United States Department of Labor
Employees' Compensation Appeals Board

K.H., Appellant	)	
and	)	**Docket No. 14-566**
	)	**Issued: July 16, 2014**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 15, 2014 appellant, through his attorney, filed a timely appeal from a November 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 developed bilateral knee, left shoulder, arm and hand, left side of the head and right hand conditions in the performance of duty causally related to factors of his federal employment.

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 22, 2013 appellant, then a 44-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral knee, left shoulder, arm and hand, left side of the head and right hand conditions due to factors of his federal employment, including continuous work on belts, throwing small parcels and pulling overloaded wires and hampers.

In a February 5, 2013 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated March 27, 2013, OWCP denied appellant's claim. It found that the evidence failed to establish fact of injury.

On April 2, 2013 appellant, through his attorney, requested an oral hearing. He submitted nerve conduction studies dated October 25, 2012 which verified bilateral carpal tunnel syndrome.

In a December 21, 2011 report, Dr. Michael Acurio, a Board-certified orthopedic surgeon, diagnosed medial and lateral meniscal tears in both knees with degenerative joint disease. He noted that appellant was a federal employee who had a prior history of an anterior cruciate ligament (ACL) reconstruction 21 years ago. Appellant complained of increasing pain, popping, locking and swelling which had begun to worsen over the past several months. On August 15, 2012 Dr. Acurio stated that appellant was driving back and forth every day from Texarkana to Shreveport and that riding in the car had increased his discomfort. He diagnosed medial and lateral meniscal tears in both knees with mild degenerative joint disease, right greater than left. On August 24, 2012 Dr. Acurio performed a partial medial and lateral meniscectomy with synovectomy on both knees. On August 29, 2012 he advised that appellant was status post bilateral knee arthroscopy and was doing well. Appellant was to continue off work.

In a September 12, 2012 report, Dr. Acurio noted that appellant was 19 days status post bilateral total knee arthroscopy and improving, but still had pain. Appellant needed physical therapy and was found capable of returning to light-duty work.

On October 3, 2012 Dr. Acurio diagnosed carpal tunnel in the left upper extremity and advised appellant to continue light-duty work.

In an October 17, 2012 report, Dr. Acurio indicated that appellant's left knee was doing very well and his right knee was still painful but improving. Appellant's left hand was still numb and he had a workup for a possible stroke. Dr. Acurio advised that appellant could continue light-duty work.

On October 25, 2012 Dr. Acurio diagnosed bilateral carpal tunnel and found that both wrists showed positive Phalen's and negative Tinel's signs. He scheduled a left carpal tunnel release surgery for November 2, 2012.

A telephonic hearing was held before an OWCP hearing representative on August 15, 2013.

Appellant submitted a September 18, 2013 report from Dr. Acurio, who reiterated the diagnosis of bilateral carpal tunnel syndrome. Dr. Acurio stated that appellant was previously employed at the employing establishment doing a good deal of clerking with repetitive motion and had a sudden onset of symptoms in October 2012. He opined that appellant's condition was causally related to this repetitive motion at work.

On October 9, 2013 Dr. Acurio explained that appellant had a nerve conduction study, not an electromyogram, which was positive for carpal tunnel. He stated that he "would relate this to [appellant's] repetitive motion work even though diabetes is known to cause a neuropathy," further indicating that appellant did "have an imposed diabetes." Dr. Acurio opined that this may have worsened appellant's symptoms but he did not think it was the cause.

By decision dated November 29, 2013, OWCP's hearing representative affirmed the March 27, 2013 decision. She found that appellant did not establish fact of injury as the medical evidence failed to establish the causal relationship between the diagnosed conditions and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, and that an injury[3] was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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]

[2] *Id.* at §§ 8101-8193.

[3] OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[4] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.[6]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that his federal employment caused or aggravated his bilateral knee, left shoulder, arm and hand, left side of the head or right hand conditions. Appellant submitted a statement in which he identified the factors of employment that he believed caused the condition. In order to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.[7]

Dr. Acurio diagnosed medial and lateral meniscal tears in both knees with degenerative joint disease. He performed a bilateral knee arthroscopy on August 24, 2012. Dr. Acurio stated that appellant was a federal employee with a 21-year history of an ACL reconstruction. Appellant complained of increasing pain, popping, locking and swelling which had begun to worsen. On August 15, 2012 Dr. Acurio noted that appellant was driving back and forth every day from Texarkana to Shreveport and that riding in the car increased his discomfort. He did not adequately address how riding in a motor vehicle for prolonged periods was competent to cause the diagnosed meniscal tears.

On October 25, 2012 Dr. Acurio diagnosed bilateral carpal tunnel and found that both hands showed positive Phalen's and negative Tinel's signs. He scheduled a left carpal tunnel release surgery for November 2, 2012. On September 18, 2013 Dr. Acurio indicated that appellant was previously employed at the employing establishment doing a good deal of clerking with repetitive motion and had a sudden onset in October 2012. He opined generally that appellant's condition was causally related to repetitive motion at work. On October 9, 2013 Dr. Acurio stated that appellant had a nerve conduction study which was positive for carpal tunnel. He stated that he "would relate this to [appellant's] repetitive motion work even though diabetes is known to cause a neuropathy," further indicating that appellant did "have an imposed diabetes." Dr. Acurio opined that this may have worsened appellant's symptoms but he did not think it was the cause. The Board finds that he did not provide a fully rationalized medical opinion explaining how the accepted factors of appellant's federal employment, such as continuous work on belts, throwing small parcels and pulling overloaded wires and hampers, caused or aggravated his carpal tunnel conditions. Dr. Acurio's generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how appellant's physical activity at work

[6] *See O.W., supra* note 4.

[7] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

caused or contributed to the diagnosed conditions.[8] The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.[9] Lacking thorough medical rationale on the issue of causal relationship, Dr. Acurio's reports are insufficient to establish that appellant sustained an employment-related injury.

The nerve conduction studies dated October 25, 2012 do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to his employment.[10] As such, the Board finds that he did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his claim that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that his arguments are not substantiated.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he developed bilateral knee, left shoulder, arm and hand, left side of the head and right hand conditions in the performance of duty causally related to factors of his federal employment.

[8] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[9] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *See* 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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