United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
	)	
and	)	**Docket No. 15-0881**
	)	**Issued: August 21, 2015**
DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING SERVICE, Blakely, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2015 appellant filed a timely appeal from a January 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an occupational disease in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board noted that appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On March 5, 2014 appellant, then a 50-year-old physical science technician, filed an occupational disease claim alleging that he developed carpal tunnel in the performance of duty. He advised that lifting 50-pound bags, and blending and grinding samples caused his condition. Appellant noted that he became aware of his condition and its relation to his federal employment on February 1, 2011. He did not stop work.

In a February 28, 2011 report, Dr. O.H. Chitwood, III, a Board-certified orthopedic surgeon specializing in hand surgery, advised that appellant was experiencing numbness and tingling in his hands. He noted that appellant would wake up at night with symptoms that came and went but it bothered him primarily in the mornings. On physical examination Dr. Chitwood advised that appellant was neurovascularly intact, his elbows, wrists, and digits had full range of motion, positive Tinel's bilaterally, negative carpal tunnel compression test, and negative Phalen's maneuver. He assessed mild carpal tunnel syndrome.

In a January 10, 2014 report, Dr. Chitwood advised that appellant's symptoms were worsening and that his prescribed medication was no longer helping. He noted that he discussed surgery and steroid injections as possible treatment options. On examination Dr. Chitwood noted full range of motion, positive Tinel's at the carpal tunnel bilaterally, negative carpal tunnel compression tests, and intact motor and sensory examinations.

Appellant noted that from 1985 to 1996 he worked in a nonfederal position operating a forklift. He worked at the employing establishment from 1997 to the present testing and grinding samples.

By letter dated March 6, 2014, OWCP notified appellant that the evidence was insufficient to establish his claim. Appellant was instructed to submit a questionnaire establishing the factual element of his claim and also advised of the type of medical evidence needed to establish the claim. Also on March 6, 2014 OWCP requested that the employing establishment submit a statement from a knowledgeable supervisor regarding the assertions made by appellant.

In a February 11, 2014 statement, appellant advised that his job duties include lifting bags, grinding samples, using a pipet to measure mixtures, recordkeeping, and typing results. In a February 3, 2014 letter, appellant's former nonfederal employer advised that he worked as a forklift operator, stacker, and lead person at the bag out location from 1985 until 1996.

In a March 10, 2014 report, Dr. Chitwood advised that he was asked to determine whether appellant's condition was work related. He explained that because appellant's symptoms often occurred at night or when he was asleep it was impossible to determine whether his work duties caused his condition. Dr. Chitwood noted that appellant's condition could potentially be idiopathic carpal tunnel. He advised appellant to seek a second opinion.

In a March 17, 2014 report, Dr. Chitwood advised that appellant's symptoms were worsening. On examination he found full range of motion, no atrophy, positive Tinel's over the

carpal tunnel, and decreased sensation in the median nerve distribution bilaterally. Dr. Chitwood noted that he would order a nerve conduction study.

In a March 31, 2014 statement, an employing establishment supervisor advised that appellant performed computer-related tasks as well as working with samples. She stated that these duties could be tedious and could potentially cause tension in the wrist and hand area. The supervisor noted that no other staff member had developed problems performing these tasks. The employing establishment also provided a copy of appellant's job description.

By decision dated April 10, 2014, OWCP denied the claim because medical evidence was insufficient to establish that the diagnosed condition was causally related to factors of his employment.

In an April 18, 2014 diagnostic report, Dr. Bonnie Dungan, a Board-certified physiatrist, advised that an electromyogram (EMG) and nerve conduction testing revealed that appellant had bilateral median motor and sensory carpal tunnel, bilateral ulnar cubital tunnel syndrome, and cervical spondylosis without evidence of active radiculopathy.

In an April 28, 2014 report, Dr. Chitwood noted seeing appellant for followup of his EMG. He advised that the EMG showed changes consistent with advanced carpal tunnel syndrome. Dr. Chitwood reported that because appellant first related that his symptoms started at night then developed during the day he could not say that his condition was related to his work. He opined that appellant's carpal tunnel was idiopathic. Dr. Chitwood reiterated that it was possible that a different physician could have a differing opinion.

In a letter postmarked May 8, 2014, appellant requested an oral hearing. He also submitted an April 21, 2014 statement noting his work duties and his belief that his employment contributed to his condition. Appellant subsequently submitted photographs of his workstations with descriptions of his job duties.

In a July 25, 2014 report, Dr. David Rehak, a Board-certified orthopedic surgeon specializing in hand surgery, advised that he discussed proposed surgery with appellant. On examination he noted positive Tinel's at the cubital tunnel, mild thenar weakness, and positive Tinel's sign at the median nerve. Dr. Rehak noted that appellant worked for the employing establishment since 1997 and that his duties included lifting 50-pound bags, preparing samples, and manually squeezing a pneumatic device. He opined that, if the job duties as described by appellant were accurate, then these duties could have caused or exacerbated his current diagnosis. In an August 14, 2014 addendum, Dr. Rehak advised that he reviewed appellant's job description and pictures and opined that appellant's job caused or exacerbated his current diagnosis.

In an August 25, 2014 statement, appellant advised that his former physician Dr. Chitwood told him he would no longer see him as a patient and that he should find another physician. He noted seeing other physicians, including Dr. Rehak, and advised that he had surgery on August 7, 2014.

In the December 10, 2014 oral hearing, appellant described the work duties that he believed caused his carpal tunnel syndrome. The hearing representative explained that his claim

needed medical evidence to establish a causal relationship between the diagnosed condition and his employment. He acknowledged that Dr. Rehak opined that appellant's condition was caused or exacerbate by his work duties; however, he explained that his report needed medical reasoning to support this position. The hearing representative advised that the record would be held open for 30 days to allow for the submission of additional medical evidence.

A January 8, 2015 addendum report, signed by a medical assistant in Dr. Rehak's office, advised that appellant's job may not have caused appellant's diagnosis of carpal tunnel, but his job certainly could have exacerbated his diagnosis of carpal tunnel. It further noted that nocturnal symptoms are typical of carpal tunnel syndrome.

By decision dated January 27, 2015, an OWCP hearing representative affirmed the April 10, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish 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 FECA, that the claim was timely filed within the applicable time limitation, 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.[3] 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.[4]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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

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

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

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[6] *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

The record confirms that appellant's job involves lifting, typing, and grinding samples. However, the medical evidence of record is insufficient to establish that these duties caused or exacerbated his bilateral carpal tunnel syndrome or other conditions.

In his July 25, 2014 report, Dr. Rehak noted that appellant's duties included lifting 50-pound bags, preparing samples, and manually squeezing a pneumatic device. He opined that if the job duties as described by appellant were accurate, they could have caused or exacerbated his current diagnosis. Although Dr. Rehak described appellant's duties and found that those duties could have caused or exacerbated his condition, the Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[8] As a result, this report is insufficient to discharge appellant's burden of proof. In his August 14, 2014 addendum, Dr. Rehak stated that he had reviewed appellant's job description and pictures and more explicitly stated that appellant's job was causally related to his diagnosis. Although he provides an opinion on causation the report lacks medical rationale to support his opinion. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[9]

In his March 10, 2014 report, Dr. Chitwood explained that because appellant's symptoms often occurred when he was asleep it was impossible to determine whether his work duties caused his condition. In his April 28, 2014 report, he advised that because appellant reported that his symptoms started at night and developed during the day he could not say that his condition was related to his work. Dr. Chitwood opined that appellant's carpal tunnel was idiopathic. These reports do not support causal relationship and instead suggest that his condition was caused by factors outside of the workplace. Other reports by Dr. Chitwood do not address causal relationship.

The April 18, 2014 diagnostic report from Dr. Dungan is insufficient to establish the claim as the physician did not address causal relationship.[10]

In a January 8, 2015 addendum report a medical assistant in Dr. Rehak's office opined that appellant's job might not have caused appellant's carpal tunnel, but his job certainly could have exacerbated that condition. A medical assistant is not a physician as defined under

---

[7] *James Mack*, 43 ECAB 321 (1991).

[8] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

[9] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[10] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

FECA.[11] Thus, records from medical assistants have no probative medical weight and are insufficient to establish the claim.

On appeal appellant reiterated the work duties that he believed contributed to his condition. However, he has not submitted medical evidence explaining how the established work factors caused or contributed to the diagnosed condition. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[12] The physician must accurately describe appellant's work duties and medically explain the process by which these duties caused or aggravated his condition.[13] Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease caused by factors of his employment.

---

[11] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[12] *See supra* note 5.

[13] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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