

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKLIN BLACKBURN and U.S. POSTAL SERVICE,
SHAWNEE BRANCH, Kansas City, KS

*Docket No. 99-1133; Oral Argument Held April 5, 2001;
Issued May 11, 2001*

Appearances: *Beth R. Foerster, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that his right shoulder condition was caused by factors of his federal employment.

On May 9, 1996 appellant, then a 48-year-old tractor trailer operator, filed a claim for an occupational disease (Form CA-2) assigned number A11-0150254 alleging that he first realized that his shoulder surgery was caused or aggravated by his employment on January 16, 1995. A letter accompanied appellant's claim from his counsel indicating appellant's allegation that his every day job tasks as part of his job description caused his need for shoulder surgery and his injury on March 16, 1995.¹ Appellant's claim was also accompanied by a description of his tractor trailer operator position. His April 17, 1995 narrative statement revealed that he injured

¹ Prior to the instant claim, appellant filed a traumatic injury claim assigned A11-014961 alleging that on January 16, 1995 he injured his right shoulder while pulling and tugging on a heavy loaded all-purpose container of third class mail from a trailer. By decision dated June 2, 1995, the Office of Workers' Compensation Programs found the evidence of record sufficient to establish that the claimed incident occurred at the time, place and in the manner alleged, but insufficient to establish that appellant sustained a medical condition caused by the employment incident. On May 22, 1995 appellant filed another Form CA-1 assigned number A11-141925 alleging that on March 16, 1995 he injured his right shoulder while pulling and tugging on a heavy loaded all-purpose container of third class mail from a trailer. By decision dated August 31, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In a September 20, 1995 letter, appellant requested an oral hearing. In a June 25, 1996 decision, the hearing representative found the evidence of record sufficient to establish that the incident occurred as alleged, but insufficient to establish that appellant sustained a medical condition caused by the employment incident. Accordingly, the hearing representative affirmed the Office's August 31, 1995 decision. In a June 24, 1997 letter, appellant, through his counsel, requested reconsideration of the hearing representative's decision. By decision dated July 7, 1997, the Office denied appellant's request for modification based on a merit review of the claim.

his shoulder while unloading an all-purpose container of third class mail from a trailer. A June 20, 1996 letter from the employing establishment controverted appellant's claim.

In a July 22, 1996 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised appellant to submit factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.²

In response to the Office's letter, appellant submitted an undated narrative statement describing how his employment duties caused his January 16 and March 16, 1995 shoulder injuries.³ He also submitted factual evidence regarding his January 16 and March 16, 1995 shoulder injuries and his job description. In addition, appellant submitted a June 14, 1996 letter of Dr. Mark J. Maguire, a Board-certified orthopedic surgeon, finding that his work activities caused his right shoulder problems. Further, he submitted a report regarding unsafe conditions at the employing establishment. An August 8, 1995 electromyography and nerve conduction studies report of Dr. S.R. Reddy Katta, a Board-certified physiatrist, revealed a history of appellant's March 1995 shoulder injury and medical treatment, his findings on physical examination, and a description of the procedure. Dr. Katta stated that there was no definite electromyography and nerve conduction evidence of compression neuropathy, polyneuropathy or right cervical radiculopathy. He stated that relatively slow motor nerve conduction velocity in across the elbow segments of ulnar nerves when compared to forearm segment was suggestive of early ulnar nerve compression neuropathy in across the elbow segment. In a September 28, 1995 follow-up report, Dr. Katta noted that appellant's status was post right rotator cuff repair and his findings on physical examination. He stated that appellant still had a mild degree of tendinitis and relative weakness of the right shoulder. Appellant submitted blood test results, and a normal chest x-ray and treatment notes covering the period March 17 through May 22, 1995 from Dr. William F. Taylor, an internist, concerning his right shoulder. The December 29, 1994 treatment note of Dr. G. Robert Powers, a Board-certified family practitioner, revealed that appellant had right shoulder and arm pain for six to eight months. Appellant also submitted the hearing transcript from his March 16, 1995 traumatic injury claim.

By letter dated July 2, 1997, the Office advised appellant's counsel to submit additional factual evidence to resolve the discrepancy between the date appellant first experienced shoulder problems which he indicated occurred on January 16, 1995 and the causal relationship between his shoulder problems and employment based on Dr. Powers' treatment note, which revealed that appellant complained of shoulder problems prior to or at the start of his employment.⁴ The Office also advised appellant's counsel that Dr. Maguire's report was not rationalized to establish appellant's claim. The Office then advised appellant's counsel to submit a rationalized report from Dr. Maguire. In a letter of the same date, the Office advised the employing

² On July 22, 1996 the Office doubled appellant's claims assigned A11-014096, A11-0141925 and A11-150254 into a master case file assigned number A11-150254.

³ In his undated narrative statement, appellant indicated that he resigned from the employing establishment on September 29, 1995.

⁴ The record indicates that appellant began work at the employing establishment on June 24, 1994.

establishment to comment on appellant's description of his work activities. Appellant did not submit additional factual or medical evidence.

By decision dated September 2, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a medical condition caused by factors of his employment. In a September 12, 1997 letter, appellant, through his counsel, requested an oral hearing.

The Office received Dr. Maguire's July 7, 1998 letter reiterating his opinion that appellant's work activity caused his right shoulder problems.

By decision dated August 3, 1998, the hearing representative affirmed the Office's decision. In a September 10, 1998 letter, appellant, through his counsel, requested reconsideration of the hearing representative's decision. In support of his request, appellant submitted Dr. Powers' July 31, 1998 letter explaining the discrepancy in his treatment note regarding when appellant began having right shoulder and arm pain.

In a decision dated January 19, 1999, the Office denied appellant's request for modification based on a merit review.

The Board finds that appellant has met his burden of proof to establish that his right shoulder condition was caused by factors of his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. 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,⁶ must be one of reasonable medical certainty,⁷ 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.⁸

⁵ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

In this case, appellant submitted a rationalized medical opinion from Dr. Maguire, a Board-certified orthopedic surgeon, dated July 7, 1998, which clearly indicated that his right shoulder condition was caused by factors of employment. Dr. Maguire specifically stated:

“I have reviewed the medical records, [appellant’s] job description and his preemployment physical. I do think [appellant’s] work activity caused his right shoulder problems. I think the shoulder pain is related to subacromial bursitis and degenerative changes at the acromioclavicular joint, and also, I think the repetitive nature of his lifting, pulling and reaching, which his job required, ultimately caused this overuse type injury. And I think this, then, is why he required surgery on his shoulder on May 5, 1995.”⁹

Thus, Dr. Maguire reviewed the evidence of record and sufficiently described how the employment factors would have been competent to cause the claimed shoulder condition. The Office, therefore, erred in finding that Dr. Maguire’s opinion lacked probative value.

Further, in a July 31, 1998 letter, Dr. Powers, a Board-certified family practitioner, sufficiently explained the misstatement in his December 29, 1994 treatment note that appellant had right shoulder and arm pain for six to eight months. Dr. Powers specifically stated:

“The question has been raised concerning an office note concerning [appellant] dated December 29, 1994. According to that record, the office note states that he had been having right shoulder and arm pain for six to eight months. The question is whether that should have been weeks or months. It appears that it should have been weeks, as the following office visit per Dr. William Taylor, internal medicine, on March 17, 1995 clearly states that the shoulder pain had been present for three to four months.

“To me this rather strongly suggests either a miscommunication between [appellant] and myself on December 29, 1994 or the possibility of a dictation or typing error concerning months, which should have been weeks on that particular date.”

The record in this case contains a rationalized medical opinion from Dr. Maguire pertaining to the claimed condition relating the cause of the claimed condition to factors of appellant’s employment. In addition, Dr. Powers’ explanatory letter establishes that appellant experienced right shoulder and arm pain after working for the employing establishment for nearly seven months prior to realizing that his pain was employment related on January 16, 1995. This evidence, therefore, indicates that appellant is entitled to reimbursement for medical treatment and sick leave related to his claimed condition. Thus, the Office’s August 3, 1998 and January 19, 1999 decisions are reversed, and the case is remanded to the Office to determine the periods in which appellant was disabled based on his employment-related right shoulder condition and for reimbursement of appropriate medical expenses.

⁹ The record indicates that appellant underwent shoulder surgery on May 5, 1995.

The January 19, 1999 and August 3, 1998 decisions of the Office of Workers' Compensation Programs are therefore reversed and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 11, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member