

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, JAMES CREWS
STATION, Kansas City, MO, Employer**

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**Docket No. 12-1648
Issued: January 28, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2012 appellant filed a timely appeal from a July 20, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying a traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (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 has established that he sustained left shoulder injury in the performance of duty.

On appeal, appellant asserts that statements from a witness and an attending physician were sufficient to meet his burden of proof.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 6, 2012 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) claiming that on January 27, 2012 he felt a “pop or strain” in his left shoulder while reaching into a six-foot high mail case to retrieve a postcard. He did not stop work. A coworker signed a witness statement affirming that appellant sustained the injury as claimed and immediately reported it to a supervisor.

In May 4, 2012 reports, Dr. Vincent Key, an attending Board-certified orthopedic surgeon, noted that appellant denied “any focal history of trauma.” He found a full range of left shoulder motion with positive impingement signs. Dr. Key diagnosed left shoulder impingement with an os acromiale.²

In a May 25, 2012 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including factual evidence corroborating that the claimed injury occurred as alleged, and a medical report from his attending physician explaining how and why the identified work factors would cause the claimed left shoulder injury. Appellant was afforded 30 days in which to submit such evidence.

In a May 26, 2012 letter, appellant explained that he told his supervisor about the January 27, 2012 injury within minutes of its occurrence. He first sought medical treatment on May 4, 2012 as his left shoulder symptoms initially appeared to be improving.

In a June 15, 2012 form report, Dr. Key recommended arthroscopic acromioplasty of the left shoulder.

In a July 3, 2012 attending physician’s report (Form CA-20), Dr. Key diagnosed left shoulder pain and impingement secondary to an os acromiale. In response to question 8, “Do you believe the condition found was caused or aggravated by an employment activity?” Dr. Key checked a box “no.”

By decision dated July 20, 2012, OWCP denied appellant’s claim finding that causal relationship was not established. It found that the January 27, 2012 reaching incident occurred at the time, place and in the manner alleged. The medical evidence, however, did not support a causal connection between that incident and the claimed left shoulder injury. OWCP noted that Dr. Key negated causal relationship in a July 3, 2012 report.

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

² May 4, 2012 left shoulder x-rays showed an os acromiale without evidence of acute fracture or dislocation. A June 12, 2012 magnetic resonance imaging scan of the left shoulder showed an os acromiale with increased signal at the synchondrosis of the mesoacromion, moderate tendinosis of the supraspinatus and infraspinatus tendons, moderate fraying of the superior bursal surface with fluid in the subacromial subdeltoid bursa and a small shallow bursal surface tear.

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 and/or specific condition for which compensation is claimed are 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 on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.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

ANALYSIS

Appellant claimed that on January 27, 2012 he injured his left shoulder when reaching into a mail case. OWCP accepted that this incident occurred at the time, place and in the manner alleged.

In support of his claim, appellant submitted reports from Dr. Key, a Board-certified orthopedic surgeon. When Dr. Key first examined appellant on May 4, 2012, he noted that he denied a history of focal trauma. On June 15, 2012 he recommended acromioplasty to address left shoulder impingement syndrome. In a July 3, 2012 report, Dr. Key checked a box “no,” indicating that the diagnosed left shoulder conditions were not caused or aggravated by employment factors. As he opined that work factors did not cause or aggravate the claimed condition, OWCP denied the claim by a July 20, 2012 decision.

OWCP advised appellant by May 25, 2012 letter that, to meet his burden of proof, he must submit a medical report from his attending physician explaining how and why work factors would cause the claimed left shoulder injury. However, appellant did not submit such evidence. His attending physician clearly opined that the January 27, 2012 reaching incident did not impact the claimed left shoulder condition. Therefore, appellant failed to meet his burden of proof.⁷

On appeal, appellant asserts that statements from a witness and attending physician were sufficient to meet his burden of proof. As stated above, he submitted insufficient medical evidence to establish that the accepted January 27, 2012 incident caused or aggravated any medical condition. Further, appellant’s attending physician negated causal relationship.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Id.*

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained a left shoulder injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 20, 2012 is affirmed.

Issued: January 28, 2013
Washington, DC

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

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

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