

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

THOMAS L. CAREY, SR., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 05-52
Issued: June 8, 2005**

Appearances:
Thomas L. Carey, Sr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 30, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated October 21, 2003, which rejected his claim for bilateral shoulder conditions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained bilateral shoulder conditions causally related to factors of his federal employment.

FACTUAL HISTORY

On September 24, 2002 appellant, then a 55-year-old distribution clerk, filed a Form CA-2 claim for occupational disease alleging that he developed bilateral pain in his shoulders,

causally related to factors of his employment.¹ Appellant stated that the onset of his shoulder conditions did not happen all at once but his shoulders started to get sore. Appellant noted that July 2, 2001 was the day when he realized that he had an employment-related condition.

A March 19, 2002 magnetic resonance imaging scan of the left shoulder was reported by Dr. William S. Witt, a Board-certified radiologist, as demonstrating a signal change near the insertion of the rotator cuff consistent with previous surgery, marked thinning in the distal half of the supraspinatus tendon and conjoined portions of the supraspinatus and infraspinatus tendons. He stated that this was consistent with either chronic degenerative changes or acute injury and suspected a partial tear with a small effusion was present. Moderate acromioclavicular joint hypertrophy was present, with the inferior extent abutting and distorting the superior surface of the myotendinous junction of the supraspinatus muscle and tendon.

An October 3, 2002 x-ray report from Dr. Jung Ja Hong, a Board-certified radiologist, indicated a left shoulder cortical irregularity of the greater tuberosity of the humerus which represented, most probably, bursitis. He noted that there was narrowing of the space between the acromion process and humeral head, which was consistent with a rotator cuff tear, without evidence of acute fracture or dislocation. Dr. Hong opined that no attention was needed.

In an undated statement received on November 4, 2002, appellant addressed his work duties of 18 years, noting that one day one of his shoulders became sore and that soon both shoulders started hurting and that he had prior bilateral surgery. Appellant stated that he bid on other jobs, including sorting letters to cases manually, but that his shoulder conditions had not healed. He implicated work duties as causing his bilateral shoulder conditions, including dumping full sacks of mail as well as boxes and bundles of magazines on to a conveyor belt, throwing mail 15 feet, rolling containers to the back dock and working in the cold and wet weather.

By decision dated January 29, 2003, the Office denied appellant's claim, finding that the medical evidence did not support that his shoulder injuries were causally related to factors of his federal employment. It noted that his physician had addressed rotator cuff tendinitis, which was related to the prior surgery of 1991.

Appellant requested reconsideration and submitted additional medical evidence.

In a note dated March 17, 2003, Dr. Timothy M. Carey, a family practice physician, with the Veterans Administration, stated that appellant had been under his care for two years for bilateral rotator cuff injuries which had been unresponsive to steroid injections and nonsurgical therapies. He indicated that appellant had been evaluated by orthopedic physicians for possible surgical intervention. To the best of his knowledge, Dr. Carey indicated that appellant experienced injury at work on or around July 2, 2001.

¹ The Office accepted that appellant sustained shoulder strains on March 27, 1990 but not a rotator cuff tear and noted a four-year history of shoulder problems. The record reflects that appellant underwent bilateral shoulder surgery on December 9, 1991 and returned to work with a restriction on overhead lifting.

In a report dated March 17, 2003, Dr. Maurice C. Kuttub, a general practitioner and acupuncture specialist, noted that appellant had torn rotator cuffs in both shoulders. He stated that appellant first became aware of his condition on July 2, 2001 while picking up and throwing a large piece of mail and had since experienced severe pain in both shoulders. Appellant also submitted treatment records from the Veterans Administration clinic.

On March 21, 2003 appellant requested reconsideration.

By decision dated April 22, 2003, the Office denied modification of the January 29, 2003 decision. It found that appellant did not submit sufficient evidence to establish that his shoulder conditions were causally related to his federal employment. The Office noted that Dr. Carey did not provide any rationalized medical opinion that addressed the effects of the employment work activities on appellant's preexisting shoulder conditions. It noted that the history included bilateral shoulder surgery in 1990 and an automobile accident in 1991.²

By letter dated July 20, 2003, appellant again requested reconsideration. He submitted a treatment note indicating that he underwent rotator cuff repair surgery on July 3, 2003.

By decision dated August 25, 2003, the Office denied appellant's request for reconsideration, finding that the evidence was irrelevant and did not address the deficiencies noted in the prior decisions.

On August 27, 2003 appellant requested reconsideration. In support, he submitted a rotator cuff postoperative protocol. Also submitted was a February 3, 2003 treatment note from Dr. Carey, who indicated that appellant's shoulder problems began approximately 10 years earlier while working for the employing establishment. He stated that appellant was followed at the Veterans Administration for his rotator cuff injury, which the physician described as chronic and most likely related to his work activities. In an August 27, 2003 note, Dr. Carey stated that he had treated appellant for bilateral shoulder injuries sustained from repetitious use injuries that got worse on July 2, 2001 while at work.

In a decision dated October 21, 2003, the Office denied modification of the prior decisions finding that he had not submitted sufficient rationalized medical opinion evidence to establish that his bilateral shoulder conditions were caused by his federal employment.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.³

² Appellant claims that he was hit from behind and therefore could not injure his shoulders.

³ *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 the 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 employee 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 employee.⁴ The medical opinion must be one of reasonable medical certainty 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 employee.⁵

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate factual and medical background.⁶

ANALYSIS

In this case, the issue is whether appellant alleged that he sustained a bilateral shoulder conditions while in the performance of duty, causally related to factors of his federal employment. The Board finds that appellant has not met his burden of proof to establish his claim.

Appellant described his condition as “bilateral pain in his shoulders,” but did not submit evidence which provides a firm diagnosis or which contains a rationalized opinion from a physician that explains how his shoulder complaints in 2001 relate to his prior surgery. Appellant had a 1990 bilateral shoulder injury and 1991 surgery, but no reports related to his treatment at that time were submitted to the record. Appellant returned to work following the surgeries, with restrictions on overhead lifting. The claim for injury commencing in 2001 is deficient as the submitted medical evidence lacks a full history of appellant’s shoulder conditions, treatment records or review of the prior surgical procedures.

Radiographic evidence was interpreted as demonstrating a signal change near the insertion of the rotator cuff, which could be consistent with either chronic degenerative changes or acute injury. The radiologist, Dr. Witt, also diagnosed moderate acromioclavicular joint hypertrophy, but he did not address the cause of this condition. Dr. Hong indicated that radiographic testing revealed left shoulder cortical irregularity consistent with bursitis, but he did

⁴ See generally, *Arturo A. Adame*, 49 ECAB 421 (1998); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁵ See *Solomon Polen*, 51 ECAB 341 (2000).

⁶ See *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999); *Judith J. Montage*, 48 ECAB 292 (1997).

not opine on causal relation, nor did he provide evidence of acute fracture or dislocation. Therefore, neither of these radiographic reports provide a definite diagnoses for appellant's ongoing shoulder complaints or discuss causal relationship with any particular factor of his work duties. These reports are not sufficient to establish his claim.

Dr. Carey, a physician with the Veterans Administration, briefly noted that he had treated appellant for two years for bilateral rotator cuff injuries that were unresponsive to steroid injections and nonsurgical therapies. With regard to the history obtained, he indicated that appellant experienced these injuries on or around July 2, 2001 while at work. Dr. Carey did not provide a review of appellant's medical history dating back to 1990 or comment about his prior bilateral shoulder rotator cuff surgeries in 1991. The brief treatment records of Dr. Carey do not discuss the impact of the preexisting bilateral shoulder injury on appellant's present condition. This report is of diminished probative value as Dr. Carey did not provide any discussion of how appellant's preexisting shoulder conditions were caused or aggravated by factors of his federal employment. He did not provide any rationalized medical opinion explaining how the prior rotator cuff tears were aggravated in 2001 by the implicated factors of appellant's employment. As Dr. Carey's opinion is not based on an accurate factual and medical history, lacked a definite diagnosis and provided no discussion as to causal relation, his opinion is of diminished probative value and is insufficient to establish appellant's claim.

Dr. Kuttab stated that appellant had bilateral torn rotator cuff of which he became aware on July 2, 2001 while picking up and throwing mail. The only evidence Dr. Kuttab discussed to establish this diagnosis were appellant's subjective complaints of severe pain in both shoulders. No objective evidence of torn rotator cuffs was presented and Dr. Kuttab did not address the diagnosis reports submitted. As Dr. Kuttab did not base his opinion on a complete and accurate factual and medical background or provide any explanation of causation of appellant's bilateral shoulder condition to his working conditions, the Board finds that the physician's opinion is speculative and insufficient to establish appellant's claim.

Appellant apparently underwent additional rotator cuff repair surgery on July 3, 2003. He submitted literature regarding postoperative rotator cuff care and a February 3, 2003 report from Dr. Carey, who again noted that appellant's shoulder problems had begun 10 years prior. Dr. Carey did not address causal relation or explain how the 2003 surgery was due to appellant's work duties. On August 27, 2003 Dr. Carey noted that appellant's bilateral shoulder injuries started from repetitious use injuries, which worsened on July 2, 2001 while at work. He did not, however, describe the repetitive nature of appellant's job or address how any specific work requirement would aggravate the preexisting shoulder conditions to the extent that additional surgery was necessary in 2003. Dr. Carey did not base his opinion on a complete factual and medical history. These reports are too speculative to establish appellant's claim. Accordingly, appellant has not submitted rationalized medical evidence establishing that he sustained a bilateral shoulder condition in 2001 arising from performing his employment duties.

The Board finds that appellant has not met his burden of proof to provide rationalized medical evidence sufficient to establish that the implicated work factors were the proximate cause of his bilateral shoulder condition, for which compensation is claimed or surgery was performed in 2003.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained bilateral shoulder conditions in the performance of duty, causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2003 is affirmed.

Issued: June 8, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member