United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 10-571**
	)	**Issued: September 8, 2010**
DEPARTMENT OF AGRICULTURE, FOOD, SAFETY & INSPECTION SERVICE, Minneapolis, MN, 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 28, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 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 August 19, 2009 appellant, a 56-year-old consumer safety inspector, filed an occupational disease claim form (CA-2) alleging that he developed a wrist condition as a result of performing repetitive knife duties as he inspected beef. He first became aware of his condition on August 3, 2009.

Appellant submitted an August 10, 2009 "referral prescription" from Dr. Heather L. Phipps, a Board-certified osteopath specializing in orthopedic surgery, reflecting diagnoses of right wrist tendinitis (not documented); TFCC tear; right wrist disc tear (new) and closed dislocation of the right wrist mid-carpal joint. He also submitted a patient information record reflecting that an appointment had been scheduled with Dr. David W. Fischer, a Board-certified orthopedic surgeon, on September 2, 2009 to address the conditions diagnosed by Dr. Phipps.

In a statement dated August 19, 2009, Minerva Blom, appellant's supervisor, confirmed the accuracy of appellant's representation as to the nature of his employment duties. She noted that he performed the same repetitive activities, eight hours a day, five days a week. In a normal day, appellant inspected 150 heads, 300 livers and 300 heart/lung sets with a hook and knife.

In a letter dated August 25, 2009, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to submit 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.

Appellant submitted an August 18, 2009 report from Dr. Phipps. Examination of the right hand revealed intact sensation; two-second capillaries refill; and pain over the region of the scapholunate joint and TFCC. An August 14, 2009 magnetic resonance imaging (MRI) scan showed TFCC tears and scapholunate separation.[1]

On August 28, 2009 appellant stated that in June 2009, he felt tightness in the right forearm and numbness in the fingers of the right hand. On August 3, 2009 he experienced sharp pains in the right wrist while making cuts in heads, hearts and livers. On August 11, 2009 Dr. Phipps informed him that his knife duties were the source of his problems. Results of an MRI scan revealed the need for surgery. Dr. Phipps restricted him from knife work and from lifting more than 10 pounds and referred him to Dr. Fischer.

Appellant submitted personnel records, including a November 24, 1987 application for employment. An undated position description for a food inspector reflected that the employee would perform in-plant inspections on slaughtered animals to insure that no pathological or unsanitary conditions rendered the product unfit for human consumption. Duties included working with knives and repetitive motion of the upper body six hours per day.

In a September 2, 2009 "physician's initial report, Dr. Fischer diagnosed right carpal tunnel syndrome and provided an injury date of August 3, 2009. In response to the question as to whether the diagnosed condition was caused by this injury or exposure, he placed a checkmark in the "yes" box. In a separate report of the same date, Dr. Fischer stated that appellant had a history of a "burning[-]type sensation" in the right hand, with paresthesias and numbness at times, together with involvement of the thumb, index and long fingers. In the section entitled "employment," he indicated that appellant was right-handed, had a work-related injury and was currently employed as a food safety inspector. Dr. Fischer stated that appellant had "questionably positive Tinel's over the median nerve at the wrist, negative at the median and

[1] The record contains a report of an August 14, 2009 MRI scan.

ulnar nerves at the elbow and over the brachial plexus at the shoulder." In a "return to work note," he restricted appellant from performing knife work and from lifting or carrying more than 10 pounds from August 11 through September 30, 2009.

By decision dated October 1, 2009, the Office denied appellant's claim on the grounds that he had not established a causal relationship between the diagnosed condition and established work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4]

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.[5] 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 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.[6]

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, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[7]

---

[2] 5 U.S.C. §§ 8101-8193.

[3] *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 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).

[4] *Dennis M. Mascarenas,* 49 ECAB 215, 217 (1997).

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

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

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

ANALYSIS

The Office accepted that appellant engaged in repetitive work activities in his position as a consumer safety inspector. The medical evidence of record is insufficient, however, to establish that his diagnosed conditions were caused or aggravated by the established employment activities. Therefore, appellant failed to meet his burden of proof.

On September 2, 2009 Dr. Fischer diagnosed right carpal tunnel syndrome and indicated, by placing a checkmark in the "yes" box, his belief that the diagnosed conditions was caused by the August 3, 2009 injury or exposure. He described a history of a "burning[-]type sensation" in the right hand, with paresthesias and numbness at times, together with involvement of the thumb, index and long fingers. In the section entitled "employment," Dr. Fischer indicated that appellant was right-handed, had a work-related injury and was currently employed as a food safety inspector.

Dr. Fischer's reports lacks probative value on several counts. Most significantly, he did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. Medical conclusions unsupported by rationale are of little probative value.[8] The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[9] Similarly, Dr. Fischer's notation that appellant had a work-related injury lacks probative value without an explanation. Additionally, he did not indicate that his opinion was based on a review of a complete factual and medical background of the claimant. Dr. Fischer's September 2, 2009 "return to work note" did not contain a diagnosis or an opinion as to the cause of appellant's condition. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.[10] For all of these reasons, Dr. Fischer's reports are insufficient to establish a causal relationship between a diagnosed condition and the accepted work activities.

On August 18, 2009 Dr. Phipps found that appellant had intact right-hand sensation; two-second capillaries refill; and pain over the region of the scapholunate joint and TFCC. She provided the results of an August 14, 2009 MRI scan, which revealed TFCC tears and scapholunate separation. Dr. Phipps did not, however, provide an opinion as to the cause of appellant's condition. His August 10, 2009 "referral prescription" reflected diagnoses of right wrist tendinitis (not documented); TFCC tear; right wrist disc tear (new) and closed dislocation of the right wrist mid-carpal joint. Neither report provided an opinion on the cause of appellant's condition. Therefore, they are of limited probative value and are insufficient to establish his claim.[11]

[8] *Willa M. Frazier*, 55 ECAB 379 (2004).

[9] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

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

[11] *Id.*

The remaining medical evidence of record includes patient information records and diagnostic test results. As these reports do not contain an opinion on the cause of appellant's condition, they are of limited probative value and insufficient to establish his claim.

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. The record before the Office at the time it issued its decision 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 that he sustained an occupational disease in the performance of duty causally related to factors of employment.[13]

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.

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

[13] The Board notes that appellant submitted additional evidence after the Office rendered its October 1, 2009 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995*); James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ORDER

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

Issued: September 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