

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

F.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Metairie, LA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-2468
Issued: March 3, 2009**

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 September 15, 2008 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 11, 2008. 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 sustained a right shoulder injury in the performance of duty on November 26, 2007.

FACTUAL HISTORY

Appellant, a 27-year-old letter carrier, filed a claim for benefits on December 28, 2007, alleging that he experienced pain his right shoulder on November 26, 2007 when the weight suddenly shifted in the mailbag he was carrying, placing inordinate stress on his right clavicle and right shoulder.

A form report dated December 20, 2007, stated "patient should use a cart instead of a bag to carry mail." The physician's signature on the form is not legible.

On January 9, 2008 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from his treating physician describing her symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated February 11, 2008, the Office denied appellant's claim, finding that he failed to establish fact of injury.

By letter dated March 5, 2008, appellant requested reconsideration.

By decision dated March 21, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated May 7, 2008, appellant requested reconsideration.

A Form CA-17 report dated May 7, 2008 stated "patient needs to use a cart instead of a bag to carry mail" and diagnosed a torn right labrum. It also noted that the history of injury appellant provided corresponded with the physician's findings. The physician's signature on the form is not legible.

By merit decision dated August 11, 2008, the Office denied modification of the February 11, 2008 Office 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the

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).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ 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.⁶

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.⁷

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 his 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.

ANALYSIS

The Office accepted that appellant experienced right shoulder pain while carrying a mailbag on November 26, 2007. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the November 26, 2007 employment incident caused a personal injury.

Appellant submitted the December 20, 2007 and May 7, 2008 form reports which recommended that he use a cart instead of a bag to carry mail. The May 7, 2008 Form CA-17 diagnosed a torn right labrum and credited appellant's account of how his right shoulder injury occurred. Neither of the forms contained a legible signature from a physician.

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.¹⁰ Although the Form CA-17 report presented a diagnosis of appellant's condition, it did not adequately address how this condition was causally related to the

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *John J. Carlone*, *supra* note 4.

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

November 26, 2007 work incident. The report did not explain how medically appellant would have sustained a right shoulder injury because the weight shifted in the mailbag he was carrying on November 26, 2007. There is insufficient rationalized evidence in the record that appellant's left shoulder injury was work related. Appellant failed to provide a medical report from a physician that explains how the work incident of November 26, 2007 caused or contributed to the claimed right shoulder injury.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the November 26, 2007 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a right shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.¹¹

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right shoulder injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 11, March 21 and February 11, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 3, 2009
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

¹¹ The Board notes that appellant submitted additional evidence to the record following the April 12, 2004 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).