

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

A.B., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer

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**Docket No. 09-204
Issued: September 11, 2009**

Appearance:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 27, 2008 appellant filed a timely appeal from an August 28, 2008 decision of the Office of Workers' Compensation Programs which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a left shoulder, left arm or cervical injury on July 5, 2008, as alleged.

FACTUAL HISTORY

On July 16, 2008 appellant, then a 51-year-old automation clerk, filed a claim alleging, that on July 5, 2008 he injured his left arm and shoulder when he lifted full trays of mail. He also alleged a pinched nerve in the left arm and shoulder region. Appellant stopped work on

July 5, 2008. The employing establishment controverted his claim noting that he did not provide adequate medical evidence and based on a preexisting condition in his shoulder and neck.

By letter dated July 25, 2008, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his left upper extremity condition and the July 5, 2008 incident.

Appellant submitted a July 16, 2008 statement. On July 5, 2008 he was preparing to dispatch mail and placing full trays into a cage when he experienced pain in his left shoulder. Appellant was not scheduled to work the next two days. Thereafter, he sought medical treatment. In an undated statement, Cynthia Robinson, a coworker, noted appellant's complaint of shoulder pain after working on a mail machine. On July 16, 2008 Michelle A. Dozier, appellant's supervisor, noted that appellant reported sustaining a left shoulder injury on July 4, 2008 while pulling mail. She advised that appellant was off work for two days but experienced persistent left shoulder pain and sought medical treatment.

Appellant submitted a July 11, 2008 disability certificate from Dr. Harold Mars, a Board-certified family practitioner, who advised that appellant was totally disabled due to an exacerbation of his symptoms. Dr. Mars recommended that appellant remain off work until July 25, 2008. He did not provide a specific medical diagnosis. In a July 23, 2008 note, Dr. Mars diagnosed cervical spondylosis and referred appellant to a pain management clinic. In a disability certificate dated July 23, 2008, he estimated that appellant would be totally disabled from July 5 to August 11, 2008 pending a pain management consult and treatment.

In a decision dated August 28, 2008, the Office denied appellant's claim on that grounds that the medical evidence was not sufficient to establish that he sustained an injury caused by the July 5, 2008 work incident.

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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 357 (2001).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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 The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

Appellant alleged that he sustained a left arm, shoulder and cervical injury when he lifted full trays of mail on July 5, 2008 while performing his clerk duties. The evidence supports that the incident on July 5, 2008 occurred as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained an injury causally related to the July 5, 2008 work incident.

On July 25, 2008 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the July 5, 2008 work incident caused or aggravated his claimed left upper extremity or neck condition.

In a July 11, 2008 disability certificate, Dr. Mars noted only that appellant was totally disabled until July 25, 2008 due to an exacerbation of his symptoms. In a July 23, 2008 disability certificate, he estimated that appellant would be totally disabled from July 5 to August 11, 2008 pending a pain management consultation and treatment. However, these notes

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

did not provide a diagnosis of a medical condition,⁷ note a history of the July 5, 2008 incident,⁸ or offer any opinion on how the incident at work caused or aggravated appellant's condition.⁹ Consequently, these reports are of diminished value and do not establish appellant's traumatic injury claim. On July 23, 2008 Dr. Mars diagnosed cervical spondylosis and referred appellant to a pain management clinic. However, as above, this brief report is insufficient to establish the claim. Dr. Mars did not provide any history of injury or address how the employment incident caused or aggravated the diagnosed medical condition. He did not describe how the July 5, 2008 incident involving lifting mail trays cause or contributed to the diagnosed cervical spondylosis.

Appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and any diagnosed condition. The evidence from Dr. Mars is insufficient to meet appellant's burden of proof. The record contains no other medical evidence.¹⁰ Because appellant has not submitted reasoned medical evidence explaining how and why his left arm, shoulder and cervical condition is employment related, he has not established an injury resulting from the accepted incident.

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 is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.¹¹ Causal relationships must be established by rationalized medical opinion evidence. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a left arm, shoulder or cervical injury causally related to the July 5, 2008 employment incident.

⁷ See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

⁹ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (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).

¹⁰ After the August 28, 2008 decision appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This decision does not preclude appellant from filing for reconsideration with the Office and submitting additional medical evidence in support of his claim.

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board