

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fort Worth, TX, Employer)

**Docket No. 10-591
Issued: August 25, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 30, 2009 appellant filed a timely appeal from a November 6, 2009 decision of the Office of Workers' Compensation Programs that denied his claim. 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 established he sustained a right shoulder injury in the performance of duty causally related to his employment.

FACTUAL HISTORY

On August 6, 2009 appellant, a 60-year-old mail handler, filed an occupational disease claim (Form CA-2) for a right shoulder condition. He first became aware of this condition on "March 16, 2009." In a supplemental statement dated August 7, 2009, appellant attributed his condition to pulling wire cages "filled with packages/magazines." He stated that he sustained a "tear in ... left shoulder" and that his right shoulder condition resulted from "overcompensation for pain in the left shoulder."

Appellant submitted a report signed by a physical therapist.

By letter dated August 19, 2009, the employing establishment controverted appellant's claim.

On October 23, 2009 Dr. Elliot Wagner, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed a partial tear of the supraspinatus tendon, "mild" osteoarthritic changes in the glenohumeral joint, "mild synovial effusion," degenerative changes in the acromioclavicular joint, a "moderate amount" of fluid "suggestive of bursitis" and a "small amount" of fluid along the "bicipital tendon" and the "inferoglenohumeral pouch."

By decision dated November 6, 2009, the Office accepted the employment factors appellant deemed responsible for his condition but denied the claim because the medical evidence did not establish these employment factors caused a medically-diagnosed condition.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition

¹ On appeal, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal, which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.

ANALYSIS

The Office accepted the employment factors appellant deemed responsible for his condition. Appellant's burden is to demonstrate that the accepted employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be established by medical opinion evidence. The Board finds that appellant has not submitted sufficient medical opinion evidence and, consequently, has not established he sustained an injury in the performance of duty causally related to his employment.

Dr. Wagner diagnosed a partial tear of the supraspinatus tendon, "mild" osteoarthritic changes in the glenohumeral joint, "mild" synovial effusion, degenerative changes in the acromioclavicular joint, a "moderate amount" of fluid "suggestive of bursitis," and a "small amount" of fluid along the "bicipital tendon and the inferoglenohumeral pouch." Missing from his report is a reasoned discussion that explains how the accepted employment factors caused the conditions he diagnosed.⁸ Thus, Dr. Wagner's report is not sufficiently rationalized and does not establish the requisite causal relationship.

On appeal, appellant argues that his claim was denied by "people too lazy to add all the facts together." As noted, because the Board's jurisdiction is limited to the evidence of record before the Office when it rendered its decision, the Board may not consider evidence for the first time on appeal.⁹

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹¹ The fact that a condition manifests itself or worsens during a

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

⁹ See *supra* note 1.

¹⁰ *Edgar G. Maiscott*, 4 ECAB 558 (1952).

¹¹ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

period of employment¹² or that work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between a claimed condition and accepted employment factors.

Because appellant has not submitted medical opinion evidence containing a reasoned discussion that explains how the accepted employment factors caused or aggravated a firmly-diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established he sustained a right shoulder injury in the performance of duty causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹³ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).