

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

P.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
La Crosse, WI, Employer**

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**Docket No. 08-500
Issued: June 16, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 5, 2007 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated August 16, 2006 and September 17, 2007. 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 met his burden of proof in establishing that he sustained a right shoulder condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 49-year-old custodial worker, filed a Form CA-2 claim for benefits on May 15, 2006, alleging that as of April 10, 2006 he became aware that he had a right shoulder condition causally related to factors of his employment.

In a report dated April 10, 2006, Dr. Bruce J. Kerr, Board-certified in internal medicine, stated:

“[Appellant] reports at this time for evaluation of right scapular pain and increase in anxiety. [He] left work today because of increasing symptoms. [Appellant] was sweeping and felt worsening symptoms around his right upper back.”

“[Appellant] is interested in physical therapy for his injury... I do recommend removing him from the workplace for several days, to allow him adequate time to evaluate these symptoms and for occupational medicine evaluation. Further, time off or return to workplace under restrictions will be arrived at after proper occupational medicine evaluation.

Dr. Kerr noted on April 11, 2006 that x-ray results showed no pneumothorax on the right and no active infiltrates. He advised that right scapular x-rays showed no bony abnormalities of either the shoulder or the scapula.

In a report dated April 24, 2006, Dr. Catherine J. Inman, a specialist in occupational medicine, related appellant’s complaints of right shoulder and right upper back pain and stated:

“[Appellant] states that he is a 60 percent disabled veteran and because of that reason was put on a 20-pound weight restriction. He states that he has been having pain with using his dust mop since February 6, 2005.... [Appellant] describes his right upper back pain as below his right scapula and burning in nature that is present upon awakening and worsens as the day progresses.”

Dr. Inman noted that appellant had undergone chiropractic treatment, which provided some relief. On physical examination, she stated that appellant had full range of neck motion with pain in internal rotation/adduction and pain with abduction at 120 degrees. Dr. Inman noted some mild tenderness over the right acromioclavicular joint with some tenderness in the infraspinatus area. Appellant also experienced pain with external rotation. Dr. Inman diagnosed right infrascapular pain, work relatedness to be determined. She advised that, because of his symptoms that suggested possible cervical disc pathology as the cause of his symptoms, she was referring him to his primary care physician at the employing establishment. Dr. Inman concluded:

“I explained to him that I doubt [his right scapular pain] can be considered work related due to his 1988 injury since that did not appear to be musculoskeletal and it would have resolved by this time. [Appellant] is on work restrictions as per [the employing establishment] with a 20-pound work restriction, so it is not necessary to address that aspect of his work restrictions. However, I recommend that he have restricted reaching to the occasional category.”

By letter dated June 12, 2006, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether

his claimed conditions were causally related to his federal employment. Appellant did not submit any additional medical evidence.

By decision dated August 16, 2006, the Office denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained a right shoulder condition in the performance of duty.

In a December 26, 2006 report, Dr. Aaron J. Hanesworth, a specialist in family practice, stated:

“[Appellant] is a 49-year[-]old male who is a disabled veteran as well as having problems with chronic ongoing right scapular pain. The origin of this pain seems to date back to 1988. It has been bothering him much worse since April 2006.... It has been worse over the last several days and he feels like he needs some time off work to help heal this.”

Dr. Hanesworth stated that his examination of appellant's back revealed tenderness just medial to the lower aspect of the right scapula. He noted some spasm of the thoracic paraspinal muscles on the right side. Dr. Hanesworth advised that appellant could reach over his head, but this only reproduced the pain. In a January 18, 2006 note, Dr. Michael S. Rusak, a chiropractor, recommended physical therapy for appellant.

By letter dated July 8, 2007, appellant requested reconsideration. He submitted diagnostic tests from March 2005 and May 2006, which showed normal results.

By decision dated September 17, 2007, the Office denied modification of the August 16, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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

¹ 5 U.S.C. §§ 8101-8193.

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

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

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 is usually rationalized medical 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.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his claimed right shoulder condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Drs. Kerr, Inman and Hanesworth, who related findings of right shoulder and right scapular pain on examination, in addition to upper back pain, but did not provide any diagnosis or a probative, rationalized medical opinion that the claimed condition or disability was causally related to employment factors. Dr. Inman advised that appellant's symptoms suggested possible cervical disc pathology as the cause of his symptoms, but diagnostic tests were normal. In addition, she indicated that the injury was probably not work related in light of a previous injury he had sustained in 1988 injury and because it did not appear to be musculoskeletal and would have resolved by this time. Dr. Hanesworth stated in his December 26, 2006 report that appellant was having problems with chronic ongoing right scapular pain, which seemed to have originated in 1988. While his examination showed tenderness at the lower aspect of the right scapula and some spasm of the thoracic paraspinal muscles on the right side, he did not relate these symptoms to any factors of employment

The opinions of the physicians of record are of limited probative value as they do not contain any medical rationale explaining how or why appellant's claimed right shoulder

⁴ *Id.*

⁵ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

condition was currently affected by or related to factors of employment.⁶ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ Appellant did not submit a medical opinion which sufficiently described his job duties or explained the medical process through which such duties would have been competent to cause the claimed condition. Accordingly, he failed to submit sufficient medical evidence to establish that his claimed right shoulder condition was causally related to his employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. The Office advised appellant of the evidence required to establish her claim. However, he failed to submit such evidence. Accordingly, the Office properly denied appellants' claim for compensation based on a right shoulder condition.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establish that his claimed right shoulder condition was sustained in the performance of duty.

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2007 and August 16, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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