

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

MERLE SMITH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lowell, AR, Employer**

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**Docket No. 04-35
Issued: March 9, 2004**

Appearances:
Merle Smith, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 29, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated January 21 and July 1, 2003. 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 has established that he sustained a right rotator cuff tear in the performance of duty.

FACTUAL HISTORY

On December 2, 2002 appellant, then a 59-year-old distribution clerk, filed an occupational disease claim indicating that he sustained a right rotator cuff tear, causally related to the use of his right arm for mail distribution for a prolonged period. He indicated that he first became aware of the condition on January 1, 2000 when he realized that it was related to his employment.

By letter dated December 16, 2002, the Office advised appellant that the information submitted was not sufficient to establish his claim and requested that he describe, in detail, the work factors that he implicated in causing his condition and provide a medical report addressing causal relation.

Appellant provided an undated medical report from Dr. B. Raye Mitchell, Jr., an orthopedic surgeon of the spine, which noted that he treated appellant on six occasions during 2002. Dr. Mitchell stated that appellant had a right rotator cuff tear and had been injected twice with steroids. He noted that the history that appellant gave him was of experiencing shoulder pain and right-sided head and neck pain for about two years prior to his beginning treatment and that he related it to his job of sorting mail right handed. Dr. Mitchell noted that appellant's magnetic resonance imaging (MRI) scan showed evidence of a rotator cuff tear, some degeneration of his acromioclavicular (AC) joint and some evidence of impingement.

Appellant also submitted an undated statement in which he stated that he had difficulty for the preceding two to three years with his right arm and right shoulder, across the shoulder, up the right side of his neck and pain behind his right eye resulting in debilitating headaches. He stated that he suspected this condition was more than likely caused by the fact that he had been distributing mail, exclusively with his right arm, for the past 21 years. Appellant claimed that he carried mail for two years and had been a clerk for the past 19 years. He stated that he still did mail distribution and also did mark-up where he used his right arm to stamp mail in a repetitive motion.

In a January 5, 2003 statement, appellant detailed his right arm usage and stated that, after distributing mail on Saturday, he would have to stay in bed until Sunday and sometimes missed work on Monday. He claimed that his problems started on a consistent basis about three years before and would culminate in debilitating headaches and neck and shoulder pain so severe he had to seek emergency room treatment.

In an undated statement, the postmaster noted that appellant performed a wide variety of tasks which included manual distribution of mail, window operations and administrative functions. He noted that appellant spent on average two hours per week sorting unit distribution with the remainder of his time performing window and administrative duties.

Dr. Mitchell also submitted a January 7, 2003 letter in which he stated that appellant's injury "seems to have occurred at work. It is an injury that is commonly associated with repetitive motion at or above shoulder level." Dr. Mitchell also stated: "I think the rotator cuff tear portion of his injury is an acute injury and I think it did occur with a causal relationship to his work environment."

By decision dated January 21, 2003, the Office denied appellant's claim finding that there was no objective medical evidence to support that he sustained a work-related injury.

On January 31, 2003 appellant requested a review of the written record. No new evidence was submitted.

By decision dated July 1, 2003, the Office hearing representative affirmed the January 21, 2003 decision finding that appellant had not provided a well-reasoned medical report to establish an employment-related condition. The hearing representative found that Dr. Mitchell speculated as to the cause of appellant's condition and merely repeated what appellant had told him. She found that Dr. Mitchell did not have an accurate understanding of appellant's current work factors in that he did not do a lot of mail distribution any more and that stamping mail was not done above shoulder level.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that he 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

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;³ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ 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.⁵ The medical evidence required to establish causal relationship, generally, is 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,⁶ must be one of reasonable medical certainty⁷ 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.⁸

¹ 5 U.S.C. § 8101 *et seq.*

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁵ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

Moreover, the opinion of a lay person cannot be considered to be probative medical evidence.⁹ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.¹⁰

ANALYSIS

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

In this case, appellant has alleged that his general duties using his right arm over the preceding 21 years caused his torn rotator cuff condition. He implicated distributing mail with his right arm and doing mark-up, stamping mail with his right hand, as causing his condition. Appellant did not implicate any specific action or incident. However, Dr. Mitchell stated, on January 7, 2003, that he thought that appellant's rotator cuff tear portion of his injury was an acute injury that occurred with a causal relationship to his work environment. Unfortunately no acute incident of injury was ever reported by appellant. This opinion, therefore, does not support appellant's occupational injury claim.

In an undated medical report, Dr. Mitchell also repeated appellant's version of his history on shoulder pain and right-sided head and neck pain for the preceding two to three years and he noted that appellant related it to the use of his right hand in the course of his employment. This, therefore, is not an opinion as it is devoid of a supporting rationalized medical opinion based on a complete and accurate factual and medical background establishing that the implicated factors of employment caused or materially adversely affected the claimed condition.¹¹ Instead it is a recitation of appellant's version of the facts and has limited probative value.¹² Dr. Mitchell diagnosed a right rotator cuff tear, some degeneration of his acromioclavicular joint and some evidence of impingement, but he did not discuss causation or relate these conditions to specific factors of appellant's employment. Therefore, this opinion is insufficient to support appellant's claim.

As no further medical evidence was submitted, appellant has failed to establish his occupational disease claim.

⁹ See *Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

¹⁰ See generally *Charles E. Evans*, 48 ECAB 692 (1997); *Patrick H. Hall*, 48 ECAB 514 (1997).

¹¹ See *Margaret A. Donnelley*, 15 ECAB 40 (1963).

¹² An opinion of a lay person cannot be considered to be probative medical evidence. See *Sheila Arbour (Victor E. Arbour)* 43 ECAB 779 (1992). See also *Margaret A. Donnelley*, *supra* note 11 at 43. (Appellant's unsupported assertion of causal relationship is not proof of the fact).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right rotator cuff tear in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 21 and July 1, 2003 are hereby affirmed.

Issued: March 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member