

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADOLPH BOWMAN and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, NY

*Docket No. 01-1456; Submitted on the Record;
Issued August 31, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on August 29, 2000.

On September 18, 1999 appellant, a 72-year-old modified mailhandler, filed a notice of traumatic injury alleging that he injured his left shoulder opening mail. By decision dated January 18, 2000, the Office denied appellant's claim finding that he failed to submit sufficient medical evidence to establish fact of injury. Appellant requested reconsideration on February 9, 2000. By decision dated August 29, 2000, the Office declined to reopen appellant's claim for consideration of the merits.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.¹

In this case, the Office accepted that appellant opened mail on September 18, 1999. However, the Office found that appellant had not submitted sufficient medical evidence to establish that his diagnosed left shoulder condition was due to this injury.

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. 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.² 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. The weight of the 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.³

In support of his claim for a left shoulder injury, appellant submitted a report dated September 19, 1999 from Dr. Mukund Gundanna, who noted that appellant indicated that he injured his left shoulder at work. He diagnosed strain of biceps and lateral deltoid, with a possible small supraspinatus tear. Although Dr. Gundanna indicated that appellant stated that he injured his left shoulder at work, this report is not sufficient to meet appellant's burden of proof as Dr. Gundanna did not describe the mechanism of injury and did not opine that appellant's diagnosed condition was due to his accepted employment injury.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on August 29, 2000.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

In this case, appellant attempted to submit new and relevant evidence not previously considered by the Office. In support of his request for reconsideration, appellant submitted a report dated November 23, 1999 from Dr. Kurt V. Voellmicke, who noted that appellant reported pain in his left shoulder on October 4, 1999 and that appellant stated that he strained his shoulder at work. He noted that a magnetic resonance imaging scan demonstrated a partial thickness tear of the left supraspinatus tendon as well as a questionable labral tear.

Although this report is new evidence, it is not relevant to the issue for which the Office denied appellant's claim, the failure of the medical evidence to establish a causal relationship

² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

³ *James Mack*, 43 ECAB 321 (1991).

⁴ 5 U.S.C. §§ 10.609(a) and 10.606(b).

between appellant's accepted employment incident and his diagnosed condition. Dr. Voellmicke failed to describe the employment injury and failed to provide an opinion on the causal relationship between appellant's mail opening incident and his current left shoulder condition.

On January 2, 2000 appellant submitted additional factual evidence describing his September 18, 1999 employment injury. However, as this evidence cannot address the medical issues, it is not relevant to the issue for which the Office denied appellant's claim and is insufficient to require the Office to reopen appellant's claim for consideration of the merits.

The remainder of the evidence submitted in support of appellant's February 9, 1999 request for reconsideration did not address the September 18, 1999 employment injury and is therefore not relevant.

As appellant failed to submit relevant new evidence in support of his request for reconsideration, the Office properly declined to reopen appellant's claim for consideration of the merits.

The August 29 and January 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 31, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member