United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 10-2369**
	)	**Issued: July 21, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Capp Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 27, 2010 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated August 5, 2010. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 bilateral knee and shoulder conditions in the performance of duty.

FACTUAL HISTORY

Appellant, then a retired 57-year-old mail carrier, filed a claim for benefits (Form CA-2) on April 29, 2009 for an osteoarthritic condition in both knees and both shoulders causally related to employment factors. He asserted that his conditions resulted from engaging in 20

[1] 5 U.S.C. § 8101 *et seq.*

years of repetitive activities at his usual job as a mail carrier. Appellant retired on April 9, 2005 but did not become aware that his knee or shoulder conditions were related to his employment until April 10, 2008.

In a report dated November 19, 2007, Dr. Gerard Dysico, Board-certified in physical medicine and rehabilitation, advised that appellant had a history of degenerative disc disease of the lumbar spine with spondylosis secondary to facet arthropathy. Appellant currently experienced bilateral shoulder pain which had been increasing for approximately 10 years. He related that he had chronic, aching pain which was aggravated whenever he lifted his arms or engaged in overhead lifting. Dr. Dysico noted that appellant had been treated for shoulder pain in August 2007, at which time he received steroid injections in both shoulders and underwent physical therapy. Appellant currently complained of bilateral shoulder pain with tingling and numbness, which radiated into his elbows.

Dr. Dysico stated that on examination appellant had limited range of motion in his shoulders. He diagnosed bilateral shoulder impingement and degenerative joint disease in the acromioclavicular (AC) joints. Dr. Dysico advised that appellant had left lateral thigh pain that was consistent with a prior finding of iliotibial bend tightness. He recommended treatment with medication and physical therapy and additional diagnostic tests for appellant's shoulders.

Appellant underwent magnetic resonance imaging (MRI) scans for his left and right shoulders on December 10 and 12, 2007. The left shoulder MRI scan noted abnormal increased signal intensity within the supraspinatus tendon, with moderate-to-severe degenerative and hypertrophic change at the level of the AC joint, tear-directed spurring and large osteophytes projecting off the humeral head, consistent with degenerative change. The report diagnosed supraspinatus tendinosis and a chronic full thickness signal abnormality along the distal insertion, consistent with tear, in addition to extensive degenerative change involving the humeral head mid with moderate-to-severe degenerative change involving the glenohumeral joint, the labrum and the AC joint.

As to the right shoulder, the MRI scan showed advanced degenerative changes involving the humeral head, the glenohumeral joint and AC joint, with diffuse irregular increased signal throughout the labrum, most likely due to degeneration, degenerative. There were changes in the AC joint and supraspinatus tendinosis and full thickness signal abnormality, consistent with chronic tear.

In a December 17, 2007 report, Dr. Dysico reviewed the studies and advised that appellant had degenerative joint disease at the glenohumeral joints and the AC joints in both shoulders. He cautioned that restarting steroid injections in the subacromial bursa might only contribute to what was already a moderate-to-severe degree of degenerative joint disease in both shoulders.

In an August 5, 2008 report, Dr. Sajjad Murtaza, Board-certified in physical medicine and rehabilitation, stated that appellant had bilateral shoulder pain secondary to arthritic changes. He also noted complaints of bilateral knee pain and lower back pain with left lower extremity radiation to the lateral aspect of the left lower extremity to the dorsum of the left foot. Dr. Murtaza advised that appellant had been treated with physical therapy for an extensive period

of time. Appellant underwent functional capacity testing which showed he was capable of lifting less than 50 percent of what his job description required; for this reason he was placed on disability. Dr. Murtaza opined that appellant's pain level was a 3 on a scale of 1 to 10. Appellant had bilateral knee and shoulder pain with right rotator cuff tendinopathy and osteoarthritis in both knees. Dr. Murtaza recommended physical therapy and medication.

In an October 31, 2008 report, Dr. Murtaza stated that appellant continued to experience bilateral knee and shoulder pain and might benefit from aqua therapy.

In a July 13, 2009 report, Dr. Murtaza reiterated that appellant had osteoarthritis in both knees and both shoulders. He opined that the conditions were caused by repetitive duties indicated in appellant's job description; *e.g.*, walking and standing for most of the workday. Dr. Murtaza noted that, although osteoarthritis could be caused by overuse or aging, appellant was not at the age where one would expect the degree of degeneration demonstrated. He advised that appellant did not have any trauma or preexisting condition which could have caused his current level of deterioration.[2] Dr. Murtaza concluded that appellant could not return to work as a mail carrier. He stated that any job would have to allow for infrequent standing and walking in addition to taking off more than three days a month.

By decision dated January 6, 2010, OWCP denied appellant's claim, finding that he failed to file a timely claim under section 8122. It noted that the date of injury was March 20, 2008, that he should have been aware of the cause of his condition by April 9, 2008, and that he filed his claim for compensation on October 6, 2009. OWCP further stated that there was no evidence that appellant's immediate supervisor had no actual knowledge within 30 days of the date of injury.

On January 18, 2010 appellant requested an oral hearing, which was held on April 19, 2010. He attributed his condition to repetitive work activities.

By decision dated August 5, 2010, OWCP's hearing representative found that appellant filed a timely claim, as he first became aware of the cause of his condition in April 2008. She denied the claim on the grounds that appellant failed to submit sufficient medical evidence to establish that his claimed bilateral knee and shoulder conditions were related to factors of his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[2] Appellant stated in his Form CA-2 that his bilateral knee and shoulder conditions were partially attributable to a previous accepted traumatic injury. However, the medical evidence he submitted attributes his claimed bilateral knee and shoulder conditions to repetitive activity; none of the medical reports he submitted referred to any previous work injury which could have caused his current conditions.

[3] 5 U.S.C. §§ 8101-8193.

claimed are causally related to the employment injury.[4] 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.[5]

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 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]

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.[7]

ANALYSIS

Appellant attributed his bilateral hip and shoulder conditions to his work as a letter carrier. The Board finds that he did submit sufficient medical evidence to establish his claimed bilateral knee and shoulder conditions to factors of his employment.

Appellant submitted reports from Drs. Dysico and Murtaza, who related appellant's complaints of bilateral knee and shoulder pain and presented diagnoses of degenerative conditions, but did not provide a rationalized medical opinion that these conditions were causally related to factors of his employment. Dr. Dysico did not present any findings for appellant's alleged knee condition. He stated in a November 19, 2007 report that appellant had experienced chronic, aching pain in both shoulders which had been progressively worsening for 10 years; the pain was aggravated by lifting his arms or engaging in overhead lifting. Dr. Dysico diagnosed

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

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Id.*

[7] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

bilateral shoulder impingement and degenerative joint disease in the AC joints. He referred appellant for MRI scans on his shoulders and stated in his December 17, 2007 report that appellant had supraspinatus tendinosis and chronic full thickness tear, in addition to extensive moderate-to-severe degenerative changes in the humeral, the glenohumeral joint, the labrum and the AC joint in both shoulders. Dr. Dysico's reports, however, did not provide a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors. His opinion on causal relationship is of limited probative value as it does not contain any medical rationale how or why appellant's claimed bilateral shoulder condition was currently affected by or related to factors of employment.[8]

Appellant's attorney contends on appeal that OWCP erred by failing to find that Dr. Murtaza's opinion was unrefuted, supported by the MRI scan reports and sufficient to establish that appellant's claimed bilateral knee and shoulder conditions were causally related to employment factors. In a July 13, 2009 report, Dr. Murtaza stated that appellant had osteoarthritis in both knees and both shoulders. He generally asserted that these conditions were caused by repetitive, all-day walking and standing required by his usual job as a mail carrier. Dr. Murtaza attributed his bilateral knee and shoulder conditions to overuse, not aging and concluded that appellant could not return to work as a mail carrier. The weight of medical opinion is however 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.[9] Dr. Murtaza did not sufficiently describe appellant's job duties or explain the medical process through which such duties would be competent to cause the claimed degenerative conditions. His opinion is of limited probative value as it does not contain adequate medical rationale explaining how appellant's job duties physiologically caused the diagnosed conditions of bilateral knee and shoulder osteoarthritis. Dr. Murtaza's reports do not establish the bilateral knee and shoulder conditions as causally related to appellant's 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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[10] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed bilateral knee and shoulder conditions were causally related to his employment.

[8] *William C. Thomas,* 45 ECAB 591 (1994).

[9] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[10] *Id.*

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establish that his claimed bilateral knee and shoulder conditions was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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