

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT VANDERPOOL and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

*Docket No. 01-770; Submitted on the Record;
Issued November 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that his right shoulder and right hip conditions are causally related to his federal employment.

On September 12, 2000 appellant, then a 42-year-old letter carrier, filed a claim for occupational disease (Form CA-2) alleging that his right shoulder and right hip conditions were caused or aggravated by his federal employment.

In a narrative statement dated September 30, 2000, appellant indicated that his conditions have been going on for the past five years, since he was rear ended in 1995. He noted that, in the week of September 11, 2000, the pain became greater and he was not able to lift his arm or turn his hip during the casing of his route. Appellant advised that he attributed his problems to working long hours; casing large amounts of mail daily; casing on a case that was not safe to work on; the use of a LLV; and long hours of driving and turning of steering wheel.

By decision dated December 15, 2000, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was insufficient to establish the claim.

The Board finds that appellant has not established that he sustained an injury causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed; 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.⁴ Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.⁵

In this case, appellant has failed to meet his burden of proof in establishing through medical evidence that his condition was caused by employment factors. Causal relationship is a medical issue, which requires a physician to explain how or why he or she believes that the accident, incident, or work factor caused or affected the physical condition and the objective findings that support that conclusion.

In a report dated September 14, 2000, Dr. Stephen Imrie, an orthopedic surgeon, noted that appellant believed his current problem began as a result of an automobile accident in 1995 and his symptoms have gotten consistently worse since then. Results of appellant's physical examination were provided along with the results of a recent x-ray. An impression of pain, right shoulder and calcific tendinitis, right shoulder was provided. Modified work along with a pendulum exercise program was suggested. Dr. Imrie, however, offered no opinion regarding the cause of appellant's condition. As Dr. Imrie failed to identify the specific work factors contributing to appellant's condition and provide an opinion supported by medical rationale as to whether and how such work factors caused, aggravated, precipitated or accelerated appellant's condition, his opinion lacks probative value in establishing appellant's claim.

In a report dated September 26, 2000, an orthopedic surgeon, with an unreadable signature, stated that appellant had a left impingement with decreased range of motion. Appellant was restricted from use of his right upper extremity and referred to physical therapy. As no opinion was rendered regarding the causal relationship of appellant's condition, this report lacks probative value.

In reports dated November 7, December 7 and December 13, 2000, Dr. Sovathana Khuong, a chiropractor, noted that appellant reported right shoulder and low back pain from repetitive casing and long hours of driving and turning of steering wheel. Diagnosis provided

³ *David M. Ibarra*, 48 ECAB 218 (1996).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

were right rotator cuff tendinitis/right calcific tendinitis of right supraspinatus; right bicipital tendinitis; and chronic lumbosacral strain with secondary myofascitis. A right shoulder magnetic resonance imaging scan performed on December 5, 2000 indicated right supraspinatus calcific tendinitis and tendinosis which correlated with examination findings. Dr. Khuong noted that appellant responded slowly to the treatment rendered and authorization was needed to refer appellant for possible steroid injections. Appellant was to remain in manual therapy and rehabilitation for the right shoulder. Dr. Khuong opined that appellant was totally disabled.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that the term “physician ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”⁶ Therefore a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by an x-ray. In this case, the evidence did not identify subluxation as demonstrated by x-ray to exist and thus the report of Dr. Khuong diagnosing upper extremity problems has no probative medical value.

From the medical evidence submitted, there is no medical opinion supported by medical rationale as to whether and how such work factors caused, aggravated, precipitated or accelerated appellant’s condition. Accordingly, the Board finds that appellant has not met his burden of proof and the Office properly denied his claim.

⁶ 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383 (1994).

The decision of the Office of Workers' Compensation Programs dated December 15, 2000 is affirmed.⁷

Dated, Washington, DC
November 29, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁷ The Board notes that this case record contains evidence which was submitted subsequent to the Office's December 15, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).