

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

JOHN D. REYNOLDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 05-1676
Issued: November 18, 2005**

Appearances:
John D. Reynolds, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On August 11, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 26, 2005, that denied his claim for a right shoulder condition. Pursuant to 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 sustained a right shoulder condition in the performance of duty.

FACTUAL HISTORY

On March 15, 2005 appellant, a 55-year-old service clerk, filed an occupational injury claim alleging that his torn rotator cuff and frayed tendons of his right shoulder were caused or aggravated by the repetitive duties he performed on a daily basis. Appellant advised that he first realized his right shoulder condition was caused or aggravated by his employment on

February 21, 2005.¹ Appellant stopped work on January 14, 2005 and underwent arthroscopic repair of a right rotator cuff tear involving the supraspinatus tendon on January 17, 2005. He returned to full duty on March 22, 2005.

Appellant submitted physical therapy treatment notes dated January 21 through February 9, 2005, the operative report of January 17, 2005 and medical reports of Dr. Paul E. Perry, a Board-certified orthopedic surgeon, dated December 14, 2004 through February 21, 2005. In his December 14, 2004 report, Dr. Perry provided an impression of “small full thickness right rotator cuff tear with AC arthropathy.” In a February 21, 2005 report, Dr. Perry opined that appellant’s repetitive upper extremity use at work contributed in a large part to his full thickness right rotator cuff tear and the subsequent arthroscopic surgery. He stated that his opinion was based on his knowledge of appellant’s work duties and the repetitive intensity with which appellant’s upper extremity symptoms occurred.

In a letter dated March 23, 2005, the employing establishment controverted appellant’s claim alleging that at the same time appellant first became aware of his problem, he was doing remodeling work at his home.

In an April 1, 2005 letter, the Office advised appellant that the evidence received was insufficient to establish his claim. The Office advised appellant of the type of medical and factual evidence needed to establish his claim and afforded him 30 days in which to provide such information.

Appellant submitted responses to the Office’s questions and also submitted medical evidence, which included a December 3, 2004 magnetic resonance imaging (MRI) scan of the right shoulder, disability slips from a Dr. Scott and Dr. Perry and medical treatment reports from Dr. Eric Gourieux, a Board-certified family practitioner, dated April 14, 2004 to January 26, 2005. In an April 6, 2005 report, Dr. Gourieux noted that, when he first saw appellant on July 21, 2004 for shoulder pain, appellant could not recall any particular event or injury, the pain had come on insidiously and no etiology was determined at that point. Dr. Gourieux described appellant’s treatment, noting that an MRI scan revealed a full thickness tear of the anterior aspect of the supraspinatus tendon and a small focal area of partial undersurface tear. Dr. Gourieux opined that although the etiology of the tear could not be determined 100 percent, it was oftentimes an insidious type pain that comes on with repetitive movements. He opined that it was “quite possible and maybe even more probable that the injury was caused by repetitive movements that [appellant] is required to do at the [employing establishment]. This is determined by the fact that he does no other repetitive movements such as hobbies that may have brought on these symptoms.”

By decision dated May 26, 2005, the Office accepted that appellant was exposed to repetitious work factors as alleged but denied appellant’s claim on the grounds that the medical evidence did not establish that his diagnosed medical conditions were caused or aggravated by factors of his employment.

¹ The Office later changed the date of injury to July 21, 2004, the date appellant first sought medical treatment for his shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ 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.⁴

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) 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 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, 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, 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.⁵

ANALYSIS

It is not disputed that appellant's job requires shoulder movement and that he had a torn right rotator cuff for which he underwent surgery. However, the Office denied appellant's claim as the medical evidence submitted was insufficient to establish that appellant's diagnosed condition was causally related to his accepted exposure.

Appellant's own statements concerning his right shoulder condition cannot establish causal relationship. As noted above, to establish causal relationship between employment factors and a diagnosed condition, appellant must submit rationalized medical evidence regarding the cause of the claimed condition. Appellant was advised of the deficiency in his claim on April 1, 2005 and afforded the opportunity to provide supportive evidence; however, sufficient medical

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁵ *Id.*

evidence addressing whether appellant's right shoulder condition arose out of his work factors has not been submitted.

In his December 14, 2004 report, Dr. Perry provided a diagnosis of "small full thickness right rotator cuff tear with AC arthropathy" but failed to provide an opinion on causal relationship. In his February 21, 2005 report, Dr. Perry opined that appellant's work activities of repetitive upper extremity use contributed in a large part to his full thickness right rotator cuff tear and the subsequent arthroscopic surgery. Although Dr. Perry stated that his opinion was based on his knowledge of appellant's work duties and the repetitive intensity with which appellant's upper extremity symptoms have occurred, he failed to specifically relate any particular repetitive duties performed by appellant or provide a medically reasoned explanation as to how any such duties would cause or aggravate a right shoulder condition. Due to these deficiencies, these reports are insufficient to establish that appellant's right shoulder condition was causally related to factors of his employment.

In his April 6, 2005 report, Dr. Gourieux stated that the etiology of appellant's right shoulder condition could not be determined 100 percent but noted that appellant's pain had come on insidiously and that an insidious pain oftentimes comes on with repetitive movements. Although Dr. Gourieux opined that appellant's right shoulder condition was "quite possible and maybe even more probable" caused by the repetitive movements that appellant was required to do at work as appellant did not perform any other repetitive movements, Dr. Gourieux offered only speculative support for causal relationship. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.⁶ Therefore, Dr. Gourieux's report is insufficient to meet appellant's burden.

Appellant did not submit any other medical evidence from a physician that addressed the cause of his right shoulder condition.

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.⁷ To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, explains how these employment factors caused or aggravated appellant's diagnosed condition and present medical rational in support of his opinion.⁸ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

⁶ See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990).

⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁸ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

CONCLUSION

The Board finds that appellant has not established that his diagnosed shoulder condition was caused or aggravated by factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 26, 2005 is affirmed.

Issued: November 18, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board