

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

N.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 10-2018
Issued: June 15, 2011**

Appearances:

*Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant, through representative, filed a timely appeal from Office of Workers' Compensation Programs' decision dated July 6, 2010. Pursuant to the Federal Employees' Compensation Act¹ 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 a right shoulder injury in the performance of duty on July 23, 2009.

FACTUAL HISTORY

Appellant, then a 35-year-old mail processing clerk, filed a claim for benefits on September 2, 2009, alleging that she injured her right shoulder on July 23, 2009 while pulling

¹ 5 U.S.C. § 8101 *et seq.*

trays from a mail rack. The claim was administratively approved for limited medical benefits only, not to exceed \$1,500.00, without any formal adjudication.

In a July 29, 2009 clinic report, it was indicated that appellant sought treatment for complaints of bilateral shoulder pain, mostly from the right shoulder. Appellant related that she experienced pain while moving mail trays. She complained of intense pain and popping in the right shoulder approximately one week previously; the pain increased with movement. The report was signed by a registered nurse.

In a treatment note dated September 25, 2009, Dr. Marc R. Watkins, a specialist in family practice, stated that appellant had sustained a strain of her right shoulder and right upper arm. He restricted her from lifting, pushing and pulling more than 10 pounds and overhead lifting.

In a September 25, 2009 report, Dr. Watkins reiterated the diagnosis of right shoulder strain. He stated that appellant had injured her right shoulder on July 23, 2009 while sorting mail and manipulating several mail trays a day. Appellant had initially sought treatment approximately three days after her injury with her primary care physician. She denied having any previous injury to her right shoulder. Dr. Watkins related complaints of pain with any movement of her shoulder and tingling in her middle, ring and little fingers. He administered x-ray tests of appellant's right shoulder, which were negative and recommended a course of physical therapy. Dr. Watkins submitted periodic progress reports pertaining to her right shoulder in which he essentially reiterated these findings and conclusions.

By letter dated November 30, 2009, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It stated that her claim had originally been administratively handled as a simple, unchallenged case which resulted in a minor injury with minimal treatment and time loss from work. The Office therefore had not formally considered the merits of appellant's claim. It stated, however, that because her medical expenses had recently exceeded the \$1,500.00 limit, it was proceeding with a formal adjudication of the claim. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. It requested that she submit the additional evidence within 30 days.

In a November 23, 2009 report, received by the Office on December 8, 2009, Dr. Watkins stated that appellant had indicated that the pattern of right shoulder symptoms was stable and had remained essentially unchanged. He advised that a magnetic resonance imaging (MRI) scan had demonstrated an interstitial tear in the distal subscapularis, a small nondisplaced tear in the anterior aspect of the glenoid labrum and a right rotator cuff tear. Dr. Watkins recommended that appellant continue on modified activity with her current restrictions. He referred her to Dr. Steve Salyers, a Board-certified orthopedic surgeon.

In reports dated December 8, 2009, Dr. Salyers advised that appellant had a right shoulder strain caused by moving sacks of mail. He stated that x-rays showed no bony pathology but noted that the MRI scan showed an interstitial tear within the distal subscapularis, some tendinitis in the supraspinatus and a possibility of medial subluxation of the biceps.

Dr. Salyers planned to administer subacromial corticosteroid injections and had appellant continue with Dr. Watkins' restrictions.

By decision dated January 4, 2010, the Office denied the claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained a right shoulder injury causally related to the July 23, 2009 work incident.

By letter dated January 8, 2010, appellant's attorney requested a hearing, which was held on April 15, 2009.

In a report dated January 19, 2010, Dr. Salyers stated that appellant was experiencing some right shoulder pain which made her uncomfortable. He administered a subacromial corticosteroid injection on December 29, 2009 which initially rendered significant improvement in her pain. Dr. Salyers stated, however, that this improvement gradually diminished after a week or two. He advised that he was unsure of the etiology of appellant's pain based on the history he received. Dr. Salyers related that she attributed her right shoulder pain to both her July 23, 2009 injury and her repetitive use of the shoulder. He advised that the injury occurred when appellant had her arms outstretched in front of her and was moving material from the left to the right side of her body. Dr. Salyers also asserted that there were other incidents where she felt her shoulder pop and then had increased pain which was aggravated by continued work activity. He was unable to explain why there were contrasting accounts of how appellant's injury occurred. Dr. Salyers noted that her ability to recall specific historical details was frequently inaccurate.

Dr. Salyers also stated that he did not have a precise diagnosis due to this conflicting history. He opined that subacromial bursitis and tendinitis is a repetitive phenomenon but stated that working with outstretched arms and moving material would be considered a causally related factor. Dr. Salyers also advised that appellant's MRI scan findings were very mild for a diagnosis of subacromial bursitis and tendinitis. He stated, however, that the corticosteroid injection, which was placed in the subacromial space and provided her with very good pain relief, would not have reached the biceps tendon or the intra-articular structures. Dr. Salyers therefore opined that appellant's response to the corticosteroid injection would actually militate against a primary diagnosis of subacromial bursitis and tendinitis. He considered surgery as a possible cure but noted that this involved risks for her.

By decision dated July 6, 2010, the Office affirmed the January 4, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act² 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

² 5 U.S.C. §§ 8101-8193.

causally related to the employment injury.³ 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.⁴

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.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ 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.⁷

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.⁸

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 her employment is sufficient to establish causal relationship.⁹ 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 moving mail trays on July 23, 2009. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ Appellant has not submitted rationalized, probative medical evidence to establish that the July 23, 2009 employment incident would have been competent to cause the claimed injury.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(ee).

⁷ *Id.*

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 5.

Appellant submitted reports from Drs. Watkins and Salyers. Dr. Watkins noted complaints of right shoulder pain in his July 29, 2009 report and imposed work restrictions in periodic progress reports. He diagnosed a right shoulder strain and torn rotator cuff as shown by MRI scan but did not provide an opinion regarding whether these diagnoses were causally related to the July 23, 2009 work incident in which appellant was moving mail trays. Dr. Salyers asserted in his January 26, 2010 report that he was unsure of the etiology of appellant's right shoulder pain based on the contradictory history he received and was unable to explain why there were contrasting accounts of how her injury occurred. He stated that she attributed her right shoulder pain to both her July 23, 2009 injury and to repetitive use of the shoulder. In addition, appellant related other incidents in which she felt her shoulder pop and then had increased pain which was aggravated by continued work activity. Dr. Salyers noted that the primary diagnosis was subacromial bursitis and tendinitis but opined that her response to the corticosteroid injection actually militated against this diagnosis.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the 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.¹¹ Although Dr. Watkins presented diagnoses of appellant's condition, he did not adequately address how these diagnoses were causally related to the July 23, 2009 work incident. The medical reports of record did not explain how medically appellant would have sustained a right shoulder strain, right rotator cuff tear, subacromial bursitis and tendinitis while moving mail trays on July 23, 2009. The opinion of Dr. Watkins regarding causal relationship is also of diminished probative value because he did not provide adequate medical rationale in support of his conclusions.¹² Dr. Watkins did not describe appellant's accident in any detail or how the accident would have been competent to cause or aggravate her right shoulder strain, right rotator cuff tear, subacromial bursitis and tendinitis.

Moreover, the opinions of these physicians are of limited probative value for the further reason that they are generalized in nature and equivocal in that they only noted summarily that appellant's condition was causally related to the July 23, 2009 work incident. Dr. Salyers stated in his January 26, 2010 report that he received a contradictory, inaccurate history of how appellant sustained her right shoulder. He indicated that although patients frequently recall inaccurate details at an injury based on these contradictions he was unable to specify an accurate diagnosis. There is therefore insufficient rationalized evidence in the record that appellant's diagnosed right shoulder conditions were work related. Appellant failed to provide a medical report from a physician that explains how the work incident of July 23, 2009 caused or contributed to the claimed right shoulder injury.¹³

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹² *William C. Thomas*, 45 ECAB 591 (1994).

¹³ The Board notes that the reports of record from nurses, physical therapists and physician's assistants do not constitute medical evidence pursuant to section 8101(2).

or explains the medical process through which the July 23, 2009 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a right shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right shoulder injury in the performance of duty on July 23, 2009.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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