

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE D. MAESTAS and U.S. POSTAL SERVICE,
POST OFFICE, Salida, CO

*Docket No. 99-557; Submitted on the Record;
Issued June 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on February 6, 1996, as alleged.

On February 7, 1996¹ appellant, then a 60-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 1996 he sustained a right elbow injury while loading a C.B.U. (a cement mailbox) in the performance of duty. He alleged that his injury occurred while holding the C.B.U. to prevent it from falling on another employee. Appellant noted that the injury to his right elbow was a pulled muscle and/or torn ligaments and caused bruising and swelling. On the claim form, Eugene A. Gallegos, appellant's coworker, stated that he was assisting appellant when appellant prevented the C.B.U. from falling and that appellant complained of a sore forearm and elbow following the incident. Appellant did not miss work.

In support of his claim, appellant submitted an October 23, 1997 report form from Dr. Peter Janes, a Board-certified orthopedic surgeon, indicating his initial diagnosis of a right rotator cuff injury. Appellant also submitted a duty status report (Form CA-17) dated October 23, 1997 signed by Dr. Janes. In the report, Dr. Janes affirmatively diagnosed a right rotator cuff injury. The supervisor's portion of the form stated that appellant was injured "stopping [the] CBU from falling." Finally, appellant submitted a personal statement detailing events related to the February 6, 1996 employment incident.

¹ The claim form was submitted on this date to appellant's former supervisor, John Ordaz. However, appellant's subsequent supervisor, Peggy Kirby, did not learn about the February 6, 1996 incident until October 8, 1997. On October 10, 1997 Ms. Kirby provided appellant with Form CA-2a because he stated that his shoulder injury was related to the February 6, 1996 incident. Appellant submitted the form on October 21, 1997. By letter dated October 29, 1997, the Denver, Colorado district office notified appellant that it received both forms and that only the CA-1 claim would be considered by the Office.

By letter dated October 29, 1997, the Office of Workers' Compensation Programs informed appellant that it received his claim and requested additional medical evidence. The Office allowed appellant 30 days to respond.

In response to the Office's request for additional medical evidence, appellant submitted a narrative report from Dr. Janes regarding appellant's October 23, 1997 office visit.

In his report, Dr. Janes noted that appellant felt and heard a tearing in his shoulder in February 1996 when he prevented a 250-pound portable mail unit from falling by holding the weight of the unit in a "slightly extended forward flexed position." He noted that appellant denied any previous history of injury to his shoulder. Dr. Janes diagnosed a reduced range of motion, weakness and pain in appellant's right shoulder. In a form report also dated October 23, 1997, he diagnosed a right rotator cuff condition.

A magnetic resonance imaging (MRI) scan by Dr. Audrey Krosnowski, a diagnostic radiologist, dated June 18, 1997, indicated chronic tendinopathy and an extensive partial thickness articular surface tear resulting in impingement.

Appellant also submitted numerous reports from Dr. David Arnett, a Board-certified family practitioner. By letter dated December 12, 1997, he stated that during a routine examination on June 10, 1997, appellant reported pain in his right shoulder relating to a trauma sustained on February 6, 1996. In his office visit notes, Dr. Arnett noted a rotator cuff tear, but the remaining content of his June 10, 1997 notes are essentially illegible.

Appellant submitted a narrative report from Dr. Richard E. Stockelman, a Board-certified orthopedic surgeon, dated July 14, 1997. He stated that appellant had experienced shoulder pain since moving a 200-pound cement mailbox on February 6, 1996. Dr. Stockelman noted that appellant's shoulder injury was healing until he felt severe pain while pushing a wheelbarrow about three weeks prior to the office visit. He diagnosed a "[p]robable partial or possible full-thickness tear of the rotator cuff."

A duty status report dated October 27, 1997, signed by an unknown doctor, indicated that appellant's injury corresponded to his supervisor's description of how the injury occurred.

Appellant submitted a personal statement on November 5, 1997 in which he stated that he felt and heard a tearing sound when he was injured and the following morning he experienced swelling and bruising from his shoulder to beyond his elbow. He noted his various medical examinations and tests.

Two reports from Dr. Edwin Loeffel, a Board-certified radiologist, dated June 10 and June 27, 1997 regarding appellant's unrelated sinus condition were also submitted.

By decision dated December 30, 1997, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant's right shoulder injury was caused by factors of his federal employment. The Office found that the evidence of record was insufficient to establish a causal relationship between appellant's condition and the alleged employment incident. The Office noted that appellant's original claim involved an

elbow and forearm injury, but the evidence of record only supported the existence of a shoulder injury.² Further, the Office indicated that Dr. Stockelman's report, which noted that appellant's shoulder condition was significantly aggravated by his subsequent use of a wheelbarrow, served as evidence that appellant's shoulder condition was not work related. Finally, the Office found that Dr. Arnett's reports regarding appellant's June 10, 1997 office visit were altered and were, therefore, severely diminished in probative value.

By letter dated January 15, 1998, appellant requested an oral hearing. Following his hearing request, appellant submitted additional medical evidence to support his claim, including progress notes from Dr. Paul Abbott, Jr., a Board-certified family practitioner. In his notes dated May 21, 1998, Dr. Abbott noted appellant's progress following his rotator cuff repair surgery and restricted him from using his shoulder.

At the July 22, 1998 hearing, appellant presented an exhibit containing the following evidence: (1) a witness statement from Eugene Gallegos; (2) a statement from John Ordaz, appellant's supervisor at the time of the alleged February 6, 1996 employment incident; (3) a letter from Dr. Abbott dated June 16, 1998; and (4) appellant's photograph taken after his right rotator cuff repair surgery. Dr. Abbott's letter described the February 6, 1996 employment incident consistently with appellant's account, stated a diagnosis of a rotator cuff tear and provided his medical opinion that the employment incident and appellant's injury were related.

At the hearing, appellant testified that his first medical treatment for his alleged injury was in June 1997 during a routine physical examination with Dr. Arnett. He stated that his shoulder condition was aggravated by various tasks, including use of a wheelbarrow, while building his home. Appellant denied knowing why Dr. Stockelman's report stated that appellant's shoulder was injured while pushing the wheelbarrow. He stated that Dr. Abbott concluded that a rotator cuff tear only results from "a sudden and hard jerk," not by using a wheelbarrow. Appellant testified that he did not seek medical treatment for his alleged injury sooner because he had strained muscles and ligaments in the past and he thought that the shoulder condition would heal itself. He stated that the pain grew progressively worse and that he decided to mention the condition to Dr. Arnett at his routine physical examination.

Following the hearing, appellant submitted numerous documents from Dr. Abbott including medical bills dated May 14, May 21, June 16 and July 20, 1998; copies of "physicians supplemental report" forms dated May 21, June 16 and July 20, 1998 and October 30, 1997; and a copy of a "physician's initial report" form dated October 27, 1998. From Dr. Janes, appellant submitted an undated "physician's initial report" and a "physician's supplemental report" dated May 14, 1998.

By decision dated September 28, 1998, an Office hearing representative denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's condition and the employment incident. The hearing

² By personal statement dated November 5, 1997, appellant amended his claim for an elbow and forearm injury to a shoulder injury. Following the submission of that statement, appellant consistently characterized his injury as a shoulder condition.

representative found inconsistencies in the evidence concerning the injured part of appellant's body and the extent of his bruising. The hearing representative noted that appellant's claim involved an elbow and forearm injury, but all evidence of file concerned appellant's shoulder condition.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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 causally related to the employment injury.⁴ Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁷ An employee may satisfy the burden of proof by establishing that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to that employment incident. Appellant's statements concerning the employment incident were unrefuted and supported by a witness and the employing establishment. The witness statements specifically noted appellant's shoulder injury. Further, there is no evidence of record indicating that the incident of February 6, 1996 did not occur at the time, place and in the manner alleged.

The remaining issue is whether the alleged injury was caused by the employment incident. In order to satisfy his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ *See John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 4 at 1145.

⁸ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

between the employee's injury and the alleged employment incident. The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.⁹

In this case, the numerous reports, forms and other documents from Drs. Janes, Krosnowski and Arnett were not probative of whether appellant's shoulder injury was causally related to the employment incident. Similarly, many of Dr. Abbott's reports and notes did not address causal relationship. Appellant's statement along with the statements of Mr. Gallegos and Mr. Ordaz and appellant's photograph do not constitute medical opinion evidence and therefore are not probative of the causal relationship issue. Dr. Loeffel's reports were irrelevant to this case because they refer to appellant's unrelated sinus condition.

Dr. Stockelman's July 14, 1997 report contained the facts of the February 6, 1996 employment incident as appellant communicated them, a history of appellant's medical condition, and the results of various diagnostic tests. He stated that appellant's right shoulder injury occurred at work when he prevented a 200-pound cement mailbox from falling on his coworker, thereby straining his shoulder. Dr. Stockelman further noted that appellant's shoulder injury was aggravated by using a wheelbarrow about three weeks prior to appellant's July 14, 1997 office visit, but he did not relate appellant's wheelbarrow use to his diagnosis or the employment incident. He diagnosed a "[p]robable partial or possible full-thickness tear of the rotator cuff" but he did not address causal relationship. Therefore, his report is of diminished probative value.

Dr. Abbott's report stated the facts of the employment incident consistently with appellant's statements of record and contained his diagnosis of a rotator cuff tear. He rationally opined that appellant's shoulder condition was causally related to the employment incident. Specifically, Dr. Abbott described the employment incident, the related symptoms and diagnosis, and wrote, "[t]here is no doubt in my mind that this rotator cuff tear occurred at work in February of 1996, taking [appellant's] description into account and what I found at the time of surgery." However, his report is of diminished probative value because it did not contain test results or a complete factual and medical history of appellant. Although Dr. Abbott's report is not sufficient to establish causal relationship, it is sufficiently probative to warrant further development of the record.

There is no evidence of record negating causal relationship between appellant's rotator cuff tear and the employment incident. The Office did not refer the medical evidence of record to an Office medical adviser.

It is well established that proceedings under the Act are nonadversarial in nature. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of evidence.¹⁰

⁹ See *Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

¹⁰ *Richard Kendall*, 43 ECAB 790, 799 (1992).

On remand, the Office should attempt to obtain from Dr. Abbott a complete factual and medical history of appellant's rotator cuff tear, including applicable test results. In his report, Dr. Abbott should specifically address how appellant was able to continue working after the February 6, 1996 employment incident until he first obtained medical treatment on October 23, 1997. He should also address what impact, if any, appellant's wheelbarrow use had on his injury. Following any further development, the Office shall issue a *de novo* decision on the issue of whether appellant sustained an injury in the performance of duty on February 6, 1996, as alleged.

The December 30, 1997 decision of the Office of Workers' Compensation Programs is affirmed and the August 8, 1998 decision is set aside and remanded for further development in accordance with this decision.

Dated, Washington, D.C.
June 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member