

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS REED and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, NC

*Docket No. 03-1982; Submitted on the Record;
Issued November 17, 2003*

DECISION and ORDER

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

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

On June 6, 2002 appellant, then a 31-year-old distribution clerk, filed a Form CA-2 notice of occupational disease claiming that on August 30, 2001 he first became aware that he had developed impingement syndrome, bursitis and acromioclavicular arthritis of his left shoulder, causally related to physical activities in his federal employment. Appellant stopped work on October 16, 2001 and underwent left shoulder surgery on October 17, 2001.

In an attached June 7, 2002 statement, appellant noted that he had injured his shoulders while in the military in 1990 and 1991. He started working with the employing establishment in August 1997 and that his right shoulder started bothering him in June 1998. Appellant claimed that he favored his left shoulder because of a fear that he would reinjure it or make it worse and that he bore most of the weight on his right arm in order to prevent further left shoulder injury. His work required that he use both arms in repetitive motion, separating mail flats and letters above his shoulders, and that he was required to do heavy lifting. Appellant notified his supervisor on several occasions about his discomfort. He was transferred to the Magnolia branch of the employing establishment where he had to throw parcels for about three to three and one half hours a day and that he had to unload trucks with heavy equipment. Appellant notified his supervisor and the station manager that his physician recommended surgery. Appellant requested light duty but, was told that none was available; therefore, he resigned from the employing establishment on January 10, 2002 as his physician had told him that his job would only aggravate his shoulders.

Appellant submitted multiple handwritten and partially typed medical progress notes dating from 1999. In several medical progress notes, Dr. Kevin S. Scully, a Board-certified orthopedic surgeon, noted that, in 1999 and 2000, appellant complained of right shoulder, wrist and knee pain from running and pain in both shoulders from lifting. Diagnoses were noted as rotator cuff impingement versus a small rotator cuff tear, left wrist ligamentous injury, right knee

pain and right shoulder discomfort. Appellant underwent a right knee arthroscopy and was tender over the medial collateral ligament just proximal to the joint. Bursitis and tendinitis were diagnosed. On June 14, 2001 appellant complained of left wrist pain in the area of the triangular cartilage without radiation and normal range of dorsiflexion, plantar flexion and radial deviation, but ulnar deviation with pain. No muscle wasting or fasciculations were noted. Causal relation was not discussed.

On August 30, 2001 appellant complained of pain in both shoulders, left worse than right, with crepitus on range of motion and pain with impingement maneuvers. The diagnosis was noted to be bursitis. On September 17, 2001 appellant's left shoulder pain persisted and an arthroscopy was recommended. A September 26, 2001 magnetic resonance imaging (MRI) scan of appellant's left shoulder revealed distal supraspinatus tendinosis. In a September 27, 2001 progress note, Dr. Scully indicated that appellant had tendinosis of the supraspinatus tendon with pain in the area of the acromioclavicular joint with cross-chest adduction to direct palpation. Dr. Scully opined that appellant had impingement syndrome and acromioclavicular arthritis. A Mumford distal claviclectomy and anterior decompression were recommended.

On October 17, 2001 appellant underwent an arthroscopic evaluation of his left shoulder, which demonstrated impingement syndrome, chronic bursitis, acromioclavicular arthritis and chondromalacia of the glenoid fossa and hypertrophic synovium. Surgical debridement of the hypertrophic synovium, a bursectomy and anterior decompression with a Mumford distal claviclectomy were performed by Dr. Scully that day.

Postoperatively appellant was followed by Dr. Scully, who opined that appellant could return to work at light duty on November 27, 2001. Dr. Scully recommended that appellant work at his waist level with no overhead work and with a 10-pound limit on lifting, pushing and pulling. However, the employing establishment had no light duty available.

Thereafter, appellant submitted the results of an April 26, 2002 hearing of the Employment Security Commission of North Carolina regarding whether or not he was entitled to unemployment benefits. The hearing adjudicator found that appellant quit this job due to his medical condition and was eligible for unemployment benefits.

By letter dated October 3, 2002, the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to establish his claim and requested that he submit a detailed description of the employment activities that he believed caused his conditions. The Office also requested that appellant provide a physician's report, based on a complete and accurate factual and medical history, which discussed the causal relation of his diagnosed conditions with the implicated factors of his employment.

By decision dated December 12, 2002, the Office denied appellant's claim finding that he failed to establish that he sustained any employment-related injury because he did not submit medical evidence supporting a causal relation between his conditions and factors of his federal employment.

By letter dated March 12, 2003, appellant requested reconsideration of the December 12, 2002 decision. He submitted a February 28, 2003 letter from Dr. Scully which noted as follows:

“On review of [appellant’s] military records he clearly had issues related to the shoulder and knee during his time of service. Since that time, he [has] been employed by the [employing establishment] and has substantially aggravated these initial injuries. These injuries may very well have been aggravated by [appellant’s] duties at the [employing establishment] with consistent loading and unloading carts with equipment and mail. He frequently had to lift above shoulder level and was forced to move heavy items.”

Two reports dated December 9, 2002 and January 2, 2003 from Dr. Paymaun M. Lofti, a Board-certified orthopedic surgeon, were also submitted. Dr. Lofti noted that appellant was status post distal clavicular resection and arthroscopic subacromial resection in October 2001 with residual pain and abduction to about 80 degrees actively but, no evidence of instability. He injected appellant’s subacromial space and acromioclavicular joints with steroids and Lidocaine. Dr. Lofti followed up by addressing the continuation of appellant’s left-sided shoulder pain.

A December 20, 2002 radiology report noted that the lateral end of appellant’s left clavicle was deficient, which might be a congenital variation or a residual from previous surgery or previous trauma.

In a January 9, 2003 report, Dr. Subir S. Jossan, a Board-certified orthopedic surgeon, noted that appellant’s current symptoms included pain with forward elevation of the left shoulder, a mild positive impingement sign and a positive cross body abduction test. Dr. Jossan diagnosed residual left shoulder pain post arthroscopy, decompression and distal clavicle excision and symptomatic os acromiale, left shoulder. He recommended activity limitations. Some 2002 and 2003 physical therapy progress notes were also submitted.

By decision dated May 30, 2003, the Office denied modification of the December 12, 2002 decision. The Office found that neither Dr. Lofti nor Dr. Jossan addressed the causal relation of appellant’s employment and the development of his bilateral shoulder conditions, such that their opinions were insufficient to support appellant’s claim. The Office found that, although Dr. Scully did address causal relationship, he provided an opinion couched in speculative terms.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that he is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the

5 U.S.C. § 8101 *et seq.*

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.²

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;³ (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ 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 causal relationship, is generally 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 certainty⁷ 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

In this case, appellant failed to submit such rationalized medical evidence establishing a causal relationship between specific factors of his employment and the conditions for which he was treated. The medical evidence of record noted that appellant had preexisting shoulder conditions related to his military service. Dr. Scully noted that appellant had knee pain from running and bilateral shoulder pain from lifting and he diagnosed rotator cuff impingement versus a small rotator cuff tear. However, Dr. Scully did not provide a rationalized medical opinion relating the diagnosed shoulder conditions to specific factors of appellant's employment other than "lifting." On August 30, 2001 Dr. Scully noted that appellant had bilateral shoulder pain with crepitus on range of motion and pain with impingement maneuvers and he diagnosed bursitis. However, he did not address causal relation. Following an MRI scan Dr. Scully diagnosed distal supraspinatus tendinosis and indicated that appellant had an impingement

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁴ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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

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

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

syndrome and acromioclavicular arthritis. Thereafter, appellant underwent surgery with good results and he was cleared to return to light duty on November 27, 2001. These reports from Dr. Scully are deficient as they failed to provide a full history of appellant's preexisting condition and did not include an explanation from him as to how appellant's work activities caused or contributed to his diagnosed conditions.

The Office, therefore, properly denied appellant's claim on December 12, 2002 as he had failed to submit rationalized medical evidence supporting causal relation of his conditions with specific factors of his employment.

With his March 12, 2003 request for reconsideration appellant submitted a February 28, 2003 report from Dr. Scully, which addressed causal relationship. Dr. Scully stated that appellant's injuries "may very well have been aggravated by his duties" at the employing establishment with "loading and unloading carts with equipment and mail" and with frequently lifting above shoulder level and moving heavy items. However, the Board finds that this opinion is not well rationalized.

The Board has frequently explained that the opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.⁹ A physician's statement that an employee's complaints "could have been" related to a work injury, or that condition is "probably" related, "most likely" related, or "could be" related to employment factors, are speculative statements and are of reduced probative value.¹⁰ Dr. Scully's February 28, 2003 report is couched in speculative terms and failed to provide an explanation as to how appellant's work activities caused or aggravated his preexisting condition.

The only medical evidence that appellant submitted, which addressed the issue of causal relationship between his employment activities and the conditions for which he was treated, is Dr. Scully's February 28, 2003 report. This report is of reduced probative value and appellant has failed to establish that he became disabled commencing October 16, 2001, causally related to his federal employment.

Appellant submitted the findings of the Employment Security Commission of North Carolina regarding his entitlement to unemployment benefits. This evidence, however, is not determinative of his entitlement to benefits under the Federal Employees' Compensation Act. The Board has held that the findings of other administrative agencies are not dispositive of proceedings under the Act, which is administered by the Office and the Board.¹¹ Therefore, this evidence does not support a causal relation between appellant's conditions and factors of his employment.

⁹ *Connie Johns*, 44 ECAB 560 (1993).

¹⁰ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *Brian E. Flescher*, 40 ECAB 532 (1989); *Jennifer Beville*, 33 ECAB 1970 (1982).

¹¹ *Shelby J. Rycroft*, 44 ECAB 795 (1993); *Daniel Deparini*, 44 ECAB 657 (1993); *Richard L. Ballard*, 44 ECAB 146 (1992).

Appellant also submitted multiple physical therapy notes. The Board has held that a physical therapist's reports are not medical evidence as a physical therapist is not a physician under the Act.¹² Therefore, none of the physical therapy notes submitted to the record are probative on the issue of causal relation. As no further rationalized medical evidence addressing causal relation was submitted by appellant, he has failed to establish his claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated May 30, 2003 and December 12, 2002 are hereby affirmed.

Dated, Washington, DC
November 17, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996).