United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
	)	**Docket No. 10-2062**
and	)	**Issued: May 17, 2011**
	)	
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Fox Valley, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from April 21 and July 28, 2010 merit decisions of the Office of Workers' Compensation Programs which denied his traumatic injury claim. 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to his December 7, 2009 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 14, 2009 appellant, then a 53-year-old clerk, filed a traumatic injury claim alleging that on December 7, 2009 he sustained injuries to his back, shoulder, arm and hand while pulling dock plates on the dock.

According to an unsigned December 14, 2009 hospital record, Dr. Jeffrey A. Zeitler, Board-certified in emergency medicine, treated appellant in the emergency room and diagnosed a thoracic strain. A December 14, 2009 work excuse slip and duty status report with an illegible signature, excused appellant from work until December 16, 2009 and diagnosed him with right thoracic strain. It was noted that he was injured on December 7, 2009 after pulling chains and popping the plates on a dock and marked "yes" that this diagnosis was due to the December 7, 2009 work event.

Appellant provided medical reports from Dr. Kaleem Khan, a Board-certified family practitioner. In a December 10, 2009 report, he complained of pain in his upper back and neck, which radiated to both arms and shoulder blades, for the past month. Appellant stated that he could not turn his neck without pain and experienced tingling and numbness on both arms when he is working. Dr. Khan noted that he worked for the employing establishment and his job, which involved, lifting, pulling, pushing and bending down, aggravated the pain in his back. He conducted a physical examination, reviewed appellant's social and medical background and diagnosed a back sprain. Dr. Khan provided a work excuse slip advising appellant to return to full duty without restrictions on December 17, 2009.

In a December 17, 2009 medical report, Dr. Khan stated that appellant was treated for back pain. Upon physical examination, he noted tenderness in appellant's upper back and spasms of the paraspinal thoracic muscles. Dr. Khan diagnosed a back sprain. In a January 12, 2010 report, he noted that appellant was seen in the hospital emergency room on January 1, 2010 for back pain and complained of upper back pain radiating to his shoulders and arms. Dr. Khan reviewed appellant's social and medical background and conducted a physical examination, which revealed spasms of the upper thoracic and cervical muscles and decreased range of motion. He diagnosed a back sprain and advised appellant to avoid bending, stooping, lifting, pushing or pulling.

In an undated statement, appellant reported that on December 7, 2009 he was hurt on the job and filled out all related documents with his supervisor. He requested copies of any documents related to the December 7, 2009 employment incident.

On March 16, 2010 the Office advised appellant that the evidence submitted was insufficient to support his claim because the medical evidence did not explain how his condition resulted from the December 7, 2009 work event. It requested that he describe whether the claim was for his shoulder and arm, his left or right side and whether he previously had any similar disabilities or symptoms. The Office also requested that appellant provide a detailed, narrative medical report from his physician, which should include a history of the injury, examination and treatments received, results of any examinations and tests, medical diagnosis and his physician's opinion, supported by medical rationale, explaining how the December 7, 2009 employment incident caused or aggravated the alleged injury.

In a January 29, 2009 handwritten record, Dr. Richard Gelband, a chiropractor, stated that appellant sustained a shoulder and neck injury at work on December 7, 2009 when he was pulling chains at work. He diagnosed cervical radiculopathy. Appellant explained that his pain was located in his upper back, shoulder, neck and arms. In progress notes dated January 29 to March 12, 2010, Dr. Gelband recorded appellant's treatments.

In a decision dated April 21, 2010, the Office denied appellant's claim on the grounds of insufficient medical evidence. It accepted that the December 7, 2009 incident occurred as alleged, but found that the medical evidence failed to provide a physician's opinion regarding how his diagnosed conditions were causally related to the accepted event.

On May 14, 2010 appellant requested a review of the written record. He submitted a November 15, 2009 report of hazard, unsafe conditions signed by appellant, which indicated that the dock area had bays that did not work properly. He also submitted a PS Form 1769 about the employment incident, which noted that he was injured on December 7, 2009 and that the emergency pull cords or stop buttons were improperly placed and inaccessible. Appellant explained that he sustained a thoracic strain and experienced pain in his shoulder, back, arm and hand when he was popping the dock plates on the dock.

On June 24, 2010 the Office advised the employing establishment that appellant requested a review of the written record and asked for any comments or relevant documents to be submitted within 20 calendar days. No response was received.

By decision dated July 28, 2010, the Office hearing representative affirmed the April 21, 2010 decision, finding that appellant failed to submit sufficient medical evidence to establish that his medical conditions were causally related to the December 7, 2009 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10]

ANALYSIS

The Office accepted that on December 7, 2009 appellant was pulling dock plates on the dock at work. Appellant was subsequently diagnosed with thoracic strain and cervical radiculopathy. The issue is whether he established that his alleged back, shoulder, arm or hand conditions resulted from the accepted December 7, 2009 employment incident.

On December 14, 2009 Dr. Zeitler treated appellant in the emergency room and diagnosed a thoracic strain. He did not provide any opinion on the cause of appellant's condition or describe the December 7, 2009 work incident. In December 10, 17, 2009 and January 12, 2010 medical reports, Dr. Khan diagnosed appellant with a back sprain but did not explain how appellant was injured or mention the December 7, 2009 incident. None of these reports relate appellant's back condition to the December 7, 2009 work event or explain how pulling plates off the dock caused his back condition. It was noted in the December 10, 2009 report, that appellant stated he experienced back and neck pain for the past month and that his employing establishment duties aggravated his pain. He failed to mention any specific work event. As the reports fail to provide an accurate history of injury describing the December 7, 2009 incident, they are not based upon a complete and factual background and are of limited probative value.[11]

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[11] *Paul Foster*, 56 ECAB 208 (2004); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

In a December 14, 2009 duty status form, it was marked "yes" that appellant's thoracic strain was due to the December 7, 2009 work event.[12] The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[13] No explanation is given for the conclusion that appellant's back condition was a result of the work event and no evidence is provided indicating that the provider is a physician. Thus, this report is insufficient to establish causal relationship.

Appellant also provided a medical report by Dr. Gelband, a chiropractor, who stated that appellant sustained a shoulder and neck injury at work on December 7, 2009 when he was pulling up chains at work and diagnosed him with cervical radiculopathy. Although Dr. Gelband provided an accurate history of injury and opinion as to causal relationship, chiropractors are defined as "physicians" only to the extent that their reimbursable services are limited to treatment consistent of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[14] The record does not contain any x-ray report or indication that Dr. Gelband ever requested that x-rays be taken. Further, he diagnosed appellant with cervical radiculopathy, not subluxation. Dr. Gelband is not considered a "physician" under the Act and his opinion does not constitute probative medical evidence.

On appeal, appellant contended that his injury was caused by following his supervisor's instructions to pop all the dock plates even though this activity was not part of his job requirements as a clerk. A claimant's belief, however, that his condition was caused by his employment is insufficient to establish causal relationship.[15] As noted, the issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[16] Appellant contended that his supervisor did not provide any information about his injury in response to the Office's request. As noted, however, it is his burden to establish all the elements of his claim.[17] Appellant did not provide probative medical opinion in this case and failed to meet his burden of proof to establish his traumatic injury claim.[18]

[12] The December 14, 2009 duty status form contained an illegible signature, which appellant alleged on appeal was completed by his supervisor.

[13] *D.D.*, 57 ECAB 734, 738 (2006); *Lucrecia, M. Nelson*, 42 ECAB 583, 594 (1991).

[14] *Paul Foster*, 56 ECAB 208 (2004); *D.S.*, Docket No. 09-860 (issued November 2, 2009); *see also* 5 U.S.C. § 8101(2).

[15] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Sharon Yonak*, 49 ECAB 250 (1997).

[16] *David Apgar*, 57 ECAB 137 (2005); *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

[17] *See Elaine Pendleton*, *supra* note 4.

[18] To the extent that medical evidence of record refer to repetitive lifting, pulling, pushing and bending down at work occurring over more than one shift, rather than a single incident and that appellant indicated in the December 10, 2009 medical report that he experienced pain for the past month, the medical evidence implicates that he may have an occupational disease claim.

CONCLUSION

The Board finds that appellant did not establish that his back, shoulder, arm and hand conditions were causally related to the December 7, 2009 employment incident.[19]

ORDER

IT IS HEREBY ORDERED THAT the July 28 and April 21 2010 decisions of the Office of Workers' Compensation Program are affirmed.

Issued: May 17, 2011
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[19] Appellant may submit additional evidence, together with a written request for reconsideration, to the Office within one year of the Board's merit decision under 5.U.S.C. § 8128.