United States Department of Labor
Employees' Compensation Appeals Board

ERROL V. HINES, Appellant	)	
and	)	**Docket No. 04-2078**
	)	**Issued: January 14, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Honolulu, HI, Employer	)	

Appearances:
Errol V. Hines, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On August 20, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' July 30, 2004 merit decision, finding that he did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury while in the performance of duty on February 16, 2004.

FACTUAL HISTORY

On February 16, 2004 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that on that date he experienced sharp pain in his right shoulder while picking up oversized parcels. The Office received treatment notes from Brent Lewandowski, a physical therapist, and Theresa Walsh, a physician's assistant, indicating that appellant had myofascial trigger point of the right trapezius.

By letter dated June 17, 2004, the Office advised appellant to submit, within 30 days, a detailed narrative report from his attending physician, including an opinion on the relationship of the diagnosed conditions to his federal employment. The Office received a duplicate copy, as well as, new treatment notes from Mr. Lewandowski reiterating his diagnosis of myofascial trigger point of the right trapezius. On February 18, 2004 Dr. Robert Sussman, Board-certified in family practice and occupational medicine, requested authorization for appellant's continued physical therapy and steroid injection for a diagnosis of bursitis of the right shoulder. In a July 15, 2004 letter, the Office responded that authorization could not be provided at that time since appellant's case had not yet been adjudicated.

By decision dated July 30, 2004, the Office denied appellant's claim, finding that, although the evidence of record was sufficient to establish that the February 16, 2004 incident occurred, the medical evidence was insufficient to establish that he sustained an injury causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of 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 actually experienced the employment incident or exposure, which is alleged to have occurred.[4] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *Elaine Pendleton*, *supra* note 2*; see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[6] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[7]

ANALYSIS

In this case, there is no dispute that on February 16, 2004 appellant was picking up oversized parcels while working at the employing establishment when he experienced pain in his right shoulder. The Board finds, however, that the medical evidence of record is insufficient to establish that this incident caused an injury. The treatment notes from Mr. Lewandowski and Ms. Walsh do not constitute medical evidence as to whether appellant sustained an injury caused by the February 16, 2004 employment incident because neither a physical therapist nor a physician's assistant is a physician as defined under the Act.[8] Dr. Sussman did not address the causal relationship between the diagnosis of bursitis of the right shoulder and the February 16, 2004 employment incident. As there is no rationalized medical evidence of record establishing that appellant sustained a right shoulder injury in the performance of duty as alleged, he has failed to meet his burden of proof.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that he sustained an injury caused by the February 16, 2004 employment incident, the Board finds that he has failed to satisfy his burden of proof in this case.

[5] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined).

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Charles E. Evans*, 48 ECAB 692 (1997).

[8] 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act); *Ricky S. Storms*, 52 ECAB 349, 353 (2001) (a physician's assistant is not a physician under the Act).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member