

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

R.B., Appellant

and

**U.S. POSTAL SERVICE, CHARDON POST
OFFICE, Chardon, OH, Employer**

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**Docket No. 06-1739
Issued: January 22, 2007**

Appearances:

*Alan S. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 29, 2005 and June 19, 2006 merit decisions denying his occupational disease claim. 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 has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment

FACTUAL HISTORY

On July 5, 2005 appellant, a 58-year old rural mail carrier, filed an occupational disease claim form (CA-2) alleging that he developed severe pain in both shoulders as a result of constant horizontal and vertical reaching motions in the employing establishment and on his route. In an accompanying statement, appellant indicated that he underwent rotator cuff surgery in February 2002. He began experiencing pain six months after he returned to work in

June 2002, but he “put up with it.” When his symptoms appeared again in 2004, he was told that his pain was caused by bursitis and scar tissue. Appellant stated that he first became aware that his condition was related to his employment in February 2004.

On September 12, 2005 the Office informed appellant that the evidence submitted was insufficient to establish his claim and requested detailed information regarding the activities he believed contributed to his condition and a comprehensive medical report with a diagnosis, results of examinations and tests, and a doctor’s opinion with medical reasons on the cause of his condition.

In response to the Office’s request, appellant submitted numerous reports from Dr. Syed Akhtar-Zaidi, a Board-certified physiatrist. In a report dated January 17, 2005, Dr. Akhtar-Zaidi stated that appellant had been complaining of pain since he underwent arthroscopic surgery two and one half years before. He indicated that appellant’s reports of pain radiating up to his neck and down his arms at a level of seven to eight on a scale of ten. Dr. Akhtar-Zaidi noted that appellant’s work as a postman involved “quite a bit of twisting and turning of his neck and shoulders on a consistent basis everyday.” On January 31, 2005 he provided diagnoses of lumbar radiculitis and bilateral shoulder pain. On examination Dr. Akhtar-Zaidi found moderate tenderness in the shoulders bilaterally, especially over the subacromial space. Range of motion was good, but abduction was painful. On February 28, 2005 Dr. Akhtar-Zaidi provided a diagnosis of right shoulder pain. On April 18, 2005 he diagnosed neck and shoulder pain and bilateral suprascapular neuritis and recommended bilateral suprascapular nerve blocks. On June 13, 2005 Dr. Akhtar-Zaidi noted appellant’s ongoing chronic bilateral shoulder pain, more so on the right. On June 20, 2005 he reported that appellant underwent “RF lessening of the right suprascapular nerve” with an excellent result. In a report dated November 7, 2005, Dr. Akhtar-Zaidi provided a diagnosis of shoulder sprain/strain. He stated that appellant was in so much pain that he could hardly move his shoulder.

Appellant also submitted a report dated May 1, 2002 from Dr. Christopher J. Walsh, a Board-certified orthopedic surgeon, who stated that appellant had been diagnosed with a right rotator cuff tear and subacromial impingement. He subsequently underwent surgery for a repair of a right rotator cuff tear and an acromioplasty. In a November 1, 2005 letter to the Office, appellant stated that he should have filed a claim for his 2002 rotator cuff tear, because he distinctly remembered reaching for a mailbox in a snowdrift and feeling something pull in his shoulder.

By decision dated November 29, 2005, the Office denied appellant’s claim on the grounds that the medical evidence did not demonstrate that his claimed medical condition was causally related to established work-related events. The Office found that appellant had failed to provide any medical opinion on the issue of causal relationship.

On December 3, 2005 appellant, through his representative, requested an oral hearing. In support of his request, appellant submitted a January 5, 2006 report from Dr. R. Denison Stewart, a Board-certified orthopedic surgeon, who stated that he and his former partner, Dr. Walsh, had treated appellant for bilateral shoulder conditions since 2002. In 2002, Dr. Walsh performed an extensive repair of the right rotator cuff. Dr. Stewart began treatment for low back pain beginning December 7, 2004. At that time, x-rays revealed the presence of a degenerative

spondylolisthesis of L5 on S1, which he opined “could be the cause of ongoing low back pain that would limit appellant’s ability to perform his regular duties with the post office.” Appellant was also treated for left shoulder pain. Although x-rays were, “by and large,” within normal limits, Dr. Stewart “suspected” that appellant had a chronic bursitis in the left shoulder.

At the April 20, 2006 hearing, appellant testified that he injured his shoulders as a result of constant reaching in the course of his job as a rural mail carrier. He stated that he had been treated for low back pain by a chiropractor, Dr. Roediger.¹ Appellant’s representative indicated that the x-ray taken by the chiropractor did not reveal a subluxation. He conceded that Dr. Roediger’s report would not establish a causal relationship between appellant’s shoulder condition and factors of his employment.

By decision dated June 19, 2006, the Office hearing representative affirmed the November 29, 2005 decision, finding that the medical evidence of record failed to establish that appellant’s bilateral shoulder condition was causally related to accepted work-related activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged³ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician’s well-reasoned opinion on how the established factor of employment caused or contributed to the claimant’s diagnosed condition. To be of probative value, 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

¹ The Board notes that the record does not contain a report by Dr. Roediger.

² 5 U.S.C. §§ 8101-8193.

³ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). “When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.” *See also* 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (“occupational disease or illness” and “traumatic injury” defined).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

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 An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁷

ANALYSIS

The Office accepted that the reaching activities described by appellant occurred in the performance of duty. The issue at hand, therefore, is whether the medical evidence submitted is sufficient to establish that his diagnosed condition is causally related to the employment factors identified. The Board finds that appellant has submitted insufficient medical evidence to establish that his diagnosed medical condition was caused or aggravated by factors of his federal employment.

Medical evidence of record consists of reports from Drs. Walsh, Stewart and Akhtar-Zaidi. Dr. Walsh's May 1, 2002 report reflects that appellant underwent surgery for a repair of a right rotator cuff tear and an acromioplasty in 2002. However, Dr. Walsh did not provide any opinion on the cause of appellant's condition. Therefore, his report lacks probative value. Dr. Stewart's January 5, 2006 report also fails to support appellant's claim. He stated that he and Dr. Walsh had treated appellant for bilateral shoulder conditions since 2002, when Dr. Walsh performed an extensive repair of the right rotator cuff, and that he "suspected" that appellant had a chronic bursitis in his left shoulder. However, Dr. Stewart failed to offer any opinion as to the cause of appellant's diagnosed shoulder condition. Therefore, his report also lacks probative value.⁸ Appellant submitted numerous reports from Dr. Akhtar-Zaidi, who provided diagnoses of lumbar radiculitis; bilateral suprascapular neuritis; and shoulder sprain/strain. Dr. Akhtar-Zaidi noted that appellant's work as a postman involved "quite a bit of twisting and turning of his neck and shoulders on a consistent basis everyday." However, none of his reports contained a definitive opinion as to the cause of appellant's condition, nor did he describe the physiological process whereby any specific duties performed by appellant caused or contributed to his condition. Therefore, his reports lack probative value. The Board notes that appellant's current shoulder condition could be related to his 2002 rotator cuff tear or to another traumatic event not related to his employment. As the medical evidence of record does not contain a rationalized medical opinion explaining how work-related incidents or factors caused or aggravated any medical condition or disability, appellant has failed to satisfy his burden of proof.

Appellant expressed his belief that his condition resulted from repetitive work activities. The Board has held that the mere fact that a condition manifests itself during a period of

⁶ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

⁸ *See Leslie C. Moore*, *supra* note 6.

employment does not raise an inference that there is a causal relationship between the two.⁹ 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.¹⁰ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by work-related activities is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

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 June 19, 2006 and November 29, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 22, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*