

**United States Department of Labor
Employees' Compensation Appeals Board**

J.J., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, El Paso, TX, Employer**

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**Docket No. 09-1523
Issued: March 3, 2010**

Appearances:
Gordon Reiselt, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 12, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 9, 2009, which affirmed the Office's January 7, 2009 decision, which found that appellant did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on March 15, 2008.

FACTUAL HISTORY

On November 18, 2008 appellant, then a 49-year-old security screener, filed a traumatic injury claim alleging that, on March 15, 2008, he sustained an injury to his right hand/arm. He alleged that he had numbness and cramping and locking in the performance of duty. Appellant alleged that it was caused by a September 23, 2003 work injury, a ruptured bicep, which resulted

in a bone growing from where the tendon was repaired. He stopped work on May 23, 2008.¹ The employing establishment controverted the claim. It noted that appellant failed to timely inform his supervisor of the injury.

By letter dated November 20, 2008, the Office advised appellant that additional factual and medical evidence was needed. It explained that the physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information.

In a letter dated December 4, 2008, appellant's representative provided appellant's responses to the November 20, 2008 correspondence. Appellant explained that, on March 15, 2008, he reported to work. He indicated that he had an ongoing restriction that prevented him from using his right arm or hand. Appellant alleged that his supervisors found it "hard to believe" that using his right hand "once in a while" would affect his condition. He alleged that he took a class for "Travel Document Checker" and went on the floor for on-the-job training for that position. Appellant noted that he was required to stand at a podium and utilize a loop and an ultraviolet light to check boarding passes, IDs and passports. He alleged that because he had to hold the form of identification while using the loop and placing it under the ultraviolet light, he had to use his right hand. Appellant further explained that it was not possible to use his left hand only. He alleged that, after 20 minutes, his right arm became numb and locked up. Appellant noted that the only witness, was a coworker, named Gary who was shadowing his on-the-job training. However, he indicated that he did not know Gary's last name. Appellant indicated that he reported his injury to his supervisor, Cathy Webb. He also noted that she would notify other supervisors via e-mail to ensure that they were clear that appellant could not use his right arm or hand. Appellant noted that, despite his request for a copy of that e-mail from Ms. Webb, she had declined to comment.

By decision dated January 7, 2009, the Office denied appellant's claim. It found that the evidence supported that the claimed events occurred. However, there was no medical evidence that provided a diagnosis which could be connected to the events.

In a January 7, 2009 letter, received by the Office on January 12, 2009, appellant's representative provided the Office with a December 23, 2008 report from Dr. Richard S. Westbrook, a Board-certified orthopedic surgeon.

In his December 23, 2008 report, Dr. Westbrook noted appellant's history. He found that appellant had a worsening right carpal tunnel syndrome and chronic right radial neuropathy. Dr. Westbrook advised that appellant had a biceps rupture and developed a radial nerve palsy following the surgery, which had resolved. His findings included that appellant had calcification of the arm, which was most likely in the area of the biceps tendon reconstruction. Dr. Westbrook noted that it was causing nerve impingement on the radial nerve, which was causing discomfort. He recommended removing this new bone formation as there was increasing symptomatology

¹ The record reflects that appellant has a prior claim for a September 29, 2003 injury, which was accepted for rupture of the right biceps tendon and surgical repair. Claim No. xxxxxx275. That case was previously on appeal under Docket No. 09-75 (issued September 22, 2009). The Board found that the Office properly terminated appellant's compensation effective February 16, 2008 on the grounds that he refused an offer of suitable work. Claim No. xxxxxx275 is not before the Board in the present appeal.

with the carpal tunnel which was secondary to compression in the upper arm area with a double crush-type syndrome. Dr. Westbrook explained that the bony prominence caught the tendon and was painful. He diagnosed biceps tendon rupture, carpal tunnel syndrome and radial neuropathy. Dr. Westbrook recommended that the bony prominence be removed.

On January 16, 2009 appellant's representative requested a review of the written record. He noted that the report of Dr. Westbrook was not received in time, and requested that the Office review the new evidence. Appellant's representative enclosed another copy of the report, which also contained a work capacity evaluation, also dated December 23, 2008. Dr. Westbrook opined that appellant was unable to work and had not reached maximum medical improvement.

In an April 9, 2009 decision, the Office hearing representative found that the evidence established that appellant had right upper extremity conditions. However, there was no medical evidence to support that any such condition was causally related to the March 15, 2008 employment event. The hearing representative affirmed the January 7, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 Act³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁶ The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ 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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁷ *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

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.⁸

ANALYSIS

The evidence supports that the claimed job duties occurred as alleged on March 15, 2008. Therefore, the Board finds that the first component of fact of injury is established; the claimed work incident involving checking identification of travelers.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence of record does not establish that appellant injured his right hand and arm while in the performance of duty on March 15, 2008. The medical evidence contains no reasoned explanation of how the specific employment incident on March 15, 2008 caused or aggravated an injury.⁹

In his December 23, 2008 report, Dr. Westbrook noted that appellant had a worsening right carpal tunnel syndrome, and chronic right radial neuropathy. He also indicated that appellant had a biceps rupture and developed a radial nerve palsy following the surgery, which had resolved. Dr. Westbrook noted that appellant had calcification of the arm, which was most likely in the area of the biceps tendon reconstruction and advised that it was causing nerve impingement on the radial nerve, which was causing discomfort. The Board notes that he did not offer a specific rationalized opinion addressing whether any of the diagnosed conditions were caused or aggravated by particular work duties on March 15, 2008. Causal relationship must be substantiated by reasoned medical opinion evidence.¹⁰ Although Dr. Westbrook noted appellant's medical condition, he did not address how appellant's employment on March 15, 2008 caused or aggravated a diagnosed medical condition. There is no medical evidence to support that the March 15, 2008 incident caused an injury.

The Board has held that the mere 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.¹¹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹² Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

⁸ *D.E.*, 58 ECAB 448 (2007).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the March 15, 2008 work incident would have caused the claimed injury. Accordingly, he did not establish that he sustained a right arm or hand condition in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 9 and January 7, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board