

tunnel syndrome, bilateral cubital tunnel syndrome and cervical radiculopathy due to repetitive keyboarding at work. The Board noted his history of possible cervical radiculopathy, cervical spondylosis, cervical disc degeneration and bilateral wrist conditions beginning in 2002² and a nonoccupational motor vehicle accident in September 2003.³ The Board found that the opinion of Dr. David B. Lotman, a Board-certified orthopedic surgeon and second opinion physician, required clarification regarding causal relationship. Dr. Lotman diagnosed cervical spondylosis aggravated by work factors, noting that appellant's cervical condition had returned to baseline following the 2003 accident. The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant submitted a July 24, 2006 chart note from Dr. Paul C. Dell, an attending Board-certified orthopedic surgeon, who stated that electrodiagnostic studies showed borderline right carpal tunnel syndrome but no cervical radiculopathy. Dr. Dell performed a right median nerve release on August 24, 2006.

On May 3, 2007 the Office referred appellant, an updated statement of accepted facts and questions to Dr. Lotman for clarification of his prior report. It requested that Dr. Lotman state if appellant had cervical radiculopathy. The Office also asked him to explain whether the accepted work factors caused or aggravated the claimed carpal tunnel syndrome, cubital tunnel syndrome and cervical radiculopathy.

Dr. Lotman submitted a May 29, 2007 report reviewing appellant's updated history and statement of accepted facts. He noted that the questions posed by the Office focused on appellant's carpal and cubital tunnel syndromes. On examination, Dr. Lotman noted decreased sensation in the ulnar two fingers of the right hand, to be addressed by planned ulnar nerve surgery by Dr. Dell. He noted mid-dorsal carpal pain on the left. Dr. Lotman did not set forth any clinical findings regarding appellant's neck or cervical spine. He stated there was no electrodiagnostic evidence of cervical radiculopathy in the record. Dr. Lotman diagnosed bilateral cubital and carpal tunnel syndromes, both related to work factors. He noted that the August 24, 2006 median nerve release was directly related to carpal tunnel syndrome. Dr. Lotman did not address whether or not the claimed cervical radiculopathy was clinically present or work related.

² A January 29, 2002 electromyogram (EMG) of the upper extremities was suggestive of bilateral mild chronic C5-6 polyradiculopathies. Dr. Bruce Steinberg, an attending Board-certified orthopedic surgeon, diagnosed possible cervical radiculopathy in October and November 2002 chart notes. In a January 27, 2003 report, Dr. Michael S. Scharf, an attending Board-certified orthopedic surgeon, noted that January 2002 imaging studies showed multilevel disc degeneration from C4-6 with foraminal stenosis at C4-5. He diagnosed cervical spondylosis.

³ On September 13, 2003 appellant sustained a cervical vertebral endplate fracture at C5-6 and disc herniations at C3-4 and C4-5 in a nonoccupational motor vehicle accident. In a February 18, 2004 report, Dr. M.W. Kilgore, an attending Board-certified psychiatrist and neurologist, opined that the accident caused chronic neck and back pain, disabling appellant from work.

On June 27, 2007 the Office accepted bilateral carpal tunnel syndrome, bilateral ulnar nerve lesions and cervical spondylosis without myelopathy.⁴

By decision dated July 11, 2007, the Office denied appellant's claim for cervical radiculopathy. It found that Dr. Lotman's reports demonstrated that appellant's neck condition was due to the accepted aggravation of cervical spondylosis.

On July 16, 2007 appellant filed a claim for wage loss (Form CA-7) for intermittent work absences from October 3, 2003 to April 1, 2004 and from April 2, 2004 onward after he elected disability retirement.⁵ In a September 6, 2007 letter, the Office explained the type of evidence needed to support his claim for compensation, including a motor vehicle accident report, related medical records and prescription information. Appellant responded by September 11, 2007 letter, asserting that Dr. Lotman's opinion was sufficient to establish entitlement to compensation. He submitted physical therapy notes from November 2006 through January 2007,⁶ prescription logs from September 2003 onward and medical visit logs.

By decision dated October 16, 2007, the Office denied appellant's claim for wage loss on and after October 3, 2003. It found that Dr. Lotman's report established that the accepted conditions did not cause any period of disability. The Office further found that appellant submitted no medical evidence supporting disability from October 3, 2003 onward due to the accepted conditions. It also found that appellant was ineligible for further compensation as he received disability retirement benefits due to the September 2003 motor vehicle accident. The Office stated that it had advised him incorrectly to file a Form CA-7.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act⁷ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁸ 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.⁹

⁴ In later correspondence, the Office indicated that it accepted an aggravation of cervical spondylosis, not the underlying condition of cervical spondylosis.

⁵ Appellant also checked a box indicating that he claimed a schedule award. There is no final decision of record regarding appellant's schedule award claim. The Office noted that appellant telephoned on October 16, 2007 and explained that he had not meant to claim a schedule award.

⁶ Dr. Dell signed a few of the notes, indicating that physical therapy was medically necessary.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment 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 employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.¹⁰

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral ulnar nerve lesions and an aggravation of cervical spondylosis. Appellant also claimed cervical radiculopathy. As set forth in the prior decision,¹¹ he submitted a January 29, 2002 electromyography (EMG) study suggestive of C5-6 polyradiculopathies and October and November 2002 chart notes from Dr. Steinberg, an attending Board-certified orthopedic surgeon, diagnosing possible cervical radiculopathy. The Office denied appellant's claim for cervical radiculopathy, based on the opinion of Dr. Lotman, a Board-certified orthopedic surgeon and second opinion examiner.

In a September 27, 2005 report, Dr. Lotman diagnosed cervical spondylosis aggravated by the accepted work factors. On remand of the case, the Office requested that Dr. Lotman provide additional rationale regarding causal relationship. In his May 29, 2007 report, Dr. Lotman noted that the Office was seeking clarification concerning appellant's carpal and cubital tunnel syndromes. He did not address the Office's inquiry regarding appellant's cervical radiculopathy. There is no evidence that Dr. Lotman examined appellant's neck or cervical spine on May 29, 2007. The Board finds that Dr. Lotman's evaluation did not fully comply with the Office's request. It does not address whether appellant sustained cervical radiculopathy due to the accepted work factors. The case will be remanded to the Office for further development on this issue.

On remand of the case, the Office should request a supplemental report from Dr. Lotman addressing whether appellant has cervical radiculopathy and, if so, whether it is related to work factors. Following this and all such development deemed necessary, the Office will issue an appropriate decision in the case.

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *See also supra* note 2.

LEGAL PRECEDENT -- ISSUE 2

Under the Act, the term “disability” is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.¹² For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.¹³ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.¹⁴ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁵ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.¹⁶

ANALYSIS -- ISSUE 2

Appellant claimed wage-loss compensation for intermittent work absences beginning October 3, 2003 and for total wage loss following his April 2, 2004 disability retirement. In its October 16, 2007 decision, the Office denied the claim, finding that appellant submitted no medical evidence establishing that he was disabled for work due to the accepted conditions at any time after October 3, 2003. The Board finds, however, that appellant submitted evidence indicating he was disabled for work on and after August 24, 2006 due to accepted carpal tunnel syndrome.

Appellant underwent a right median nerve release on August 24, 2006. In his May 29, 2007 report, Dr. Lotman opined that the surgery was necessitated by appellant’s carpal tunnel syndrome, a condition later accepted by the Office. There is no evidence of record regarding the precise period appellant was disabled due to the August 24, 2006 surgery. The case requires additional development regarding the duration of such disability. Dr. Lotman should be asked to clarify this aspect of appellant’s claim.

The Board notes that, in its October 16, 2007 decision, the Office indicated that the September 13, 2003 nonoccupational motor vehicle accident was an intervening cause, rendering appellant ineligible to receive future compensation. However, Dr. Lotman opined on September 27, 2005 that appellant’s neck condition had returned to baseline following the accident. There is no medical evidence of record that the motor vehicle accident had any effect on the accepted bilateral carpal and cubital tunnel syndromes.

¹² See *Prince E. Wallace*, 52 ECAB 357 (2001).

¹³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

¹⁶ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant sustained cervical radiculopathy in the performance of duty. The Board also finds that the case is not in posture for decision regarding whether appellant was disabled for work due to the accepted conditions at any time on or after October 3, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 16 and July 11, 2007 are set aside and the case remanded to the Office for further development.

Issued: July 1, 2008
Washington, DC

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

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

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