causal relationship between appellant's right shoulder and neck pain and diagnosed right arm and cervical conditions and the October 2, 2007 employment incident.⁹ The Board finds that this evidence lacks probative value.

While Dr. Zimmerman's March 26 and September 18, 2008 reports reviewed a history of the October 2, 2007 employment incident and found that appellant sustained a muscular neck injury involving his right trapezius muscle due to the accepted employment incident, he did not explain how the diagnosed condition was caused by the employment incident. The Board finds that Dr. Zimmerman's reports are of diminished probative value as the physician did not adequately address the issue of causal relation.

Dr. Weinberger's November 23 to February 22, 2008 reports and December 28, 2007 disability certificate reviewed a history of the October 2, 2007 employment incident and found

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

⁹ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

that appellant sustained cervical myofascial pain and muscle spasm. He stated that imaging studies revealed only minor spondylosis at C5-6 which did not require surgical intervention. Dr. Weinberger did not address how he sustained a cervical condition that was caused or contributed to by the accepted employment incident. The Board finds that his reports are of diminished probative value.

Dr. Weinberger's January 30, 2008 report indicated with an affirmative mark that appellant's cervical myofascial and neck pain were caused by an October 3, 2007 work incident. His report is insufficient to establish appellant's claim as he did not explain how the diagnosed conditions were caused or contributed to by the accepted October 2, 2007 employment incident.¹⁰

While Dr. Weinberger's March 18 and 28, 2008 reports found that appellant sustained a work-related muscular neck injury involving his right trapezius muscle due to the October 2, 2007 employment incident, he failed to explain how the diagnosed condition was caused by the accepted employment incident. The Board finds that this evidence is of diminished probative value.

The treatment notes from appellant's physical therapists have no probative value in establishing appellant's claim. A physical therapist is not a "physician" as defined under the Act.¹¹

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained neck and right shoulder injuries causally related to the accepted October 2, 2007 employment incident. Appellant did not meet his burden of proof.

The Board further finds that appellant's argument on appeal that the medical evidence established that he sustained neck and right shoulder injuries causally related to the accepted October 2, 2007 employment incident has not been established for the reasons previously stated.

CONCLUSION

The Board finds that appellant failed to establish that he sustained neck and right shoulder injuries on October 2, 2007, as alleged.

¹⁰ *Id.*

¹¹ *David P. Sawchuk, 57 ECAB 316 (2006).*

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 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