

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

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**W.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Diego, CA, Employer**

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**Docket No. 12-925  
Issued: August 16, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 19, 2012 appellant, through his attorney, filed a timely appeal from a February 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 met his burden of proof to establish that he developed a right shoulder condition causally related to factors of his federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case was previously before the Board.<sup>2</sup> In a July 6, 2009 decision, the Board affirmed OWCP's September 17, 2008 decision finding that appellant failed to establish that he sustained an occupational disease in the performance of duty. The Board found that the medical evidence was insufficient to establish that his right shoulder injury was causally related to his employment activities. The facts and history contained in the prior decision are incorporated by reference.

By letter dated July 16, 2009, appellant's representative requested reconsideration and submitted a medical report not previously submitted from Dr. Martin Fritzhand, a Board-certified urologist, specializing in oncology.

In a January 19, 2009 medical report, Dr. Fritzhand reported that he had reviewed appellant's medical records and the previous OWCP decisions. He did not indicate that he had examined appellant. Dr. Fritzhand stated that 16 years ago, appellant was diagnosed with right shoulder tendinitis and bursitis. He stated that the Veterans' Administration (VA) provided appellant with a zero percent impairment rating due to this injury. From his experience rating VA impairments as a VA physician, Dr. Fritzhand noted that a zero percent impairment rating was indicative of only minimal abnormal physical findings and basically indicated that the examination was normal. He stated that x-rays of the right shoulder from August 2006 revealed sclerosis of the greater tubercle which raised the question of bony impingement. On February 3, 2007 appellant described a repetitive use injury to the right shoulder sustained during his custodial duties for seven years prior to late 2006. Thus, Dr. Fritzhand opined that appellant's shoulder pain and x-ray results were clearly related to the repetitive use of the right arm as described by appellant in his detailed work record. He further stated that appellant's 1992 injury was not relevant, as reflected by the zero percent VA impairment rating, and that there was a clear causal relationship between appellant's custodial duties resulting in the overuse of the right shoulder and the injuries incurred. Dr. Fritzhand concluded that there was causal relationship between the repetitive work activities described by appellant and the "pain and suffering" present by September 2006.

By decision dated February 14, 2012, OWCP denied modification of its prior decision finding that the medical evidence failed to establish that the right shoulder condition was causally related to the accepted employment factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the

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<sup>2</sup> Docket No. 09-174 (issued July 6, 2009).

employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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 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.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 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.<sup>6</sup>

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.<sup>7</sup> 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant engaged in repetitive activities utilizing his right arm as a janitorial custodian. It denied his claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and his left shoulder condition. The Board affirmed the denial of the claim by decision dated July 6, 2009.

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<sup>3</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>5</sup> Elaine Pendleton, *supra* note 3.

<sup>6</sup> See Roy L. Humphrey, 57 ECAB 238, 241 (2005); Ruby I. Fish, 46 ECAB 276, 279 (1994).

<sup>7</sup> See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

<sup>8</sup> James Mack, 43 ECAB 321 (1991).

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a right shoulder injury causally related to factors of his federal employment as a distribution custodian.

Appellant's records were referred to Dr. Fritzhand by counsel.<sup>9</sup> In a January 19, 2009 medical report, Dr. Fritzhand stated that he had reviewed appellant's medical records and the prior OWCP decisions. He did not provide a description of appellant's employment duties. Dr. Fritzhand merely concluded that there was a causal relationship between the repetitive work activities described by appellant and the "pain and suffering" present by September 2006. It is unclear what duties he is referring to when he states that appellant's custodial duties resulted in overuse of the right shoulder as he failed to describe appellant's work duties, did not specify how long he worked as a custodian, how many hours he lifted and scooped up trashcans with his right arm in a day and the periods and the frequency of other physical movements and tasks.

Dr. Fritzhand provided a brief medical history stating that 16 years ago, appellant was diagnosed with right shoulder tendinitis and bursitis. From his experience rating VA impairments as a VA physician, he stated that the zero percent impairment rating was indicative of only minimal abnormal physical findings and indicated that the examination was normal. Dr. Fritzhand stated that x-rays of the right shoulder from August 2006 revealed sclerosis of the greater tubercle which raised the question of bony impingement. He further stated that appellant's 1992 injury was not relevant, as reflected by the zero percent VA impairment rating. Dr. Fritzhand concluded that there was causal relationship between the repetitive work activities described by appellant and the pain and suffering present by September 2006.

An award of compensation may not be based on surmise, conjecture or speculation. 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.<sup>10</sup>

The Board finds that the opinion of Dr. Fritzhand is not well rationalized. Dr. Fritzhand provided a limited review of appellant's medical history, only briefly stating that appellant was diagnosed with right shoulder tendinitis and bursitis 16 years ago and noted that appellant's August 2006 x-ray of the right shoulder revealed sclerosis of the greater tubercle. The record reflects that appellant had prior right shoulder injuries. Dr. Fritzhand's report lacks sound medical rationale for his stated conclusions. He opined that the zero percent impairment rating provided by the VA was indicative of minimal abnormal physical findings and basically indicated that the examination was normal. Dr. Fritzhand did not reach this conclusion upon physical examination and review of appellant's medical records. Rather, he provided this opinion from his experience rating VA impairments for other patients as a VA physician. The Board notes that appellant's complete VA medical records were not part of this record.

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<sup>9</sup> The Board notes that Dr. Fritzhand is Board-certified in urology, with a specialty in oncology, who is also a Fellow of the American Academy of Disability Evaluating Physicians and the Board of Independent Medical Examiners.

<sup>10</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

Dr. Fritzhand's opinion is speculative and not based on appellant's individual circumstance as determined through his own physical examination and review of medical history.

Further, Dr. Fritzhand's report failed to state appellant's current diagnosis and he did not explain how any diagnosis was physiologically caused by specific duties of appellant's federal employment as a custodian. Although he provided a conclusion regarding causal relationship, he failed to adequately describe how appellant's repetitive employment activities would have caused this mechanism of injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>11</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup> Dr. Fritzhand's report does not meet that standard and is insufficient to meet appellant's burden of proof.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's right shoulder condition and his factors of employment as a custodian. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his right shoulder condition is causally related to factors of his employment as a custodian.

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<sup>11</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>12</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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