

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

R.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
San Diego, CA, Employer)

**Docket No. 08-103
Issued: May 5, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 28, 2007 decision which denied his claim for compensation. Under 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 met his burden of proof in establishing that he developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 18, 2007 appellant, then a 52-year-old letter carrier filed an occupational disease claim alleging that he developed pain in the neck, left shoulder and left thumb caused by factors of his federal employment. He first became aware of his condition and related it to his employment on August 13, 2006. Appellant did not stop work.

In an August 14, 2007 work status report, Dr. Robert Cabico, Board-certified in internal medicine, diagnosed sprains of the neck, shoulder and arm and indicated that appellant could return to work on that date with restrictions for approximately three days. He also diagnosed neck and left shoulder pain and prescribed restrictions. In another report also dated August 14, 2007, Dr. Cabico recorded that appellant related that a “pain goes down my neck both travel over my left shoulder right to my arm to my thumb causing numbness.” He diagnosed avulsion fracture of the left olecranon, sprain of the shoulder and arm and sprain of the neck. Dr. Cabico advised that appellant could return to work on August 14, 2007 with restrictions comprised of no mail carrying, no use of the left hand, and no reaching above the shoulder with the left hand. He continued to submit reports advising that appellant could work with restrictions.

In a letter dated August 15, 2007, Deb Lehman, a health and resource management specialist at the employing establishment, controverted the claim. She alleged that appellant did not identify a mechanism of injury or provide medical rationale to support a work-related injury.

Dr. Cabico advised that he could return to work on August 24, 2007. In an August 24, 2007 duty status report, he recommended modified restrictions. The record reflects that appellant accepted a modified assignment on August 27, 2007.

By letter dated August 27, 2007, the Office requested that appellant submit additional factual and medical evidence. Appellant was asked to describe the employment activities which he believed contributed to his condition. The Office also requested that he submit medical evidence from his treating physician which contained an explanation regarding the cause of appellant’s condition. Appellant was allotted 30 days to submit the requested evidence. The Office subsequently received physical therapy and unsigned reports.

In a statement dated September 6, 2007, appellant described his duties as a letter carrier. He alleged that he was required to carry a mailbag on his left arm and used his left hand to carry small letter-sized mail. Appellant indicated that the right shoulder was used to carry heavy packages and additional flats in a satchel. He stated that he often turned his head to the left as part of his duties. Appellant alleged that he performed these repetitive activities for the employing establishment since September 17, 2001.

In a September 8, 2007 report, Dr. Stephen Leibham, Board-certified in internal medicine, diagnosed sprain of the neck and sprain of the shoulder and arm. He advised returning to work with restrictions.

In reports dated September 10 and 11, 2007, Dr. Cabico noted that appellant developed neck and left shoulder pain which radiated to the left arm while casing mail. He opined that appellant could perform modified work.

A September 10, 2007 computerized tomography (CT) scan revealed uncovertebral joint hypertrophy with associated foraminal stenosis at C6-7 and more prominent stenosis at C5-6 with foraminal narrowing on the right side.¹

¹ The physician’s signature cannot be discerned from the record.

By decision dated September 28, 2007, the Office denied appellant's claim for compensation as the medical evidence failed to demonstrate that the claimed condition was causally related to the accepted work activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his 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 the 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. 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.²

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) 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 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.³

ANALYSIS

It is not disputed that appellant's duties as a letter carrier include repetitive activities using his hands and neck while carrying a mailbag and heavy packages in a satchel. However, he has not submitted sufficient medical evidence to support that his neck and shoulder conditions are causally related to his job duties. On August 27, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated the claimed conditions.

² Gary J. Watling, 52 ECAB 357 (2001).

³ Solomon Polen, 51 ECAB 341 (2000).

Appellant submitted several reports from Dr. Cabico. On August 14, 2007 he diagnosed a sprain of the neck, shoulder and arm as well as neck and left shoulder pain and indicated that appellant could return to work on that date with restrictions. In another report also dated August 14, 2007, Dr. Cabico diagnosed avulsion fracture of the left olecranon, sprain of the shoulder and arm and sprain of the neck. He submitted several reports advising that appellant could work with restrictions. However, Dr. Cabico did not provide a rationalized opinion addressing the causal relationship between appellant's conditions and specific factors of his employment.⁴ In reports dated September 10 and 11, 2007, he noted that appellant developed neck and left shoulder pain which radiated to the left arm while casing mail. Dr. Cabico opined that appellant could perform modified work. The Board has held that a diagnosis of "pain" does not constitute the basis for the payment of compensation.⁵ This medical evidence is deficient as Dr. Cabico did not explain how appellant's work as a letter carrier would cause or contribute to the diagnosed conditions.

In a September 8, 2007 report, Dr. Leibham, diagnosed sprain of the neck, shoulder and arm. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁶ The other medical evidence of record is similarly insufficient because it does not contain any opinion regarding the cause of any diagnosed conditions.

The Office also received physical therapy reports. However, the Board has held that physical therapy notes are not considered medical evidence as a physical therapist is not a physician under the Act.⁷ Therefore, these reports are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁸ Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.⁹

⁴ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁵ *John L. Clark*, 32 ECAB 1618 (1981).

⁶ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ On appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c).

CONCLUSION

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet his burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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