United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 07-1140**
	)	**Issued: January 3, 2008**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Pine Bluff, AR, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 21, 2007 appellant filed a timely appeal from the February 27, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of his claim. The Board also has jurisdiction to review the November 28, 2006 merit decision of the Office hearing representative, who affirmed the denial of benefits.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On September 22, 2004 appellant, then a 44-year-old food inspector, filed an occupational disease claim alleging that his neck pain and numbness was a result of his federal employment. He attributed his condition to working on new stands, which caused him to perform his duties with his arms extended far from his body. The pain in his neck would start

about an hour into his work: "Now it has progress[ed] to whenever I am sleeping, standing, or sitting this sharp pain in my neck would start and my left shoulder, arm and fingers go numb for about 20 to 30 minutes." Appellant first became aware of his condition on January 25, 2004. He stopped work on September 12, 2004.

An October 8, 2004 magnetic resonance imaging (MRI) scan of the cervical spine showed a prominent posterior disc protrusion at C5-6 resulting in cord compression and left foraminal stenosis. There was also minimal protrusion noted at C6-7 resulting in minimal cord deformity but no foraminal stenosis.

In a decision dated January 31, 2005, the Office denied appellant's claim for lack of competent medical opinion evidence.

On March 8, 2005 Dr. Ronald N. Williams, a consulting neurosurgeon, noted appellant's history: "Since late January 2004 he has had difficulty with numbness and tingling of both arms worse on the left than the right. That started when he was working daily at a job that required repetitive motions of his arms outstretched in front of him with weight." Dr. Williams reported the MRI scan findings and his findings on physical examination, and he spoke with appellant about having surgery.

On August 22, 2005 an Office hearing representative reviewed the written record and found that further development of the medical evidence was warranted. The hearing representative found that Dr. Williams' report, while not sufficient to discharge appellant's burden of proof, nonetheless raised an uncontroverted inference of causal relationship with an accurate history of injury that was consistent with appellant's statements.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Charles E. Schultz, a Board-certified neurologist, for an opinion on causal relationship. On January 2, 2006 Dr. Schultz reviewed appellant's history and complaints and his findings on physical examination. Responding to the questions the Office posed, he reported no causal relationship between appellant's physical condition and his federal employment:

> "No, there is no evidence the disc findings on MRI [scan] were caus[ed] by inspecting chickens. Patient's disc findings appear chronic in nature with a disc/osteophyte complex. This appears to be more related to degenerative disc disease and chronic arthritic changes. This finding would not have developed after an acute injury. This finding was also further noted by Dr. Ronald Williams in his note from March 8, 2005 in which he describes a small osteophyte combination at C5-6 with cord compression and left foraminal stenosis. Patient also has carpal tunnel syndrome involving his left wrist found on today's EMG [electromyogram] which patient gives no evidence of occurring on the job. There appears to be a higher incidence of carpal tunnel syndrome in patients who are diabetic. Patient has not complain[ed] of symptoms involving his right wrist which would lean more towards an occupational etiology."

In a decision dated March 15, 2006, the Office denied appellant's claim for compensation. Appellant requested an oral hearing, which was held on October 17, 2006.

Following the hearing, appellant submitted a September 26, 2006 report from Dr. Williams:

> "I first saw [appellant] on March 8, 2005. At that time he indicated [that] the difficulty he was having with the left arm started when he was working daily at a job that required repetitive motions and weight with his arms outstretched in front of him. This would be considered accumulative trauma. This history would most likely represent the proximate cause of his medical care and surgery."

In a decision dated November 28, 2006, the Office hearing representative affirmed the denial of appellant's claim. She found that the weight of the medical evidence rested with Dr. Schultz, who provided rationale to support his position: "While Dr. Williams has supported causal relationship, he has provided no medical rationale explaining how the claimant's cervical degenerative disc disease was caused or aggravated by the employment activities."

Appellant submitted a November 7, 2006 report from Dr. Williams:

> "[Appellant's] case manager always seems fairly clear cut to me. He, while at work, began having neck pain radiating into the left arm. [Appellant] was noted to have biceps weakness, which was supplied by the nerve root that is actually at the [C]5-6 level. A[n] MRI [scan] on two occasions show not only cervical spondylosis, but a combination of herniated discs. At the time of surgery, a herniated disc was found. I also had EMG and nerve conduction studies done on him which showed a C6 radiculopathy, which again fits quite nicely with the diagnosis of having a ruptured disc and foraminal stenosis on the left at C5-6. He has done pretty well since his surgery. I am not sure why there is any difference in opinion about treatment since his history, his physical findings and his surgical findings all fit fairly well for a herniated disc at C5-6."

In a decision dated February 27, 2007, the Office reviewed the merits of appellant's case and denied modification of its prior decision. The Office found that Dr. Williams failed to provide adequate medical rationale for his opinion regarding causation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an 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 in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Causal relationship is a medical issue,[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence means a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

ANALYSIS

The opinion offered by Dr. Williams, appellant's neurosurgeon, is not well reasoned. It may be that physical findings and surgical findings all fit fairly well into the picture of a herniated disc at C5-6. But that is not enough to connect the herniated disc to appellant's employment as a food inspector. Dr. Williams stated that the history fit fairly well, but he did not explain how the repetitive motion of appellant's arms, outstretched in front of him with weight, aggravated the herniated disc and caused a need for medical care and surgery. He did not discuss the pathomechanical process, the biomechanics of this aggravation. The only real connection Dr. Williams made with the employment was that appellant began having neck pain radiating into the left arm "while at work." The mere fact that a condition manifests itself or worsens during a period of federal employment, however, raises no inference of causal relationship between the two.[7]

The Board finds that Dr. Williams' opinion is not sufficiently reasoned to establish the element of causal relationship.[8] The opinion of Dr. Schultz, the second-opinion neurologist, raises more questions. He found no evidence that the disc findings on MRI scans were caused by inspecting chickens. Indeed, Dr. Schultz reported that appellant's disc findings appeared chronic in nature with a disc/osteophyte complex that appeared more related to degenerative disc disease and chronic arthritic changes, not an acute injury. The Board will affirm the denial of compensation.

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] *Steven R. Piper*, 39 ECAB 312 (1987). There is a distinction between temporal and causal relationships. The former may be necessary but not sufficient for the latter.

[8] *See Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty, as alleged. The medical opinion evidence does not establish the critical element of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2007 and November 28, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 3, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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