

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

S.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Knoxville, TN, Employer**

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**Docket No. 07-1314
Issued: October 17, 2007**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 16, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 13, 2007 which denied modification of the Office's November 1, 2006 decision finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On September 2, 2006 appellant, then a 58-year-old city mail carrier, filed an occupational disease claim alleging that he sustained a shoulder condition in his right upper arm and shoulder in the performance of duty. He alleged that he was "[t]wisting and turning [his] upper arms and shoulders while casing mail. Arms are always in a raised position while casing mail, the pain increases while working. Pain is less severe when not working." He also indicated that he had a torn rotator cuff. Appellant alleged that he first became aware of the injury and its relation to his work on August 30, 2006. He stopped work on September 14, 2006.

The employing establishment alleged that appellant's shoulder condition was related to a motorcycle accident that he had at the end of May. Appellant's supervisor also indicated that he used sick leave from May 24 to 29, 2006 and, thereafter, his shoulders started hurting in June.

In a September 2, 2006 statement, appellant alleged that he had pain in the back of his shoulders and arms since June 2004, which had progressively worsened. He also alleged that he dropped his motorcycle in May 2006 and his pain while casing mail increased. Appellant alleged that casing mail required repeatedly raising the right hand and arm at the shoulder joint to shoulder level or higher and then moving it to one side or the other while they were raised. He also alleged that delivering mail required repeatedly raising the right hand and arm at the shoulder joint with twisting of the upper torso contributed to his shoulder and arm problems. Appellant further alleged that he did not experience these symptoms in his left shoulder or arm, and that he believed his symptoms were related to his employment. He also alleged that the pain in his right shoulder lessened on the days he was not working.

By letters dated September 26, 2006, the Office informed appellant and the employing establishment of the type of evidence needed to support his claim.

By decision dated November 1, 2006, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the events occurred as alleged. The Office also found that the medical evidence did not provide a diagnosis which could be connected to the claimed event.

On November 6, 2006 appellant requested reconsideration and submitted additional evidence and a copy of his September 2, 2006 statement.

The additional evidence included a statement dated October 31, 2006 in which appellant described the duties of his position which he believed contributed to his condition. He alleged that the repetitive activities over the course of twenty-plus years caused his shoulder and arm injury. Appellant also indicated that his motorcycle accident was really an incident that occurred when he was driving approximately five miles per hour. He alleged that he dropped the motorcycle and did not receive any treatment for the accident. Appellant alleged that he only listed the accident to ensure that he left nothing out related to his case.

The Office received several reports from Dr. George R. Baddour, Jr., a Board-certified orthopedic surgeon and treating physician. In his August 15, 2006 report, Dr. Baddour related that appellant "denies his shoulder problem is a workers' compensation case." In his August 30, 2006 treatment note, Dr. Baddour diagnosed a complete rotator cuff tear of the right shoulder and recommended surgery. In a September 14, 2006 surgical report, Dr. Baddour noted that appellant underwent an arthroscopic subacromial decompression or debridement and provided medical images. In an October 25, 2006 work status form, he alleged that appellant could return to work on November 13, 2006 with temporary restrictions. In a report dated November 1, 2006, Dr. Baddour advised that appellant underwent right shoulder surgery for a rotator cuff repair. He also indicated that he related that he "injured his shoulder at work prior to a more recent motorcycle crash in June of this year." Dr. Baddour also noted that appellant was "planning to file his shoulder condition as a workers' compensation claim."

In a statement dated November 10, 2006, appellant informed the Office that he had not received the Office's September 26, 2006 letter requesting additional information. He also referenced Dr. Baddour's operative report and alleged that it supported his claim for an occupational disease, as appellant's condition was degenerative and occurred over a period of time.

By decision dated February 13, 2007, the Office denied modification of the November 6, 2006 decision. It found that there were inconsistencies in appellant's statements related to whether he believed his condition was work related. The Office also found that appellant failed to demonstrate that a specific event, incident or exposure occurred at the time, place and in the manner alleged. The Office also found that appellant failed to demonstrate a diagnosed condition connected to the accepted trauma or exposure.

LEGAL PRECEDENT

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 the essential elements of each and every 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) 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

Appellant filed an occupational claim alleging that job duties such as twisting and turning his arms and shoulder while casing mail with his arms in a raised position contributed to a right shoulder condition. Although the February 13, 2007 decision refers to inconsistencies in the claim, there are no significant factual inconsistencies.⁵ Appellant identified the work factors he believed contributed to his condition and there is no evidence disputing that he performed the identified activities such as twisting and turning with raised arms. While the employing establishment noted a motorcycle accident, appellant explained that he was going approximately five miles per hour when he dropped the motorcycle. He further alleged that he received no medical treatment. The fact that appellant had a prior motorcycle accident does not preclude the possibility that he could have a subsequent claim for an occupational disease. The Board finds that appellant has identified the employment factors which he believes caused or contributed to his claimed condition.

The issue is whether the medical evidence establishes a diagnosed condition causally related to the identified work factors. However, appellant submitted insufficient medical evidence to establish that his right shoulder condition was caused or aggravated by the activities of casing mail or any other specific factors of his federal employment.

Appellant submitted several reports from Dr. Baddour which included reports dated August 15 and 30, 2006 in which he diagnosed a complete rotator cuff tear of the right shoulder and recommended surgery. They also included appellant's September 14, 2006 surgical report, describing his arthroscopic subacromial decompression and accompanying images. Additionally, Dr. Baddour provided a work restriction regarding returning to work with temporary restrictions. However, in these reports he did not provide an opinion regarding the cause of these diagnosed conditions. 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.⁶

In his report dated November 1, 2006, Dr. Baddour indicated that appellant underwent right shoulder surgery for a rotator cuff repair. He noted that appellant related that he "injured his shoulder at work prior to a more recent motorcycle crash in June of this year." However, Dr. Baddour did not offer his own opinion as to the cause of appellant's rotator cuff injury. Furthermore, his report does not specifically address whether any factors of appellant's

⁴ *Id.*

⁵ While the Office, in finding employment factors were not established, relied upon the August 15, 2006 report of Dr. Baddour in which he noted that appellant did not believe his shoulder problem was work related. The Board notes that this report predated the date on his claim form in which appellant indicated that he was aware that his shoulder condition was caused or related to his employment on August 30, 2006.

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

employment caused his diagnosed condition.⁷ Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

The Board has held that 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.⁸ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹ Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a right shoulder condition, appellant has not met his burden of proof in establishing that he sustained a medical condition causally related to factors of his employment.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.¹⁰

⁷ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ The Board notes that subsequent to the Office's February 13, 2007 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 13, 2007 and November 1, 2006 are affirmed, as modified.

Issued: October 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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