

**United States Department of Labor
Employees' Compensation Appeals Board**

BILLY R. HAGGARD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Quebec Annex, MO, Employer**

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**Docket No. 03-1812
Issued: December 18, 2003**

Appearances:
Billy R. Haggard, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On July 10, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 14, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on July 29, 2002 as alleged.

FACTUAL HISTORY

On February 27, 2003 appellant, then a 49-year-old small parcel and bundle sorter operator, filed a claim alleging that he injured his left rotator cuff on July 29, 2002. In a separate statement also dated February 27, 2003, appellant indicated that he was given a direct instruction to work standard mail, which consisted of heavy bundles of magazines and large company booklets. He submitted a witness statement from Karen Lewis who reported that she was also asked to move heavy mail, a primary care referral request which contained the notation cervical

radiculopathy and lumbar radiculopathy, an August 5, 2002 report in which Dr. Rebecca A. Crowley, a Board-certified internist, provided the restriction that appellant should lift no greater than 10 pounds for a month and a radiology consult dated August 9, 2002.¹

In a letter dated March 7, 2003, the Office advised appellant that the information submitted with his claim was insufficient to determine whether he was eligible for benefits under the Federal Employees' Compensation Act.² The Office informed appellant of the deficiencies in his claim, including a diagnosis with rationalized medical evidence causally relating his medical condition to an employment factor. Appellant was allowed 30 days to submit the requested evidence.

In support of his claim, appellant submitted a referral intake form dated September 9, 2002 noting that a magnetic resonance imaging (MRI) scan of the cervical spine was scheduled and an August 5, 2002 medical report from Dr. Crowley who reported a history that appellant injured his shoulders while pushing a crate at work and provided an assessment of cervical radicular pain and lumbar back pain with radiculopathy. In an October 31, 2002 medical report, Dr. Larry W. Ridings, a Board-certified neurologist, noted that appellant had a history of spondylosis and posterior cervical disc displacement with prior fusion at C4-5. He reported that plain films of the cervical spine for both flexion and extension revealed no abnormal motion and only bony encroachment bilaterally of the foramina at C3-4 and C4-5, results similar to those contained in his MRI scan report. Physical findings were unremarkable except for crepitation in the left shoulder and grade five weakness of left shoulder external rotation. An impression of cervical spondylosis and degenerative disc disease with local pain along with left shoulder pain, possibly intra-articular, was provided. Appellant was referred to Dr. Stephen W. Munns, a Board-certified orthopedic surgeon, for an orthopedic consultation and lifting restrictions were increased to a maximum of 15 pounds.

In January 3, February 5 and March 4, 2003 treatment notes, Dr. Munns noted that appellant had experienced pain and stiffness in the left shoulder area since June 2002 which he attributed to the change in activities at work consisting of repetitive pushing-type activities. He noted that appellant also reported some lower back pain associated with the shoulder pain. Appellant advised that, approximately two years previously, he suffered similar symptoms about his left shoulder and was found to have surgical [sic] spine disease and was treated with a fusion of 3-4 as well as 4-5. Physical examination findings were presented. X-rays of the left shoulder showed some mild degenerative changes about the acromioclavicular joint. There was also evidence of some bone loss about his acromion at the level of the acromioclavicular joint. A diagnosis of acromioclavicular joint pain, likely secondary to degenerative changes and bone loss of the acromion of uncertain significance was provided. An MRI scan revealed a partial thickness tear which appeared to be nearly full thickness. Work restrictions, which noted a left rotator cuff tear, were provided.

By decision dated April 14, 2003, the Office denied appellant's claim on the grounds that he failed to establish fact of injury. The Office specifically found that the evidence was

¹ The physician's signature is illegible.

² 5 U.S.C. §§ 8101-8193.

sufficient to establish that appellant actually experienced the claimed incident; however, there was insufficient medical evidence to establish that a condition had been diagnosed in connection with the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely 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. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a “fact of injury” has been established. There are two components involved in establishing fact of injury, which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁴ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.⁵

ANALYSIS

In the instant case, the Office concluded that the evidence of record was sufficient to establish that the claimed incident occurred on July 29, 2002 as alleged. Because an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,⁶ the Board finds that appellant was involved in moving heavy containers on or about July 29, 2002, as alleged. However, the Board finds that appellant has submitted insufficient evidence to establish a causal relationship between his left shoulder condition and the employment incident on July 29, 2002.

To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and his medical

³ *Gabe Brooks*, 51 ECAB 184 (1999); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Linda S. Christian*, 46 ECAB 598 (1995).

history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁷

In the present case, appellant has not provided sufficient medical evidence which identifies an employment factor that caused or contributed to his medical condition. The reports from Drs. Crowley, Ridings and Munns do not provide any opinion relating their findings to appellant's federal employment and the Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Furthermore, appellant has not provided evidence that a medical condition was caused by the alleged employment factor.

Despite being advised of the deficiencies in his medical evidence appellant failed to submit a rationalized medical opinion addressing the issue of causal relationship and, therefore, failed to establish fact of injury.⁹ As he has failed to establish fact of injury, he is not entitled to compensation.

CONCLUSION

The Board finds that appellant has not established that his left shoulder condition is causally related to his federal employment.

⁷ See *Victor J. Woodhams*, *supra* note 3.

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ The Board notes that appellant submitted additional evidence after the Office rendered its April 14, 2003 decision. As this evidence was not previously considered by the Office prior to its decision of April 14, 2003, the evidence represents new evidence, which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may submit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2). The Board further notes that, subsequent to his appeal to the Board on July 10, 2003, appellant requested a hearing before the Office. In a decision dated August 21, 2003, the Office denied appellant's hearing request. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case. *Cathy B. Millin*, 51 ECAB 331 (2000). Thus, the Office decision dated August 21, 2003 is null and void.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member