

File Number:
HR10-D-H

RECEIVED JUN 12 2013

U.S. DEPARTMENT OF LABOR

JUN - 5 2013

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear :

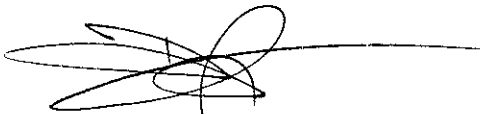
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 03/18/2013. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



David Leach
Hearing Representative

PAUL FELSER, ESQ
PO BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S.C. Code 8101 et seq. of _____, claimant; Employed by the _____ in _____, _____; Case no. _____

Hearing was held by telephone on March 18, 2013. As a result, the decision of the Office dated November 1, 2012 is hereby set aside, for the reasons set forth below:

The issue for determination is whether the evidence is sufficient to establish a work-related injury in the performance of duty in the manner alleged.

The claimant is an employee of the _____ in _____, _____ where he works as a _____.

The claimant filed form CA-1 "Notice of Traumatic Injury" on _____ alleging that he was injured at work loading and unloading mail, and driving a truck. He alleged this caused injuries to his left hand and thumb, back, and bilateral shoulders.

In a written statement, the claimant indicated he visited his physician on August 29, 2012 concerned about pain and lack of mobility in the thumb of the right hand. The physician diagnosed the condition as trigger finger, and referred the claimant to a specialist. The claimant received a cortisone shot and was told that surgery might be needed. The claimant indicated that, in addition to pain, the thumb frequently locks into position when he bends it. He felt the condition was aggravated by many years of repetitive motion at work, driving and steering the trailer that is required for work. Also, he noticed that it is painful when he pushes and releases the parking brake on the truck.

In the same written statement, the claimant also indicated he had been experiencing pain and restricted motion in his shoulders and lower back. He alleged that on September 1, 2012 he had a load to deliver to North Atlanta Station and he experienced pain unloading heavy iron cages, casters, BMC containers filled with magazines, and mail. The job requires stepping up and down into the truck, picking up and placing heavy objects on the deck, opening and closing large cumbersome dock and trailer doors. He felt this activity had caused stress on his shoulders and back. Additionally he felt that driving was negatively affecting his back, with constant bouncing up and down in the truck. On September 12, 2012, the pain and stiffness became almost unbearable,

negatively impacting his ability to perform certain work tasks and personal tasks. He visited his physician on September 14, 2012 to get some relief from what the claimant felt was an occupational disease.

Based on the claimant's description of the development of his condition, the Office administratively converted the initial claim form to a form CA-2 "Notice of Occupational Disease".¹

In support of the claim, the claimant provided numerous reports and treatment records from _____ and _____, signed by Drs. _____ and _____ showing that the claimant was treated for shoulder pain and back pain.

In a Notice of Decision dated November 1, 2012, the District Office denied the claim. It was noted that the medical evidence of record did not contain a reasoned medical opinion from a qualified physician explaining the causal relationship between the identified medical conditions and the claimant's specific work duties.

The claimant disagreed with the decision to deny his claim, and requested an appeal in the form of an Oral Hearing before the Branch of Hearings and Review.

A Hearing was held by telephone on March 18, 2013. The claimant attended the Hearing. There was no representative from the employing agency, present to observe the proceedings.

The claimant indicated his job title is _____. He testified that when he was injured at work, he filed both form CA-1 and CA-2. He did not understand which was the correct form to file. He noted that, although he filed two forms, only one claim was created, and he received only one file number. He alleged that he might have experienced both a traumatic injury and an occupational disease.

The claimant provided testimony, describing two separate work injuries that occurred on the same date. He explained he was working at _____ on a Saturday, working with heavy mail. He was loading the mail into his truck, pushing a heavy wire cage uphill. His back and his arm began hurting. The cage rolled back and pinned him up against the wall of the trailer with his left arm. His arm and back started hurting. He finished loading what he could. He was backing his truck up, when he jammed his thumb turning the wheel. When

¹ Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.

he got home, he was still hurting. He arranged to see his doctor at _____, who had prepared a narrative report for the claim. He saw a doctor for his thumb, and had to make another appointment to see a different doctor for his shoulders. He had an injection into his thumb. He also told his doctor that his back was hurting. He received steroid shots into both shoulders and into his back. He had x-rays and MRI's done. He noted that Dr. _____ is his shoulder doctor, but he does not treat the back. That is why the claimant was sent to Dr. _____ for his back. The claimant stated he is still treating with these physicians.

The claimant alleged that he also had pain from years of working at the same job. That was why he was not sure whether to file form CA-1 or CA-2, so he filed both forms. He described his overall work duties, loading and unloading mail containers into and out of the trailer, and driving the truck to different stations. He indicated that when driving, he has to get in and out of the truck and trailer. He also is constantly turning the steering wheel. Frequently on the job he is pushing or pulling heavy mail containers.

The claimant noted that, on appeal, he had provided new narrative reports from his physicians, and had also provided a new written statement of his own, with additional description of how his injury had occurred.

Following the conclusion of the Hearing, copies of the transcript were released to the claimant and the employer, and their comments were invited. As of this date, no additional evidence has been received from the employer.

The claimant provided additional medical evidence, and a written statement.

In his written statement of February 20, 2013, the claimant explained that when he first filed his claim, he did not explain very well how the injury occurred. He indicated that his right thumb was hit and jammed against the steering wheel while backing his tractor-trailer into the dock. Both shoulders were injured when he was pushing a heavy iron wire cage loaded with books and magazines weighing 800 to 1000 pounds up the hill in a trailer. He felt a pop in his shoulder and stopped pushing the cage. It started to roll back on him, hitting his left shoulder into the wall of the trailer. He started to feel pain in both shoulders and lower back. He then went to his doctor who referred him to back and shoulder specialists. He alleged he was still in pain due to these injuries.

In a narrative report dated December 18, 2012, Dr. _____ indicated the claimant first presented on September 5, 2012 with complaints of right thumb clicking and popping, reporting a two-week history without inciting trauma, but voicing his belief it was related to his work duties. He was examined by a physician's assistant, given a diagnosis of trigger thumb and treated with a corticosteroid injection. Dr. _____ noted that the claimant returned on October 5, 2012 with bilateral shoulder pain and ongoing right thumb complaints

At that time, he reported two separate episodes – jamming his thumb on the steering wheel of his truck, and feeling a pop in his shoulders pushing a heavy crate. Examination of the thumb at that time showed a persistent nodule in the region of the A1 pulley, but no evidence of triggering. The shoulder exam demonstrated significant discomfort with a limited ability to participate with the various exam maneuvers. His diagnosis at that time was disorder of the bursae or tendons of the shoulder. The claimant received bilateral steroid injections and physical therapy. The claimant returned on November 12, 2012 for examination. The thumb was benign. The shoulder exam was improved, but showed tenderness and weakness on the left. An MRI was ordered to rule out rotator cuff tear. The MRI demonstrated a small full-thickness supraspinatus tear, with additional supraspinatus tendinopathy, and possible partial thickness injury to the infraspinatus. Dr. [redacted] noted there was also evidence of proximal biceps pathology and AC joint degeneration, consistent with prior x-rays and clinical examination. Dr. [redacted] opined that it was likely the claimant had some pre-existing impingement/tendinopathy that progressed to a full thickness tear during his traumatic episode.

Dr. [redacted] opined that the claimant's work activities, including heavy manual labor, contributed to the shoulder pathology over time, and recently, the claimant had an acute worsening of the shoulder. Dr. [redacted] noted that imaging of the right shoulder had been deferred due to severity of left-sided symptoms. Dr. [redacted] recommended surgery for the left shoulder and biceps. Also, he provided modified work restrictions for the left upper extremity.

Despite apparent inconsistencies in the history provided by the claimant with regard to the right thumb complaints, Dr. [redacted] indicated that it was his belief that the claimant's work activities also contributed to the right thumb condition, as trigger digits can result from either repetitive use, trauma or post-traumatic local swelling.

A separate narrative letter from Dr. [redacted] discussed the claimant's back injury. He noted he saw the claimant on October 4, October 18 and November 26, 2012. The claimant was diagnosed with lumbar spondylosis and possible spondyloarthropathy, based on plain x-ray findings showing degenerative disk changes with facet arthropathy, and reports of pain. He explained this was an inflammatory type of arthritis that affects the spine. He felt it was noteworthy to state the claimant has psoriasis and 25% of patients with that condition develop spondyloarthropathy. He felt that further investigation was necessary to make a complete diagnosis of the claimant's spine. Dr. [redacted] noted the claimant reported that his back pain started when he was performing his regular job on August 29, 2012, pushing items onto a truck working at the post office. Dr. [redacted] indicated this type of activity can aggravate the underlying degenerative changes, as noted. Dr. [redacted] stated it was his opinion that the claimant experienced a work-related aggravation of the pre-existing degenerative changes of the spine; and possibly

an aggravation of the underlying inflammatory-type arthritis associated with psoriasis. If the claimant was found to have psoriatic arthritis, it is a progressive-type condition. The work-related aggravation would have to be seen as temporary.

In a follow-up note of January 2, 2013, Dr. Langenbeck indicated the claimant had not been seen since November 26, 2012 and his current status was unknown. He recommended that modified work restrictions would still be appropriate for the claimant. He felt the claimant would benefit from facet injections. He noted it was difficult to separate the work-related aggravation from the pre-existing condition.

Based on my careful consideration of the evidence of record at this time, I find it is not sufficient to warrant acceptance of the claim; however, it is sufficient to warrant additional development of the evidence before a decision on the claim can be made.

In the current case, the claimant filed a claim for a traumatic injury. Based on the claimant's initial description of the injury, the Office properly converted the claim to an occupational disease.

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) a 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 a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's 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 upon 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.²

The claimant has provided a sufficiently detailed description of his federal work duties. The employer did not dispute the claimant's description of these duties. The claimant's description of his work duties appears consistent with the known

² *Victor J. Woodhams*, 41 ECAB ____ (Docket No. 89-1717 issued December 20, 1989); *Frederick H. Coward, Jr.*, 41 ECAB ____ (Docket No. 90-0016 issued July 17, 1990).

duties of a . On this basis, the claimant's description of his work duties can be accepted as factual.

The claimant explained that he experienced pain unloading heavy iron cages, casters, containers filled with magazines, and mail, and pushing these containers in and out of the trailer. The claimant also explained that his job requires stepping up and down into the truck, picking up and placing heavy objects on the deck, and opening and closing large cumbersome dock and trailer doors. The claimant alleged this activity had caused stress on his shoulders and back. Additionally he felt that driving had affected his back, due to constant bouncing up and down while driving the truck. He also alleged that driving the truck, including use of the steering wheel, injured his thumb. The claimant felt that his repetitive work duties, as noted, had caused injuries to his shoulders, back and thumb.

At the time of initial adjudication of the claim, the Office found the medical evidence was insufficient to establish a causal relationship between the claimed condition and the claimant's work duties. The medical reports of file contained no reasoned explanation as to how the claimed medical conditions were related to federal work duties.

On appeal, the claimant provided additional medical evidence in support of the claim: detailed, narrative reports from Drs. and , as noted, specifically addressing the relationship between the claimed conditions and the claimant's federal work. Dr. opined that the claimant's heavy manual labor type duties aggravated the pre-existing left shoulder condition, and his repetitive work aggravated his right trigger thumb. Dr. opined the claimant's heavy work aggravated underlying degenerative or arthritis conditions of the lumbar spine

Where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. However, where the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect, which the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.³

The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two. The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation.

³ *James Bain, Jr*, 39 ECAB ___ (1988); *Richard T. DeVito*, 39 ECAB ___ (1988); *Gaeten F. Valenza*, 39 ECAB ___ (1988)

Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment conditions that are alleged to have caused or exacerbated a disabling condition.⁴ The rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his or her employment caused disability during or subsequent to appellant's employment.⁵

In this case, the rationale provided by the attending physicians falls short of meeting this standard, required to accept the claim. However, these detailed, unequivocal and unopposed medical opinions supporting that the claimant's underlying conditions were aggravated by his heavy repetitive work cannot be simply disregarded. Further development of the claim is warranted, before a decision on the claim can be reached.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶

Although none of the treating physician's reports of record contain detailed rationale sufficient to warrant acceptance of the claim, these opinions constitute substantial, uncontradicted evidence in support of the claim. The claimant's attending physicians indicated that the claimant's work duties aggravated the medical conditions that were identified in their reports. There is no opposing medical evidence in the record. The current medical evidence of record is sufficient to require further development of the case record by the Office.⁷

The Office should prepare Statement of Accepted Facts (SOAF) containing a factual background of the claim, including a detailed description of the claimant's work duties. The claimant should then be referred for a directed "second opinion" medical specialist for examination, to provide a rationalized opinion as to whether the claimant sustained a work-related injury as alleged.⁸

⁴ *Patricia Bolleter*, 40 ECAB ___ (1988) [88-0472 issued December 30]

⁵ *Newton Ky Chung*, 39 ECAB ___ (1988).

⁶ *Horace L. Fuller*, 53 ECAB ___ (Docket No. 02-1181, issued September 6, 2002).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁸ *Robert J. Pitchford* ___ ECAB Docket 03-1415, Issued August 8, 2003

The second opinion physician should receive the SOAF and copies of the medical evidence from the case file record, to use as a basis for medical examination and opinion.

The second opinion physician should be instructed to provide a diagnosis for all relevant medial conditions affecting the claimant's shoulders, lumbar spine and right thumb. An explanation should be provided as to whether the claimant's federal work duties, as outlined in the SOAF, caused or contributed to the development of any of these medical conditions, whether by direct causation, or in some way affecting an underlying condition.

The second opinion physician should be advised that it is not necessary for the work duties, alone, to have caused the claimant's condition, in order for the condition to be considered work-related. The work needs only to have contributed to it. Where a person has a preexisting condition that is not disabling, but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable. It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relation. If the medical evidence reveals that an employment factor contributes in any way to the employee's condition, such condition would be considered employment related for purposes of compensation under the Act.⁹

If the second opinion physician finds employment duties caused an aggravation of a pre-existing medical condition, this should be fully explained. The nature and extent of the work-related aggravation should be described. The rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by the employment as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his or her employment caused disability during or subsequent to appellant's employment.¹⁰

If the second opinion physician finds that the claimant's injuries are not related to work, a reasoned medical opinion must be provided to explain the basis for this conclusion. Any evidence of record that supports this opinion must be identified and its relevance discussed.

⁹ *Arnold Gustafson*, 41 ECAB ___ (Docket No. 89-0438 issued October 30, 1989).

¹⁰ *Newton Ky Chung*, 39 ECAB ___ (1988).

Once the second opinion report is received, the Office should undertake any additional development of the evidence such as it finds warranted, and issue a *de novo* decision on whether the evidence is sufficient to establish a compensable occupational disease, affecting the shoulders, low back, and/or right thumb.

Although the claimant has alleged on appeal that he sustained an additional traumatic injury to his shoulders, low back and right thumb, I find the evidence is not sufficient to support the claimant sustained a traumatic injury of this nature. The claimant did not report a traumatic injury when he filed his claim, on his form CA-1 or in his initial written statement of record. Also, according to the medical reports of file, he did not report any traumatic injury to his attending physicians at the time of his initial medical treatment. Only on appeal did the claimant provide testimony and a new written statement, alleging that he sustained two separate traumatic injuries to his shoulders, low back and right thumb, both on the same date. In light of the inconsistencies in the evidence, I find it is not sufficient to support the claimant sustained traumatic injuries, as alleged.

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has the burden of establishing the occurrence of the alleged injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An employee has not met this burden where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹¹

Discrepancies, inconsistencies and contradictions in a claimant's statements describing an injury create serious doubt that the injury was sustained in the performance of duty.¹²

As such, under the current claim, the only issue that will be considered is whether the claimant's repetitive work duties prior to August 29, 2012 caused an injury to his shoulders, low back, or right thumb.

For the reasons set forth above, the decision dated November 1, 2012 is hereby set aside, and the case file is remanded to the District Office for actions consistent with this decision.

¹¹ *Eric J. Koke*, 43 ECAB ____ (1992) [Docket No. 91-1546, issued March 31].

¹² *Mary Joan Coppolino*, 43 ECAB ____ (1992) [Docket No. 92-0205, issued July 29].

Dated: JUN - 5 2013
Washington, D.C.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

DAVID S. LEACH
Hearing Representative
for
Director, Office of Workers'
Compensation Programs