

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

ROBERT S. MITCHELL, Appellant)
)
and)
)
DEPARTMENT OF LABOR, OFFICE OF)
ASSISTANT SECRETARY FOR)
ADMINISTRATION & MANAGEMENT,)
Dallas, TX, Employer)
_____)

**Docket No. 05-65
Issued: March 3, 2005**

Appearances:
James A. Enicott, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 4, 2004 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated March 19 and June 30, 2004 finding that he had not established a injury on October 24, 2002 causally related to his federal employment. 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 has met his burden of proof in establishing that he sustained a left biceps injury on October 24, 2002 in the performance of his federal duties.

FACTUAL HISTORY

On April 9, 2003 appellant, then a 59-year-old safety specialist, filed a notice of traumatic injury alleging on October 24, 2002 he injured his left arm while picking up a table in the performance of duty. Appellant alleged that he tore his biceps tendon.

The Office requested additional factual and medical information in a letter dated April 21, 2003. In response, appellant submitted a May 29, 2003 report from Dr. Craig Duhon, a Board-certified orthopedic surgeon, who stated that appellant reported right shoulder pain after lifting a table at work in November 2002. He indicated that appellant's current right shoulder condition was probably due to his November 2002 employment injury.

By decision dated June 4, 2003, the Office denied appellant's claim for a left biceps injury finding that there was no supporting medical evidence.

Appellant requested an oral hearing on June 30, 2003. Appellant testified at the oral hearing on January 12, 2004 and stated that he sustained a left biceps injury in October 2002, but that Dr. Duhon confused the facts surrounding his subsequent right shoulder injury and claim in his May 29, 2003 report. The hearing representative allowed appellant an additional 30 days to submit additional evidence. By decision dated March 19, 2004, the hearing representative affirmed the June 4, 2003 decision.

Appellant requested reconsideration on May 27, 2004 and submitted additional medical evidence. In treatment notes dated March 20 and 27, 2003, Dr. Duhon stated that appellant complained of pain and a popping sensation in his left elbow after lifting a folding table four months previously. He stated that appellant had a past history of right distal biceps tendon rupture. Dr. Duhon diagnosed cervical spondylosis and found that a magnetic resonance imaging scan revealed a partial tear of the left distal biceps tendon.

Dr. R. David Bauer, a Board-certified orthopedic surgeon, completed a report on April 11, 2003 and stated that appellant had "no history of injury" but that he was under a great deal of stress at work. He diagnosed cervical spondylosis, cervical radicular syndrome, rotator cuff tear and carpal tunnel syndrome.

By decision dated June 30, 2004, the Office denied modification of the March 19, 2004 decision, finding that appellant had not submitted sufficient rationalized medical opinion evidence to establish that he sustained an injury as alleged.

LEGAL PRECEDENT

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion

evidence.¹ This medical opinion must be based upon a complete factual and medical background with an accurate history of appellant's employment injury. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.²

ANALYSIS

Appellant claimed that he sustained a left biceps tendon rupture as a result of lifting a table on October 24, 2002 in the performance of duty. He initially submitted a report from Dr. Duhon, a Board-certified orthopedic surgeon, in support of his claim. Dr. Duhon stated that appellant developed a right shoulder condition as a result of this lifting incident. However, appellant asserted that he had a separate claim for his right shoulder injury and that Dr. Duhon confused the two situations. Dr. Duhon's May 29, 2003 report does not support that appellant sustained a left biceps injury in the performance of duty as he failed to diagnose this condition.

In treatment notes dated March 20 and 27, 2003, Dr. Duhon noted that appellant complained of pain in his left elbow after lifting a table four months previously. He diagnosed partial tear of the distal biceps tendon. These notes are not sufficient to meet appellant's burden of proof. Although Dr. Duhon noted appellant's history of lifting a table, he stated that this incident took place in November 2002 rather than October 2002 as alleged by appellant. He also failed to provide any opinion on the causal relationship between this lifting incident and appellant's diagnosed tear of the distal biceps tendon. Without a detailed medical report providing a proper history of injury, an opinion on the causal relationship between the incident and the diagnosed condition and offering supporting medical reasoning, appellant has failed to meet his burden of proof.

Dr. Bauer, a Board-certified orthopedic surgeon, completed a report on April 11, 2003 diagnosing cervical, shoulder and carpal tunnel conditions. He did not mention appellant's alleged lifting injury, did not diagnose a left biceps condition and did not provide an opinion on the causal relationship between appellant's left arm injury and his employment. As this report fails to provide the necessary supportive medical evidence, it is not sufficient to meet appellant's burden of proof in establishing a left biceps injury due to his federal employment.

CONCLUSION

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish a causal relationship between his alleged employment incident on October 24, 2002 of lifting a table in the performance of duty and his currently diagnosed condition of partial tear of the distal biceps tendon.

¹ *Steven S. Saleh*, 55 ECAB ____ (Docket No. 03-2232, issued December 12, 2003).

² *James Mack*, 43 ECAB 321, 328-29 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 30 and March 19, 2004 are affirmed.

Issued: March 3, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member