

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS ALONZO and U.S. POSTAL SERVICE,
POST OFFICE, Sun City Center, FL

*Docket No. 00-2221; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue are: (1) whether appellant has met his burden of proof in establishing that he developed a right shoulder condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On January 15, 2000 appellant, then a 52-year-old letter carrier, filed a claim for compensation alleging that he sustained a shoulder injury while placing mail in a mailbox. He stopped work on January 15, 2000.¹

Accompanying appellant's claim were two attending physician reports dated January 17 and January 18, 2000; a duty status report dated January 18, 2000; and a magnetic resonance imaging (MRI) scan dated January 25, 2000. The physician's signature on all three reports dated January 17 and 18, 2000 was illegible. The MRI scan noted a rotator cuff tear and severe impingement.

By letter dated February 8, 2000, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury.

In response, appellant submitted x-ray reports dated January 15 and February 24, 2000 which revealed no abnormalities; progress notes from Dr. Erick A. Grana, Board-certified in physical medicine and rehabilitation, and a nerve conduction study dated January 27, 2000. Dr. Grana indicated that appellant injured his right shoulder on January 15, 2000 while lifting heavy boxes at work. He diagnosed a possible right shoulder rotator cuff tear and nerve entrapment. Dr. Grana's January 25, 2000 note indicated that appellant was still experiencing pain in the right shoulder and numbness in the right hand. He also diagnosed right

¹ The employing establishment noted that appellant initially indicated his condition was due to bursitis in his right shoulder and that performing his job duties aggravated his condition.

acromioclavicular joint arthropathy, cervical radiculopathy and neck pain. The nerve conduction test revealed no evidence of upper limb nerve entrapment but indications of cervical radiculopathy.

On March 10, 2000 the Office denied appellant's claim for compensation under the Federal Employees' Compensation Act.² The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

By letter dated March 20, 2000, appellant requested reconsideration and submitted additional medical evidence. Progress notes from January 29 to April 6, 1998 by Dr. Jay S. Reese, Board-certified in family practice, noted that appellant sorts mail at work and experienced a burning pain, which radiated down his arm. A February 24, 2000 office visit note from Dr. Francisco M. Gomez, an orthopedic specialist, diagnosed calcific tendinitis of the right shoulder. A needle electromyograph (EMG) study dated February 2000 revealed no evidence of cervical radiculopathy. Appellant's narrative statement dated February 14, 2000 noted a history of his injury on January 15, 2000 and indicated that he previously suffered from bursitis of the right shoulder.

By decision dated April 11, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative in nature and thus insufficient to warrant review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he developed a right shoulder condition while in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation 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."³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

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.⁵ In some traumatic injury cases this

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Elaine Pendleton*, *supra* note 3.

component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷

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.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 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.⁹

In this case, appellant has not submitted sufficient medical evidence to establish that his shoulder condition was causally related to employment factors such as placing mail in boxes. Appellant did not submit any medical report from an attending physician addressing how specific employment factors caused or aggravated his shoulder condition. In none of Dr. Grana's reports does he note the employment factors believed to have caused or contributed to appellant's right shoulder condition.¹⁰ Additionally, Dr. Grana's reports do not include a rationalized opinion regarding the causal relationship between appellant's right shoulder condition and the factors of employment believed to have caused or contributed to such condition.¹¹ Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence also fails to provide an opinion on the causal relationship between the January 15, 2000 incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹¹ *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹² Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.¹³

The Board further finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).¹⁴

Under section 8128(a) of the Act,¹⁵ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹⁶ which provide that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

(ii) Advances a relevant legal argument not previously considered by the Office;
or

(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁷

In support of his request for reconsideration, appellant submitted progress notes from Dr. Reese, an office visit note from Dr. Gomez, and an EMG study. Dr. Reese's progress notes predated appellant's January 15, 2000 injury and thus are not relevant to the issue of causal relationship. Dr. Gomez's note merely diagnosed calcific tendinitis of the right shoulder which repeats information previously considered by the Office. Additionally, Dr. Gomez did not

¹² See *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).

¹⁴ See 20 C.F.R. § 10.606(b)(2)(i-iii).

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b) (1999).

¹⁷ 20 C.F.R. § 10.608(b).

address the cause of appellant's condition and did not indicate that this was a work-related injury. The needle EMG study is neither relevant nor pertinent to appellant's claim.

Inasmuch as appellant neither showed that the Office erroneously applied or interpreted a point of law, advanced a point of law not previously considered by the Office nor submitted relevant and pertinent evidence not previously considered by the Office,¹⁸ the Office properly refused to reopen appellant's claim for merit review.¹⁹

The decisions of the Office of Workers' Compensation Programs dated April 11 and March 10, 2000 are affirmed.

Dated, Washington, DC
June 8, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁸ 20 C.F.R. § 10.606(b).

¹⁹ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).