

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

F.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 10-863
Issued: December 16, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 17, 2010 appellant filed a timely appeal from a December 14, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On July 23, 2008 appellant, then a 67-year-old city letter carrier, filed an occupational disease claim alleging that he developed right shoulder syndrome while performing his duties at work. He became aware of his condition and realized it was causally related to his work duties on May 24, 2004. Appellant retired on May 31, 2008.

On August 4, 2008 the Office advised appellant of the type of factual and medical evidence needed to establish his claim.

In an undated statement appellant indicated that while carrying a mail satchel on his right shoulder on May 24, 2004, which included 18 to 20 feet of mail, marketing ads and parcel post accountables, he heard a thump in his right shoulder which burned. He finished his mail route and experienced difficulties using his right arm and his shoulder became swollen. Appellant indicated that there were no carriers or supervisors at the employing establishment and he stopped at a medical center on the way home from work. He indicated that management failed to provide him with a mail cart or light duty after his injury. Appellant indicated that his work duties continued to aggravate his condition although he did not miss any work.

A partially legible May 24, 2004 report noted appellant's treatment in an emergency room for chronic and acute shoulder and clavicle strain. He was prescribed Motrin. Appellant submitted a return to work slip from Dr. Richard Kay, a Board-certified internist, dated October 18, 2006 who treated him for hypertension and muscle cramps and advised that he was disabled from work from October 17 to 23, 2006. In an April 6, 2007 return to work slip Dr. Kay treated appellant for right shoulder syndrome and advised that he was disabled from March 31 to April 10, 2007 and referred him to an orthopedist. In a May 3, 2007 return to work slip, he repeated the diagnosis and stated that appellant remained disabled. In an August 14, 2007 report, Dr. Kay diagnosed right shoulder syndrome. He noted appellant's condition commenced on May 30, 2007 and advised that appellant could not work full time for three to four months. On October 31, 2007 Dr. Kay noted appellant's treatment for right shoulder impingement and advised he would be disabled from work until November 30, 2007. He recommended the use of a cart at work.

On September 17, 2008 the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

On October 6, 2008 appellant requested an oral hearing which was held on September 23, 2009. He submitted a September 24, 2001 hospital admission where he was treated for a liver mass and hepatitis C and underwent a liver biopsy. Appellant submitted laboratory results from August 19, 2002 to February 9, 2004. On February 12, 2003 he was treated by Dr. Kenneth Ho, a Board-certified internist, for a tongue lesion and who diagnosed hypertension and chronic hepatitis C. On December 6, 2003 appellant was treated by Dr. Spencer Wenger, a Board-certified internist, for neck pain in the trapezius on the left shoulder and who diagnosed hypertension, chronic hepatitis C and strain. On February 9, 2004 he was treated by Dr. Tanya Arvan, a Board-certified internist, for a routine follow up and who diagnosed hypertension and chronic hepatitis C. On May 24, 2004 appellant was treated in the emergency room for a prominent right distal clavicle with skin discoloration. He reported working as a mail carrier for 15 years. Appellant was diagnosed with a chronic and acute right shoulder condition. He submitted a radiology request for the right shoulder dated March 30, 2007 and an employing establishment adjustment certificate dated May 12, 2007. On October 15, 2009 appellant was treated by Dr. Kay who noted first treating him on March 29, 2007 for right shoulder complaints. He reported lifting a mailbag of 60 to 70 pounds and injuring his right shoulder. Dr. Kay noted x-rays of the right shoulder revealed acromioclavicular (AC) arthritis but no acute bony abnormalities. He treated appellant with muscle relaxants without success and referred him to a pain management specialist and for physical therapy.

In a decision dated December 14, 2009, the hearing representative affirmed the January 15, 2004 Office decision as modified. The hearing representative found that appellant failed to establish that he sustained an injury at the time, place and in the manner alleged or that he sustained a medical condition in connection with the reported injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 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.¹

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 claimant.

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 their subsequent course of action. An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.²

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

¹ Gary J. Watling, 52 ECAB 357 (2001).

² V.F., 58 ECAB 321 (2007).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

ANALYSIS

The Office denied appellant's claim, in part, on the grounds that he failed to establish that the events occurred as alleged. In the present case, the evidence supports that on May 24, 2004 appellant was performing his duties as a city mail carrier that included prolonged walking and carrying a satchel on his shoulders containing a large volume of mail. He also advised that his continuing duties aggravated his condition. This account of events was not specifically disputed by the employing establishment. The Board finds that appellant's account is consistent with the surrounding facts and circumstances and thus he has established that he performed his letter carrier duties on May 24, 2004 and thereafter.

It is also not disputed that appellant was diagnosed with right shoulder syndrome, chronic and acute shoulder clavicle strain, right shoulder impingement and AC arthritis. He has not submitted sufficient medical evidence, though, to establish that his diagnosed right shoulder syndrome, chronic and acute shoulder clavicle strain, right shoulder impingement and AC arthritis were causally related to the specific employment factors or conditions. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed conditions.

Appellant submitted an October 18, 2006 return to work slip from Dr. Kay, who treated him for hypertension and muscle cramps and who noted he was disabled from October 17 to 23, 2006. On April 6, 2007 Dr. Kay treated appellant for right shoulder syndrome and advised appellant was disabled from March 31 to April 10, 2007. Similarly, in a May 3 and October 31, 2007 return to work slips he treated appellant for right shoulder syndrome and impingement and noted that appellant was disabled from April 30 to May 11, 2007. These notes fail to provide a history of injury⁴ or offer an opinion on how appellant's employment could have caused or aggravated his condition.⁵ These reports are of little probative value and do not establish his occupational illness claim. Other reports from Dr. Kay included an August 14, 2007 diagnosis of right shoulder syndrome. Appellant reported his condition was work related. Likewise, in an October 15, 2009 report, Dr. Kay noted appellant's right shoulder condition began on March 29, 2007 after lifting a 60- to 70-pound mailbag. He is merely repeating the history of injury as reported by appellant without providing his own opinion as to whether his condition was work related. To the extent that Dr. Kay is providing his own opinion, he failed to provide a rationalized opinion explaining why any diagnosed conditions were caused or aggravated by particular factors of employment. He did not explain the reasons appellant's duties on and after May 24, 2004 would cause or aggravate a particular right shoulder condition.

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

⁵ *A.D.*, 58 ECAB 149 (2006) (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).

Appellant also submitted medical evidence, including reports from Drs. Ho, Wenger and Arvan, that predated the onset of his claimed condition. These reports noted his treatment for other conditions and did not implicate his employment as a cause for any medical conditions. These reports are insufficient to establish appellant's claim. Likewise, a May 24, 2004 emergency room report is not completely legible and does not address whether appellant's employment caused any diagnosed condition.⁶ Other medical reports of record are insufficient to establish the claim as these reports did not contain a physician's opinion addressing whether appellant's employment activities had caused or aggravated a diagnosed medical condition.

Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

On appeal, appellant's asserts that he has submitted sufficient evidence to establish his claim.⁷ He contends that he was refused the proper paperwork to present to his physicians to establish his claim and was improperly placed in absent without leave status. However, the Office advised appellant of the type of medical evidence needed to establish his claim. The Board notes that it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.⁸ As explained, appellant has not met his burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

⁶ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8102(2). Reports lacking proper identification do not constitute probative medical evidence. *C.B.*, 61 ECAB ____ (Docket No. 09-2027, issued May 12, 2010).

⁷ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

⁸ *See Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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