

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

HAL E. SHUTTER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Longwood, FL, Employer**

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**Docket No. 05-7
Issued: March 22, 2005**

Appearances:
Hal E. Shutter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 23, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 13, 2004, denying his claim on the grounds that he had not established an injury causally related to employment factors. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his diagnosed neck and left shoulder conditions were caused or aggravated by factors of his federal employment.

FACTUAL HISTORY

On July 6, 2004 appellant, then a 55-year-old rural carrier associate, filed an occupational disease claim alleging that his left shoulder pain, which ran down the length of his left arm, was the result of the physical work he performs in the performance of his federal duties. He indicated that he first became aware of his condition on June 29, 2004.

By letter dated July 15, 2004, the Office informed appellant of the type of factual and medical evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a July 5, 2004 statement, which the Office received on July 22, 2004, appellant stated that he was admitted to the hospital on June 30, 2004 as the left shoulder pain and discomfort he had experienced on June 29, 2004 had gotten worse. In a July 18, 2004 statement, appellant asserted that the bending, twisting and lifting of up to 70 pounds had caused his condition. He submitted copies of a discharge summary from Florida Hospital Fish Memorial dated July 14, 2004, a workers' compensation status form dated July 15, 2004 and a duty status report, also dated July 15, 2004, which contained the diagnoses of cervical spondylosis with radiculopathy and noted that he could return to modified work on July 15, 2004 with restrictions of no climbing, no bending and no lifting over 25 pounds. Objective studies were also submitted. These included a June 30, 2004 chest x-ray, which was found to be grossly clear; a July 1, 2004 x-ray of the left shoulder, which indicated degenerative changes at the acromioclavicular joint and the humeral head; a July 2, 2004 magnetic resonance imaging scan of the cervical spine, which indicated small disc bulge/herniated nucleus pulposus at C3-4 and small disc bulges at C4-5, C5-6 and C6-7, bilateral degenerative changes in the mid to lower cervical spine and moderate to severe neural foraminal narrowing on the left at C6-7 and C7-T1; and a July 2, 2004 x-ray of the cervical spine, which indicated mild to moderate cervical spondylosis and degenerative disc disease and mild to moderate neural foraminal compromise at C6-7 and to a lesser extent C5-6 and C7-T1, worse on the left side.

In a decision dated September 13, 2004, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that his diagnosed medical conditions were caused or aggravated by factors of his employment.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 period 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.³ These are the

¹ The Board notes that the Office received evidence subsequent to the issuance of its September 13, 2004 decision. As this evidence was not previously considered by the Office prior to its decision of September 13, 2004, 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 resubmit 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 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 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 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. The medical evidence required to establish causal relationship, generally, is 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, 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 claimant.⁵

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.⁶

ANALYSIS

In the present case, it is not disputed that appellant engaged in the employment activities alleged. However, appellant has submitted insufficient medical evidence to establish that his diagnosed medical conditions concerning his neck and left shoulder were caused or aggravated by these factors of his federal employment.

The medical evidence of record, which is mainly comprised of diagnostic reports, reveal appellant's diagnosed neck and left shoulder conditions but fail to provide a discussion on how his federal duties would have caused or contributed to such medical conditions. The Office informed him of what was needed to establish his claim in its letter of July 15, 2004. While appellant submitted hospital and diagnostic reports regarding his neck and left shoulder conditions, the requisite evidence needed to establish the claim was a medical report from a physician which explained how his federal employment contributed to his diagnosed conditions.

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *Arlonia B. Taylor*, 44 ECAB 591, 595 (1993).

While appellant believed that his work activities of bending, twisting and lifting of up to 70 pounds caused his diagnosed neck and shoulder conditions, the record contains insufficient medical opinion evidence explaining how those specific work factors caused and/or aggravated his condition. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's medical condition was caused and/or aggravated by factors of his employment, he has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment. The Board, therefore, affirms the Office's finding that appellant did not sustain a compensable injury.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his diagnosed medical conditions were caused or aggravated in the performance of duty.

⁷ See *Michael E. Smith*, 50 ECAB 313 (1999); *Joe T. Williams*, 44 ECAB 518 (1993).

⁸ *Michael E. Smith*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 13, 2004 is affirmed.

Issued: March 22, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member