United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 15-1078**
	)	**Issued: December 23, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Southeastern, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 15, 2015 appellant, through counsel, filed a timely appeal of a February 18, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Appeals Act[1] (FECA) 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 established bilateral brachial plexopathy or other bilateral injuries in his upper extremities causally related to his employment, as alleged.

On appeal, appellant's counsel argued that OWCP's decision was not well rationalized and that appellant's treating physician established that appellant could not work due to his employment injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts as set forth in the Board's prior decisions are incorporated herein by reference into this decision.[2] On January 4, 2008 appellant, then a 60-year-old mail clerk, filed an occupational disease claim (Form CA-2) for bilateral brachial plexus and a shoulder condition. He alleged that his bilateral brachial plexus and shoulder condition were caused by pitching mail at the employing establishment after he returned to light-duty work following an accepted May 2005 injury.[3] In a September 28, 2009 decision, the Board found that the opinion of appellant's treating Board-certified orthopedic surgeon, Dr. Scott M. Fried, was sufficient to require further development of the medical evidence, and remanded the case to OWCP.[4] In a February 18, 2014 decision, the Board found that the record did not establish that the impartial medical examiner was selected in a fair and unbiased manner. The Board further determined that appellant should have been referred to a neurologist in addition to an orthopedic surgeon when the case was referred for an impartial medical examination.[5]

In a medical conflict statement dated April 9, 2014, OWCP noted that there was a conflict in medical opinion between the second opinion physician, Dr. Noubar Didizian, a Board-certified orthopedic surgeon, and Dr. Fried. It noted that Dr. Didizian opined that appellant's electromyogram (EMG) study performed on November 1, 2007 showed bilateral brachial plexus, but was a false positive because appellant had no right upper extremity complaints at the time. Moreover, appellant's March 10, 2010 EMG study showed subacute right brachial plexopathy, but was also invalid because he was already four months retired as of September 2009. Dr. Didizian also noted that, at the present time, there was no objective test for brachial plexopathy, which is a clinical diagnosis. OWCP noted that Dr. Fried found that appellant's EMG study did demonstrate brachial plexopathy. It referred appellant to Dr. Richard Katz, a Board-certified neurologist, for an impartial medical examination. OWCP also referred appellant to Dr. Karl Rosenfeld, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a May 8, 2014 report, Dr. Katz discussed the medical evidence of record and his examination and noted that by history the initial diagnoses referable to the May 3, 2005 incident included left shoulder sprain and strain, left bicipital tenosynovitis, left shoulder localized primary osteoarthritis, and left shoulder other affections not elsewhere classified. He noted that all of these conditions are considered resolved, based on the absence of ongoing objective related clinical signs. Dr. Katz acknowledged disparities in the objective tests among the numerous physicians of record, but noted that the relation of an EMG study to the diagnosis of brachial plexus, as is the case with virtually all clinical conditions, is established based on a combination of the history and symptoms with related reproducible objective clinical findings. He noted that

[2] Docket No. 13-1333 (issued February 18, 2014); Docket No. 09-597 (issued September 28, 2009).

[3] OWCP No. xxxxxx973. Appellant was injured on May 3, 2005 when he tried to stop a tray of mail from falling.

[4] Docket No. 09-597 (issued September 28, 2009).

[5] Docket No. 13-1333 *supra* note 2.

in the case of brachial plexopathy, at least some combination of affected muscle atrophy, weakness, reflex, or sensory disturbance was necessary for such a diagnosis. Dr. Katz noted that the EMG study, nerve conduction studies, and magnetic resonance imaging (MRI) scan serve as an adjunct. He concluded that the absence of limb atrophy, normal limb strength, deep tendon reflexes, and normal sensation, indicated that appellant had no brachial plexopathy, radiculopathy, or neuropathy.

In a June 4, 2014 report, Dr. Rosenfeld reviewed the results of his physical examination and reviewed appellant's medical records. He noted that he was in agreement with the majority of the physicians, including Dr. Didizian, and the electrodiagnostic tests at the Philadelphia VA Medical Center, which were in complete contradistinction to Dr. Fried's studies. Dr. Rosenfeld opined that there was no evidence, at least clinically, of the many diagnoses entertained by Dr. Fried. He listed his diagnoses as postacroplasty of the left shoulder, status post bicipital tendon reposition, status post acromioclavicular joint resection, impingement syndrome, acromioclavicular joint arthritis, and bicipital tendinitis. Dr. Rosenfeld opined that appellant did not suffer a nerve injury as a result of his employment to either his right or left upper extremities. He noted that the multiple complaints of appellant were probably arthritic in nature and unrelated to his job setting, and that his diabetes may likely play a part. Dr. Rosenfeld concluded that appellant did not sustain a nerve injury as a result of the accepted employment condition of either his right or left extremity.

By decision dated July 8, 2014, OWCP denied appellant's claim, finding that he did not sustain bilateral brachial plexopathy or other bilateral injuries to upper extremities causally related to factors of his federal employment.

On July 15, 2014 appellant, through counsel, requested a hearing. At the hearing held on November 24, 2014 counsel challenged the completeness of the physical examinations and reasoning in the opinions of the impartial medical examiners, Dr. Katz and Dr. Rosenfeld.

By decision dated February 18, 2015, the hearing representative affirmed the July 8, 2014 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA[6] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,[7] including that he or she is an "employee" within the meaning of FECA[8] and that he or she filed his or her claim within the applicable time limitation.[9] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability

[6] 5 U.S.C. §§ 8101-8193.

[7] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[8] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[9] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

for work, if any, was causally related to the employment injury.[10] 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.[11]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.[12]

The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the percentage of impairment using the A.M.A., *Guides*.[14] Where there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[15] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[16]

ANALYSIS

OWCP found that a conflict existed between the opinion of appellant's treating physician, Dr. Fried, and the second opinion physician, Dr. Didizian, with regard to whether

[10] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[11] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[12] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[13] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, *id*.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

[15] *K.S.*, Docket No. 12-43 (issued March 12, 2013).

[16] *Anna M. Delaney*, 53 ECAB 384 (2002).

appellant had bilateral brachial plexopathy or other bilateral injuries to his upper extremities that were causally related to the accepted factors of his federal employment. It referred appellant to Dr. Katz, a neurologist, and Dr. Rosenfeld, a Board-certified orthopedic surgeon, to resolve the conflict.[17] As noted above, a rationalized opinion from a referee physician is entitled to special weight.[18]

The Board finds that the opinions of Drs. Katz and Rosenfeld were well rationalized and represent the weight of the medical evidence. These reports establish that appellant has not sustained any bilateral brachial plexopathy or other bilateral upper extremity conditions beyond those addressed from a prior traumatic injury. Both Dr. Katz and Dr. Rosenfeld noted that there were no clinical findings establishing these diagnoses. Dr. Katz noted the disparities in the objective tests, but indicated that a diagnosis of brachial plexopathy was established based on a combination of history and symptoms shown by reproducible objective clinical findings. He noted that for a diagnosis of brachial plexopathy, at least some combination of affect muscle atrophy, weakness, reflex, or sensory disturbance was necessary. Dr. Katz noted that the objective tests, such as EMG's, nerve conduction studies, and MRI scan serve only as an adjunct to the diagnosis. He noted that in the absence of appellant evincing any signs of limb atrophy, his normal limb strength, his deep tendon reflexes and normal sensation, appellant had no brachial plexopathy, radiculopathy, or neuropathy. Similarly, Dr. Rosenfeld opined that there was no evidence, at least clinically, supporting a nerve injury as a result of the accepted employment activities. He opined that appellant's multiple complaints were probably arthritic in nature and not related to his job setting, and that appellant's diabetes may likely play a part.

The Board finds that the well-reasoned opinions of the impartial medical examiners, Dr. Katz and Dr. Rosenfeld, establish that appellant did not sustain bilateral brachial plexopathy, or any other bilateral upper extremity conditions due his employment factors beyond the previously accepted work injury. As the weight of the evidence rests with the rationalized opinions of the impartial medical examiners, appellant has not met his burden of proof to establish bilateral brachial plexopathy causally related to the accepted conditions of his federal employment.

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 established bilateral brachial plexopathy or other bilateral injuries in his upper extremities causally related to his employment, as alleged.

[17] *See C.B.*, Docket No. 15-2015 (issued July 24, 2015).

[18] *See D.V.*, Docket No. 15-402 (issued June 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 18, 2015 is affirmed.

Issued: December 23, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board