United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 06-2059**
	)	**Issued: March 9, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Paul H. Kullen, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 3, 2003 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 20, 2003 denying his claim for compensation.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant established an injury in the performance of duty causally related to factors of his federal employment.

[1] In a letter dated August 24, 2006, appellant's attorney filed an affidavit with the Board indicating that he timely filed an appeal on July 3, 2003, that the document was not returned to him by the employing establishment, that when he received no response or decision he requested assistance from the Secretary of the Department of Labor and that he subsequently received notice that this Board could not locate the appeal. Appellant's attorney enclosed a copy of the July 3, 2003 request for review with his affidavit. By letter dated September 11, 2006, the Board processed appellant's appeal and assigned it Docket No. 06-2059.

FACTUAL HISTORY

On October 3, 2000 appellant, then a 44-year-old clerk, filed an occupational disease claim alleging that he sustained torn tendons as a result of his federal employment. He alleged that, while casing letters near the end of the day, his shoulder and hips would begin to hurt. The employing establishment controverted the claim.

In a note dated October 20, 2000, Dr. Alan J. Drucker, a Board-certified internist, stated that appellant had a rotator cuff tear and should be off work from October 20 to November 30, 2000. In a return to work form dated November 30, 2000, Dr. Drucker indicated that appellant could return to work on December 4, 2000 with restrictions of no lifting in excess of 20 pounds and no above the shoulder reaching.

By letter dated January 8, 2001, the Office requested that appellant submit further information. Appellant did not submit a timely reply.

By decision dated February 9, 2001, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish his shoulder or hip conditions were caused by an employment factor.

By letter received by the Office on February 15, 2001, appellant noted that his work involved repetitive movement of his shoulders, arms and hands. He indicated that, while working on the flat sorter, he began to experience pain. In a September 26, 2000 report, Dr. Drucker indicated that appellant had bilateral tears of the supraspinatus and infraspinatus tendons which he believed were job related.

By letter dated November 16, 2001, appellant, through his attorney, requested reconsideration. He submitted a report indicating that on August 10, 2001 appellant underwent a right shoulder arthroscopy, acromioplasty and partial coracoacromial ligament release by Dr. Patricia Kolowich, a Board-certified orthopedic surgeon.

Appellant submitted numerous reports by physicians at Henry Ford Hospital for treatment of bilateral rotator cuff injuries and fibromyalgia syndrome. In a June 26, 2001 report, Dr. Kolowich noted appellant's history of an injury occurring in March 2000 when he was pulling baskets of mail that weighed about 50 pounds off the line and dropping them onto the floor. Since that time, appellant experienced neck pain and occasional pain in the left shoulder.

In an August 29, 2001 report, Dr. Drucker noted that appellant has been under his care with a history of fibromyalgia as well as history of neck injury stemming from an automobile accident in 1991. He reviewed appellant's history stating that in March 2000, while working as a sorter at the employing establishment, appellant sustained an injury which resulted in severe pain to both shoulders. Since that time, appellant experienced intermittent symptoms of pain which prevented him from working. Ultrasounds of both shoulders obtained in September 2000 revealed bilateral partial thickness tears of the rotator cuffs. Dr. Drucker deferred to Dr. Kolowich for an opinion concerning the relationship between appellant's employment and his rotator cuff tears, as she was an orthopedic surgeon. However, he noted, "It appears to me that the partial thickness tears of the rotator cuffs were the result of his job activities.

By decision dated February 12, 2002, the Office found that the evidence submitted on reconsideration was insufficient to warrant modification of the February 9, 2001 decision.

On April 10, 2002 appellant filed a request for reconsideration. He submitted a March 19, 2002 report from Dr. Kolowich, who stated, "[Appellant] has been followed for his right shoulder. He had surgery [August 10, 2001]. This was a work-related injury as described in his claim note from June 26, 2001."

By decision dated April 24, 2002, the Office denied modification of the February 12, 2002 decision.

On August 9, 2002 appellant requested reconsideration. He submitted a statement indicating that he had experienced pain since March and saw a physician at that time. Appellant noted that his job involved casing mail and that on several occasions while he keyed flats, the tubs would get full and had to be removed. The tubs weighed more than 30 pounds and he slid the tubs down a short rail and then onto the floor. When the tubs derailed it would cause his arm to yank. He also had sharp pain when he would reach for high cases. The supervisor of the flat sorting machines operation at the employing establishment confirmed appellant's description of his duties.

In a decision dated November 7, 2002, the Office denied modification of the April 24, 2002 decision, finding that the medical evidence was insufficient to establish that appellant's condition was causally related to the stated factors of his federal employment. This decision was reissued by the Office on May 20, 2003 in order to protect appellant's rights on appeal.[2]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] 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.[5]

[2] Pursuant to an affidavit by appellant's attorney, on December 5, 2002 he filed an appeal with this Board which was docketed as No. 03-468. However, the Office noted on May 20, 2003 that it had sent the Board the record concerning appellant's traumatic injury case and not the record concerning his occupational disease case. Accordingly, the Board remanded the case for reconstruction of the record and the issuance of an appropriate decision in order to protect appellant's appeal rights. On May 20, 2003 the Office resissued its November 7, 2002 decision.

[3] 5 U.S.C. § 8101 *et seq.*

[4] *Joe D. Cameron,* 41 ECAB 150 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

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

To establish that the 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 diagnosed condition is causally related to the employment factors identified by the claimant.[6] The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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.[7]

ANALYSIS

Appellant established the work factors to which he attributed his condition. However, he failed to establish that these factors caused or contributed to his shoulder condition by submitting rationalized medical evidence relating his shoulder rotator cuff tears to factors of his federal employment. In a September 26, 2000 report, Dr. Drucker stated that appellant's tears of the supraspinatus and infraspinatus tendons were job related. In a report dated August 29, 2001, Dr. Drucker indicated that the partial thickness tears of the rotator cuffs "appears" to be related to appellant's job activities. He also noted in this report that appellant alleged that he experienced pain in March 2000 while working as a sorter at the employing establishment. Dr. Drucker referred appellant to Dr. Kolowich, who was in a better position to render an opinion regarding his injury. Although Dr. Drucker indicated that he believed that the tears to the rotator cuffs were the result of appellant's job activities, he did not provide sufficient explanation by addressing how appellant's duties would cause or contribute to the rotator cuff tears. To establish his claim, appellant must submit evidence establishing that a diagnosed condition is causally related to the specific work factors. Dr. Drucker's opinion is speculative. He qualified his opinion with the terms "believe" and "appears to me" which indicate the speculative nature of his opinion. Dr. Kolowich briefly stated that appellant's injury to his right shoulder was related to his work duties, stating that appellant's work duties included pulling baskets of mail on the line and dropping them on the floor. However, Dr. Kolowich did not provide a rationalized medical opinion explaining how appellant's work duties would cause or contribute to the injury to both shoulders. Furthermore, appellant claimed that his injury occurred around May 2, 2000 as a result of casing letters causing his shoulders to hurt. Dr. Kolowich listed appellant's history of injury as occurring in March 2000 when he was pulling baskets of mail that weighed 50 pounds. This discrepancy casts doubt on Dr. Kolowich's opinion, as the medical history of injury is not consistent.

[6] *Solomen Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Id.*

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[8] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[9] Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof to establish that he sustained an injury due to the noted factors of his federal employment.

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2003 is affirmed.

Issued: March 9, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[8] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[9] *Calvin E. King*, 51 ECAB 394 (2000).