United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 10-1898**
	)	**Issued: May 3, 2011**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, Huntington, WV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 13, 2010 appellant filed a timely appeal from a June 9, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 21, 2009 appellant, then a 38-year-old rating veterans service representative, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome

[1] 5 U.S.C. § 8101 *et seq.*

and right elbow epicondylitis. He became aware of his condition on July 20, 2009 and realized its relationship to his employment on July 31, 2009. Appellant did not stop work.

The Office informed appellant on September 28, 2009 that additional evidence was needed to establish his claim. It gave him 30 days to provide a statement detailing the employment activities alleged to have contributed to the injury and a comprehensive medical report containing a description of symptoms, examination results, diagnosis, treatment and a physician's reasoned opinion on causal relationship.

Appellant specified in an October 4, 2009 statement that he analyzed disability compensation claims for the employing establishment, which entailed four to six hours of typing each workday. Since July 2009, he experienced bilateral hand and wrist pain and numbness as well as intermittent right elbow pain, both of which he attributed to significant typing. Appellant indicated that his condition improved whenever he stopped this task.

In July 31, 2009 medical notes from Dr. Daria L. Lee, a Board-certified family practitioner, appellant presented bilateral wrist pain and tingling for six months and right elbow pain for one week. Dr. Lee examined him and observed right extremity tenderness and a positive Tinel's sign. She diagnosed bilateral carpal tunnel syndrome and right medial epicondylitis, commenting that appellant performed data entry at his job for 10 years. In subsequent notes dated August 15, 2009 and signed by a nurse and physician assistant, appellant complained of bilateral wrist, hand and elbow symptoms. He exhibited a positive Tinel's sign on physical examination and was diagnosed with bilateral carpal tunnel syndrome and medial epicondylitis.

By decision dated December 17, 2009, the Office denied appellant's claim, finding the medical evidence insufficient to demonstrate that employment factors caused or contributed to his condition.

Appellant requested a telephonic hearing, which was held on March 16, 2010. At the hearing, he reiterated that he typed between four and six hours a day and denied having any similar preexisting injury.

In response to a July 31, 2009 form report question regarding the cause of appellant's bilateral carpal tunnel syndrome and right medial epicondylitis, Dr. Lee checked the box indicating that they were "a direct result of … [o]ccupational injury."

In March 19, 2010 medical notes from Dr. Claudia Jo Duncan, an osteopath specializing in anesthesiology, appellant presented with bilateral hand and wrist pain symptoms since July 2009, in particular pain, stiffness and numbness radiating up to the right medial epicondyle. Dr. Duncan examined him and observed right extremity tenderness and diminished grip strength. She diagnosed bilateral wrist and right elbow pain. A March 26, 2010 nerve conduction report from Dr. Carl F. McComas, a Board-certified neurologist, revealed bilateral ulnar neuropathy and carpal tunnel syndrome, both of which were worse in the right arm.

An undated treatment record noted that appellant complained of moderate bilateral wrist pain for five months and filed a workers' compensation claim for repetitive motion injury. The physician's signature was illegible.

On June 9, 2010 the Office hearing representative affirmed the December 17, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 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]

ANALYSIS

The evidence supports that appellant analyzed disability compensation claims for the employing establishment and typed four to six hours each workday for approximately 10 years. Medical records also support that he has bilateral carpal tunnel syndrome and right elbow epicondylitis. Nevertheless, appellant did not furnish sufficient medical evidence demonstrating that his condition was caused by the described employment activity.

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

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

[4] *See S.P.*, 59 ECAB 184, 188 (2007).

[5] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *R.R.*, Docket No. 08-2010 (issued April 3, 2009).

[6] *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 3 at 352.

Dr. Lee checked a box in a July 31, 2009 insurance form stating that appellant's bilateral carpal tunnel syndrome and right medial epicondylitis were "a direct result of … [o]ccupational injury." She, however, did not provide any medical reasoning as to how his federal employment pathophysiologically caused the condition.[7] Dr. Lee's affirmative checkbox response without further explanation or rationale was of diminished probative value.[8] She did not explain how particular employment duties such as typing would cause or aggravate the diagnosed conditions. Moreover, while Dr. Lee mentioned in July 31, 2009 medical notes that appellant performed data entry for 10 years, she did not articulate that this work activity led to his bilateral carpal tunnel syndrome and right medial epicondylitis. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

The other medical documents of record failed to establish appellant's claim. Dr. Duncan's March 19, 2010 notes and Dr. McComas' March 26, 2010 nerve conduction report were of limited probative value as they did not offer an opinion on causal relationship. Notes dated August 15, 2009 and signed by a nurse and physician assistant cannot constitute competent medical evidence as neither a nurse nor a physician assistant is a "physician" as defined under the Act.[10] Finally, the undated treatment record with an illegible physician's signature lacked probative weight.[11]

Appellant argues on appeal that the June 9, 2010 decision is contrary to fact and law. As discussed above, the medical evidence did not sufficiently establish that repetitive typing at work caused bilateral carpal tunnel syndrome and right elbow epicondylitis.[12]

CONCLUSION

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

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[7] *See Ern Reynolds*, 45 ECAB 690, 696 (1994). Furthermore, Dr. Lee failed to identify repetitive typing as the contributing employment factor. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition).

[8] *See Alberta S. Williamson*, 47 ECAB 569 (1996).

[9] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[10] 5 U.S.C. § 8101(2); *Humphrey*, *supra* note 5 at 242. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[11] *See R.M.*, 59 ECAB 690, 693 (2008) (medical reports lacking proper identification do not constitute probative medical evidence).

[12] Appellant submitted new medical evidence to the Office after issuance of the June 9, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Consequently, the new evidence submitted cannot be considered by the Board for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant, however, 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 June 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board