

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE C. GIVENS and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

*Docket No. 03-244; Submitted on the Record;
Issued March 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty causally related to factors of his federal employment.

On February 7, 2001 appellant, then a 51-year-old postal supervisor, filed an occupational disease claim alleging that he sustained a right rotator cuff tear and tissue damage, which he attributed to his employment duties. In a statement accompanying his claim, appellant related that on or around September 1, 1999 he "was taking several boxes out of a BMC [bulk mail container] when I felt something pull in my shoulders." Appellant related that he underwent surgery for his shoulder condition on September 14, 2000 and missed work from that date until January 29, 2001.

By letter dated March 29, 2001, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant.

In response to the Office's request for further information, appellant stated that he had sustained a traumatic injury in 1988 and that, in September 1999, he aggravated this injury when he helped a coworker move a parcel from a BMC.

By decision dated May 21, 2001, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish fact of injury.

On June 24, 2002 appellant requested reconsideration of his claim.¹ In a decision dated August 16, 2002, the Office modified its prior decision to show that appellant established that the incident occurred as alleged but denied the claim on the grounds that he did not establish that his medical condition was causally related to the accepted employment incident.

¹ Appellant requested reconsideration in a letter dated April 17, 2002, addressed to the Board. In a letter dated June 6, 2002, the Clerk of the Board noted that appellant was seeking reconsideration and returned his letter.

The Board finds that appellant has not established an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including that fact 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

In support of his claim, appellant submitted a report dated April 12, 2001 from Dr. Kris Hirata, a Board-certified physiatrist and his attending physician, who related that “[o]n January 13, 2000 [appellant] came to the office complaining of a three- to four-month history of right shoulder pain.” He diagnosed right rotator cuff tendinitis. Dr. Hirata described appellant’s history of medical treatment and noted that he currently had “left shoulder rotator cuff impingement as well as status post right shoulder acromioplasty.” He stated:

“Based on review of the medical record, I do not note a documented injury for [appellant] concerning the development of shoulder pain. In speaking with [appellant], he reports that he did have a shoulder injury related to lifting at work. He failed to report this at work because he was up for a promotion. He subsequently has reported that injury at this time. It is possible that a lifting injury could result in [appellant’s] right shoulder impingement that led to subsequent acromioplasty.”

Dr. Hirata’s finding that a lifting injury at work “possibly” caused appellant’s right shoulder impingement is speculative in nature and, therefore, of diminished probative value.⁴

In a disability certificate dated April 12, 2001, Dr. Michael T. Mai noted that appellant was status post right shoulder open acromioplasty and could return to work on January 20, 2001. As Dr. Mai did not address the cause of appellant’s condition, his disability finding is of little probative value.

Appellant also submitted chart notes from Dr. Hirata and Dr. Mai dated May 2, 2000 through January 31, 2002. However, as the physicians did not address the cause of appellant’s condition, the chart notes are insufficient to meet his burden of proof.⁵

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.⁶ To establish causal relationship, appellant must submit a physician’s report in

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Vahed Mokhtarians*, 51 ECAB 190 (1999) (the Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999) (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).

⁶ *Donald W. Long*, 41 ECAB 142 (1989).

which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The decision of the Office of Workers' Compensation Programs dated August 16, 2002 is affirmed.

Dated, Washington, DC
March 6, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member