United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant **and** **SOCIAL SECURITY ADMINISTRATION, Burlington, NC, Employer**	**Docket No. 08-988** **Issued: October 3, 2008**

Appearances:
Edward L. Daniel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 19, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 16, 2008, which affirmed the denial of his traumatic injury claim. Pursuant to 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 has met his burden of proof in establishing that he sustained an aggravation of left-sided disc herniation at C5-6 and C6-7 on July 12, 2004.

FACTUAL HISTORY

On July 3, 2007 appellant, then a 42-year-old claims representative, filed a traumatic injury claim alleging that on July 12, 2004, while he was interviewing a claimant and typing on a keyboard, he turned his neck and felt a pop followed by pain and numbness. He claimed an aggravation of a left-sided disc herniation at C5-6 and C6-7. Appellant stopped work on July 12, 2004 and returned on July 23, 2004. Brian Walker, his supervisor, noted that appellant informed

management of his condition and inability to continue working on July 12, 2004 but that management did not interpret his condition as an injury and no reports were filed. Rather, Mr. Walker noted that management treated the situation as one where appellant became ill on the job and needed to go home. The supervisor stated that appellant did not notify management of his interpretation of the July 12, 2004 event as an injury until July 3, 2007.[1]

By letter dated July 18, 2007, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work incident identified by appellant contributed to his claimed injury. It also requested that appellant address why he delayed in filing his claim. No additional evidence was received.

In a decision dated August 24, 2007, the Office denied appellant's claim as the evidence was not sufficient to establish that the incident occurred as alleged.

On December 7, 2007 appellant requested reconsideration. He noted that on July 12, 2004, while working at his station, he experienced a severe onset of pain in his neck. Appellant's manager took him to his physician for treatment and he was subsequently admitted to the hospital where he was treated for several days.

The record reveals that, on July 1, 2004, appellant was treated by Dr. Chris N. Christakos, a Board-certified family practitioner, in follow-up for an onset of neck pain and numbness in his left upper extremity. He reported that his symptoms began after using his computer. Dr. Christakos noted an essentially normal physical examination. He diagnosed blood pressure discrepancy in the upper extremities, possible vascular abnormality and left upper extremity paresthesia. Dr. Christakos stated that it was unclear whether the etiology of appellant's condition was vascular or neurologic. A July 8, 2004 magnetic resonance imaging (MRI) scan of the cervical spine revealed a small left posterolateral disc protrusion at C6-7 and a disc bulge at C5-6 with degenerative facet change. On July 12, 2004 appellant was admitted to the hospital by Dr. William O. Bell, a Board-certified neurologist, with a four to six-week history of pain in the neck, left arm and shoulder. He reported experiencing recurrent neck and left upper extremity symptoms since the beginning of July 2004. Dr. Bell noted findings of a positive Spurling's sign on the left, decreased sensation in the left C7 distribution and decreased reflexes and diagnosed left C7 radiculopathy secondary to ruptured disc at C6-7. On July 14, 2004 Dr. Bell advised that appellant was discharged after treatment of a ruptured disc at C6-7 and degenerative disc disease at C5-6. Appellant had a six-week history of neck and left arm symptoms prior to his admission. Dr. Bell stated that pain medication and steroids had resolved appellant's problems. On August 26, 2004 he noted improvement in appellant's condition with no evidence of numbness in the C7 distribution or cervical radiculopathy.

On October 4, 2007 appellant was treated by Dr. John W. Ellis, a Board-certified family practitioner, for work-related injuries to the neck and arms occurring on July 12, 2004 and November 14, 2005. He noted appellant's history of a 1986 back injury following "a jump" that

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[1] The record indicates that appellant has filed claims for separate injuries occurring on July 11, 2005, file number 06-214341 and November 14, 2005, file number 06-216318. These other claims are not before the Board on the present appeal.

caused back and left leg pain that continued intermittently. Dr. Ellis reported that appellant underwent left carpal tunnel and left cubital tunnel surgery in 1989 and, in 1998, had a whiplash injury in his neck and right carpal and cubital tunnel syndromes due to a motor vehicle accident. Appellant reported that in May and June 30, 2004, while sitting at his computer at home, he experienced a stabbing pain in his neck down his left arm. On July 12, 2004 while at his terminal at work, he experienced a sudden, severe pain in his neck down his left arm into his hands. Appellant indicated that his manager transported him to Dr. Bell's office and he was subsequently admitted to the hospital and underwent intravenous steroid injections and pain medication. He reported a similar incident occurring at work on November 14, 2005, while sitting at his desk typing, he experienced a sudden onset of pain in his neck which radiated down both arms. Dr. Bell opined that appellant's injuries were caused by performing repetitive data entry at work and sitting in a nonergonomic position. He noted that appellant conducted three to six interviews per day using a straight keyboard and was required to keep his wrists flexed due to preexisting nerve impingement. Dr. Bell noted that the onset of neck and arm pain on July 12, 2004 and November 14, 2005 occurred while appellant was working on a straight keyboard and conducting interviews that caused repetitive strains of the upper back, shoulders and neck and ultimately a micro tear of the discs and left C6, C7 and C8 nerve root impairment. He opined that the "injury and impairment arose out of an in the course of appellant's employment and was causally connected with the above described accident." Dr. Ellis advised that appellant was not disabled due to his neck injuries in Office file numbers 06-2191692 or 06-216318, rather, he was disabled due to his back injury in Office file number 06-214341, involving a July 11, 2005 injury claim.

In a decision dated January 16, 2008, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the July 12, 2004 accident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[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 the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained 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. 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]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee

[2] *Id.*

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

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.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

Appellant alleged that he sustained a cervical injury on July 12, 2004 when he twisted his neck while interviewing a claimant and typing on a keyboard. His supervisor verified that appellant informed him of the incident that day when he stopped work. The Board finds that the evidence supports that appellant turned his neck as alleged on July 12, 2004.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained an aggravation of his preexisting left sided disc herniation at C5-6 and C6-7 causally related to the July 12, 2004 incident. On July 18, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the July 12, 2004 incident caused or aggravated his claimed condition.

Appellant was treated on July 1, 2004 by Dr. Christakos for an onset of neck pain and numbness in his left upper extremity. He reported that his symptoms began after using a computer for a period of time. However, this predates the date of the claimed July 12, 2004 traumatic incident and the physician did not otherwise address how particular factors of appellant's employment caused or aggravated his preexisting cervical condition. On July 12, 2004 Dr. Bell noted that appellant presented with a four to six-week history of neck and left arm pain. He diagnosed ruptured disc at C6-7 and left C7 radiculopathy. However, Dr. Bell did not note a history of appellant turning his neck at work on July 12, 2004 nor did he explain how

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[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Id*.

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Franklin D. Haislah,* 52 ECAB 457 (2001); *Jimmie H. Duckett,* 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

appellant's employment activities caused or aggravated the diagnosed medical condition.[8] His contemporaneous reports note that appellant had a preexisting degenerative condition that was the cause of his symptoms. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted an October 4, 2007 report from Dr. Ellis, who treated him for neck and arm injuries which occurred at work on July 12, 2004 and November 14, 2005. He obtained a history, on July 12, 2004, while working at his terminal, appellant experienced a sudden, severe pain in his neck down his left arm into his hands. Dr. Ellis opined that appellant's injuries were caused by performing repetitive data entry work and sitting in a nonergonomic position. He noted that appellant conducted three to six interviews per day at work using a straight keyboard and was required to keep his wrists flexed due to preexisting nerve impingement injury, which placed increased stress on his neck, upper back and shoulders and caused a micro tear and degeneration at C6, C7 and C8. The Board finds that, although Dr. Ellis generally supported causal relationship, he did not adequately explain his opinion regarding the causal relationship between appellant's neck condition and the July 12, 2004 incident.[9] Dr. Ellis did not explain the process by which sitting at a desk and typing on a keyboard would cause the diagnosed condition and why such condition would not be due to nonwork factors or to appellant's preexisting history of back and neck conditions. His opinion also indicates that any condition caused by work occurred over a period of time which would be an occupational disease and not a traumatic injury.[10] Dr. Ellis did not render a specific opinion explaining how the traumatic event on July 12, 2004, when appellant turned his neck while typing on a keyboard, caused or aggravated a particular condition. He also noted a history of a November 14, 2005 incident at work. He concluded his report by indicating that appellant's disability was not related to the claim that is before the Board, file number 06-2191692, but was due to a July 11, 2005 injury in file number 06-2145341, a claim that is not before the Board. Therefore, Dr. Ellis' opinion is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including an MRI scan of the cervical spine, fails to provide any opinion on the causal relationship between the July 12, 2004 incident and his diagnosed condition. The evidence is not sufficient to establish appellant's claim.[11]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.[12] Causal relationship must be established by rationalized

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[8] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *See Jimmie H. Duckett*, *supra* note 7.

[10] *See* 20 C.F.R. § 10.5(q), (ee) (lists the definitions for occupational disease and traumatic injury).

[11] *See A.D.*, *supra* note 8.

[12] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a traumatic injury on July 12, 2004.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2008 and August 24, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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