

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH E. HONES and U.S. POSTAL SERVICE,
POST OFFICE, Pembroke Pines, FL

*Docket No. 03-100; Submitted on the Record;
Issued April 14, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury causally related to his federal employment.

On October 14, 1998 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim asserting that he injured his lower back and right side of neck while "getting in and out of LLV" on October 13, 1998.¹ He stopped work on October 13, 1998 and returned to restricted duty on October 21, 1998. On July 27, 2001 appellant filed an occupational disease claim asserting that he developed an unspecified condition and indicated October 13, 1998 as the date he first became aware of the condition and realized that it was caused or aggravated by his employment.

In a decision dated September 25, 2001, the Office denied appellant's claim on the grounds that the medical evidence submitted was insufficient to establish that a diagnosed condition was caused by employment factors.

In a letter dated October 2, 2001, appellant requested an oral hearing, which was held June 13, 2002. During the hearing, he testified that on October 13, 1998 when he opened the door of his vehicle to deliver mail, he felt a ripping sensation in his shoulder and stiffness in his shoulder and neck. Appellant testified at the hearing that he had a preexisting neck and low back condition for which he still received treatment at the time of the October 1998 injury and that medical evidence, including a magnetic resonance imaging (MRI) scan conducted November 1, 1999 established a right shoulder condition.

¹ The record reflects that appellant filed a separate injury claim related to this incident, claim No. 06-0725097 and the Office of Workers' Compensation Programs accepted the conditions of lumbar strain and strain of the right shoulder. The Office denied a subsequent request for a schedule award by appellant on the grounds that the medical evidence only supported impairment to the cervical and lumbar areas. The Office however advised appellant that since the medical evidence supported that appellant had a diagnosed right shoulder impingement condition he should file an occupational disease claim since the condition had developed over time.

By decision dated September 10, 2002, an Office hearing representative affirmed the prior decision. The Office hearing representative determined that, although appellant asserted that he developed a shoulder condition and experienced neck pain as a result of the specific incident on October 13, 1998, the medical evidence of record failed to establish that his diagnosed right shoulder condition was causally related to his federal job duties.

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on October 13, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that he or she sustained an injury while in the performance of duty.³ 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 that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

In this case, the Office accepted that an incident occurred as alleged. The medical evidence in this case, however, is insufficient to establish causal relationship between a diagnosed condition and the October 13, 1998 incident. The only contemporaneous medical evidence of record is a treatment note from Dr. Kenneth Jarolem, a Board-certified orthopedic surgeon, dated October 14, 1998 and a duty status report (Form CA-17) with an illegible signature dated October 23, 1998. On the duty status form, it was noted by a medical professional with a chiropractic specialty that appellant was disabled from work following an injury to his low back and right shoulder while jumping in and out of a vehicle. Dr. Jarolem indicated, in his October 14, 1998 report, that appellant presented following an injury on October 13, 1998 with right-sided low back pain and tingling. He diagnosed lumbar sprain and placed appellant on limited duty. Appellant's right shoulder condition asserted in the claim was not discussed in this report or in any of Dr. Jarolem's follow-up reports of record, until May 12, 2000, almost two years after the employment incident.

In a May 12, 2000 report, Dr. Jarolem indicated that appellant returned complaining of low back pain and right shoulder pain. Appellant related to the physician that his right shoulder had been giving him a significant amount of difficulty. Dr. Jarolem indicated that the November 1, 1999 MRI scan, which appellant discussed at the hearing, showed supraspinatus tendinitis, acromioclavicular (AC) joint hypertrophy and supraspinatus impingement.

In an August 28, 2000 report, Dr. Phillip Cummings, a Board-certified orthopedic surgeon, discussed his evaluation of appellant for a shoulder condition. Dr. Cummings related

² 5 U.S.C. §§ 8101-8193.

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁴ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

the facts of the October 13, 1998 employment incident but indicated that appellant's symptoms of shoulder pain began four or five years ago and worsened after the October 13, 1998 incident. Dr. Cummings diagnosed mild impingement syndrome of the right shoulder and recommended work restrictions of no overhead activities.

It is appellant's burden of proof to submit the necessary medical evidence to establish a causal relationship between a diagnosed condition and the October 13, 1998 employment incident. The Board finds that appellant has not met his burden of proof in this case.

Although Dr. Jarolem treated appellant contemporaneous with the 1998 employment incident, his treatment of appellant in 1998 was for a lumbar condition and did not address at all a shoulder or neck condition resulting from the October 1998 employment incident. Only later in his May 12, 2000 report did Dr. Jarolem discuss that appellant had shoulder pain and that the November 1, 1999 MRI scan showed that appellant had developed right shoulder impingement syndrome. His report did not provide any medical opinion that relates appellant's right shoulder impingement condition to his October 13, 1998 employment injury.

Dr. Cummings in his August 28, 2000 report did not treat appellant for almost two years following the 1998 employment incident and although he discussed appellant's symptoms of shoulder pain, he noted that appellant had actually experienced shoulder pain four or five years prior and that his condition had worsened after the October 13, 1998 injury. The Board notes that Dr. Cummings provided no medical rationale in his August 28, 2000 report to support his opinion that appellant's worsening of shoulder pain was causally related to his October 13, 1998 employment injury. Without any explanation or rationale, a medical report has diminished probative value and is insufficient to establish causal relationship.⁵ Therefore, Dr. Cummings' August 28, 2000 report is insufficient to establish appellant's burden. The CA-17 form submitted with a date of October 23, 1998, while detailing appellant's injury and the events of the October 13, 1998 employment incident, did not address the pertinent issue of causal relationship between appellant's diagnosed shoulder condition and his employment.

The Board notes that none of the medical evidence submitted diagnosed a neck condition in connection with the October 13, 1998 employment incident; however, there is evidence of record, which establishes that appellant sustained a previous injury in 1997 to his neck. Treatment notes from Dr. Brad Chayet dated March 26 to October 3, 1997 discussed appellant's continual evaluation and treatment for cervical strain due to a neck injury sustained on March 19, 1997, while lifting a heavy bag. Dr. Chayet indicated that, following the 1997 injury, appellant reported that he sometimes felt significant neck pain after carrying his mailbag and the physician recommended that appellant undergo a functional capacity evaluation at that time to determine if his position was best suited for him. As with his shoulder condition, appellant has not established with sufficient medical evidence that his claimed neck pain in the instant claim is causally related to the October 13, 1998 employment incident.

As there is no medical evidence addressing and explaining why the claimed conditions were caused or aggravated by his October 13, 1998 employment injury, appellant has not met his burden of proof in this case and is not entitled to compensation.

⁵ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142 (1989).

Accordingly, the September 10, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 14, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member