United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 06-1807**
	)	**Issued: February 2, 2007**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, Clearfield, UT, 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 August 2, 2006 appellant filed a timely appeal from a July 5, 2006 decision of the Office of Workers' Compensation Programs that denied his request for reconsideration and December 16, 2005 and March 27, 2006 merit decisions denying appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he developed an occupational disease while in the performance of duty; and (2) whether the Office properly denied his request for reconsideration without conducting a merit review of the claim.

FACTUAL HISTORY

On April 6, 2004 appellant, then a 56-year-old aircraft sheet metal mechanic, filed an occupational disease claim alleging that he developed Raynaud's phenomenon over the course of his employment. He attributed his condition to the use of vibrating power tools in the

performance of duty. Appellant was first aware of his condition on July 1, 2003. He retired from his federal employment on January 3, 2004.

By letter dated July 12, 2004, the Office requested additional information from appellant who did not submit any additional information or evidence.

By decision dated August 13, 2004, the Office denied his claim.

On January 20, 2005 appellant requested reconsideration of the August 13, 2004 decision. He submitted a medical article concerning "Raynaud's [p]henomenon" from the Canada Centre for Occupational Health and Safety. Appellant also submitted a case adjudication information sheet and responses to the Office's July 12, 2004 letter. He detailed the employment factors he believed contributed to his claimed condition.

In a December 16, 2005 decision, the Office denied modification of its August 13, 2004 decision on the grounds that appellant had failed to establish that he developed an occupational disease or condition in the performance of duty. The Office noted that the medical information article was not considered medical evidence and that appellant had not submitted any medical evidence in support of his claim.

On December 23, 2005 appellant again requested reconsideration. He submitted medical evidence from Dr. Matthew J. Pingree, Board-certified in physical medicine and rehabilitation, and additional reports from Dr. Rhee.

Dr. Rhee's October 2, 2003 report noted that appellant attributed complaints of "numbness and tingling in the wrists and thumbs" to the riveting and drilling he performed on the job. The report also noted that he indicated that his fingers turned blue in cold weather. Dr. Rhee diagnosed chronic bilateral wrist dysesthesias "attributed to riveting and drilling in the '70s'" and noted that "other considerations ... might include vasospastic entities such as Raynaud's phenomenon." He performed a nerve conduction study, including an electromyogram (EMG), on November 25, 2003. The study noted a history of numbness and tingling in appellant's digits but found no evidence of cervical radiculopathy.

In a February 23, 2005 report, Dr. Pingree diagnosed Raynaud's phenomenon. He noted that appellant complained that vibrations from computers and power tools, as well as cold weather, seemed to aggravate his condition. Dr. Pingree noted that appellant "does have what sounds like Raynaud's phenomenon." He also stated:

> "I am asked to make a comment in regards to the possibility that this is connected to his work. At least according to the story of what he tells me. He had none of this before he started working as a sheet metal mechanic and has had it ever since. It certainly seems that it could be related to repetitive use type of injury."

In a February 23, 2005 EMG report, Dr. Pingree noted that appellant denied any history of trauma that could explain his symptoms. In reviewing appellant's history, he noted that appellant reported having two "fairly mild" strokes that had essentially resolved. The report also noted that he had seen a podiatrist for treatment of Raynaud's phenomenon. Dr. Pingree recorded an impression of "essentially normal EMG." In a follow-up report dated April 13,

2005, Dr. Pingree noted that appellant's condition had improved, but retained his diagnosis of Raynaud's phenomenon. He repeated the same statement on causal relationship that he included in his February 23, 2005 report.

On March 27, 2006 the Office denied modification of the December 16, 2005 decision.

On April 6, 2006 appellant requested reconsideration. He stated that his Raynaud's phenomenon was not connected to his strokes and that he found that he was unable to perform his job duties because of the problems with his hands.

By decision dated July 5, 2006, the Office denied appellant's reconsideration request without conducting a merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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]

An award of compensation may not be based on surmise, conjecture, speculation or upon a claimant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.[4] To establish a causal relationship, a claimant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[5]

An occupational disease is one caused by specified employment factors occurring over a longer period than a single shift or workday.[6] To establish the factual elements of the claim, the employee must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or

[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] *Donald W. Long*, 41 ECAB 142 (1989).

[5] *Id.*

[6] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant."[7]

The medical evidence required to establish causal relationship generally is rationalized medical opinion 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.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant[9] and must be one of reasonable medical certainty[10] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet his burden of proof in establishing that his Raynaud's phenomenon was causally related to factors of his employment. The record supports that appellant did use vibrating power tools in the performance of his duties. However, it is not established that this exposure caused appellant's condition. None of the physicians provided a rationalized medical opinion relating appellant's condition to his employment duties.

The medical evidence submitted by appellant does not address causal relationship between his claimed condition and specific employment factors. Dr. Rhee's undated EMG study report does not mention Raynaud's phenomenon or employment factors. His October 2, 2003 report listed an impression of chronic bilateral wrist and finger dysesthesias, "attributed to riveting and drilling" that appellant performed while working as a sheet metal mechanic from 1971 to 1976. However, Dr. Rhee did not provide an opinion on causal relationship explaining how Raynaud's phenomenon could be caused or contributed to by using vibrating tools. He did not provide any medical rationale explaining how and why work factors would have caused or aggravated a diagnosed condition.

Dr. Pingree diagnosed Raynaud's phenomenon and stated that appellant's work with vibrating tools seemed to aggravate his condition. However, Dr. Pingree's opinion on causal relationship was speculative in nature, stating that appellant's injury was work related "at least according to the story of what he tells me" and noting that it "seems" that appellant's Raynaud's phenomenon "could be related to repetitive use type of injury." The Board has held that medical

---

[7] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

[8] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *Judy C. Rogers*, 54 ECAB 693 (2003).

opinions on causal relationship which are speculative or equivocal in nature are of limited probative value.[12] An award of compensation may not be based on surmise, conjecture of speculation, or upon appellant's own belief that his condition is causally related to factors of his employment.[13] A physician's opinion that merely restates appellant's own assessment of his condition carries limited probative weight.[14]

Dr. Rhee and Dr. Pingree provided medical reports noting appellant's medical history and their examination findings. However, neither physician rendered a rationalized medical opinion explaining the causal relationship between his specific work factors and the diagnosed condition of Raynaud's phenomenon.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128 of the Act, the Office has discretion to grant a claimant's request for reconsideration and reopen a case for merit review. Section 10.606(b)(2) of the implementing federal regulation provides guidance for the Office in using this discretion.[15] The regulations provide that the Office should grant a claimant merit review when the claimant's request for reconsideration and all documents in support thereof:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[16]

Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[17] When reviewing an Office decision denying a merit review, the function of the

[12] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in nature have little probative value); *Melvina Jackson*, 38 ECAB 443 (1987).

[13] *See Robert Broome*, 55 ECAB 339 (2004).

[14] Generally, findings on examination are needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation. *William A. Archer*, 55 ECAB 674 (2004); *see also Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[15] 20 C.F.R. § 10.606(b)(2) (1999).

[16] *Id.*

[17] 20 C.F.R. § 10.608(b) (1999).

Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[18]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly declined to reopen appellant's claim for merit review, as his request for reconsideration did not meet the above-listed criteria. In support of his request for reconsideration, he submitted only a brief statement. On April 6, 2006 appellant noted only that he had new information on the causes of his condition, that he was unable to perform his job duties because of problems with his hands and that, to his knowledge, Raynaud's phenomenon was unrelated to strokes. Appellant also stated that he had failed to mention his difficulties before retiring because he hoped his condition would improve, but it did not.

Appellant's contentions are not sufficient to reopen his case for further merit review. The issue of whether his condition is causally related to his employment is medical in nature. Appellant submitted no additional medical evidence in support of his request for reconsideration. He did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant new legal argument. Consequently, the Board finds that the Office did not abuse its discretion and properly denied merit review.

CONCLUSION

The Board finds that appellant failed to establish that his condition was causally related to factors of his employment and that the Office properly declined to reopen the claim for merit review upon appellant's April 6, 2006 request for reconsideration.

[18] *Annette Louise*, 54 ECAB 783 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 5 and March 27, 2006 and December 16, 2005 are affirmed.

Issued: February 2, 2007
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