

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 00-2815; Submitted on the Record;
Issued July 5, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a right rotator cuff tear in the performance of duty on November 14, 1997.

Appellant, a 72-year-old mailhandler, filed a notice of traumatic injury on May 17, 1999 alleging on November 14, 1997 he sustained a right rotator cuff tear as a result of an altercation with a coworker. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 5, 1999. The Office found that appellant had established that the employment incident occurred as alleged, but failed to submit sufficient rationalized medical opinion evaluation to establish a causal relationship between the incident and his diagnosed condition. Appellant requested an oral hearing and by decision dated February 23, 2000, the hearing representative affirmed the Office's August 5, 1999 decision. On September 3, 2000 appellant appealed this decision to the Board.¹

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a right rotator cuff tear in the performance of duty on November 14, 1997.

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

¹ Following the February 23, 2000 decision, appellant submitted additional new evidence. In a decision dated September 6, 2000, the Office denied modification of its prior decisions. The Board and the Office may not simultaneously have jurisdiction over the same case. The Office, therefore, did not have the authority to issue its September 6, 2000 decision. *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Furthermore, for the first time the Board may not consider the new evidence submitted after the February 23, 2000 decision on appeal. 20 C.F.R. § 501.2(c).

actually experienced the employment incident which is alleged to have occurred.² In this case, the Office accepted that the employment-related altercation occurred as alleged.

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.³ 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 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.⁴

In a letter dated December 5, 1997, an administrative official at the Department of Veterans Affairs indicated that appellant received treatment on December 5, 1997 due to neck and shoulder pain. Appellant submitted treatment notes beginning September 28, 1998 diagnosing a right rotator cuff tear due to an assault in November 1997. These notes are not sufficient to meet appellant's burden of proof as the notes do not provide a history of injury describing the altercation, explain how appellant's shoulder condition resulted from the altercation and describe the medical treatment that appellant received from November 14, 1997 to September 28, 1998.

Appellant submitted a report dated January 27, 2000 from Dr. Nate Bondi, a Board-certified orthopedic surgeon. Dr. Bondi diagnosed a complete rotator cuff tear with retraction and opined that this condition was a result of the November 14, 1997 altercation. Although he provided a diagnosis and an opinion on the causal relationship between appellant diagnosed condition and his accepted employment incident, Dr. Bondi failed to provide any medical reasoning explaining how and why he believed that the altercation resulted in this injury.

As appellant has failed to provide any bridging evidence regarding his condition from November 14, 1997 to September 18, 1998 and as he has failed to provide a detailed narrative medical report with an accurate history of injury, physical findings and a rationalized medical opinion on the causal relationship between appellant's condition and his employment, appellant has failed to meet his burden of proof.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

The February 23, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 5, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member