

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

M.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, OR, Employer**

)
)
)
)
)
)
)
)

**Docket No. 07-649
Issued: July 24, 2007**

Appearances:
Shiela Ann Pipkin, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 12, 2006 which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On September 10, 2006 appellant, then a 35-year-old mail handler, filed an occupational disease claim alleging that factors of his employment resulted in him having a torn rotator cuff in

¹ The record includes evidence received after the Office issued the December 12, 2006 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

his left shoulder, back pain and bursitis tendinitis since December 2004. He alleges that his condition was caused by pushing a general postal mail container while performing his work duties.

Appellant's mother submitted a supporting letter dated September 17, 2006. In the letter, she described the work incident during December 2004 where appellant was pushing a heavy mail container and immediately felt pain in his shoulder and back. Appellant's mother also informed the Office that appellant had been hired as a mentally handicapped person.

Additional related documents were also submitted to the Office, including office visit notes, light-duty notes and the results of a computerized tomography scan done on July 14, 2006 at Dr. Timothy J. Gray's, Board-certified in orthopedic surgery, request. The Office also received a September 6, 2006 letter from Dr. John Austin, Board-certified in thoracic surgery, to Dr. Gray, in which Dr. Austin diagnosed appellant with a partial left rotator cuff tear with rotator cuff tendinitis and moderate acromioclavicular degenerative joint disease in the left shoulder. Dr. Austin stated that appellant was injured in December 2004 while pushing a 1,500 pound container of mail. In an August 22, 2006 magnetic resonance imaging (MRI) scan report, Dr. Christopher Morgan, Board-certified in diagnostic radiology, diagnosed supraspinatus tendinopathy and partial tearing with bursitis.

In a September 20, 2006 letter, appellant's employer controverted appellant's factual claims.

In an October 6, 2006 letter, the Office asked appellant for additional factual information and to clarify whether his claim was for a traumatic injury or an occupational disease.

Appellant's mother responded to the Office's factual inquiries in a November 1, 2006 letter. She described the incident as appellant trying to push a container in front of the elevator but he was having a hard time and once it was moving someone walked in front of it so he stopped it and hurt his shoulder. Appellant's mother stated that appellant informed several managers about his injury at the time. She also informed the Office that appellant is mentally challenged and has a high tolerance for pain and does not always know to tell people when he is hurt which was why there was a delay in the filing of the claim. Appellant's mother noted that appellant had been in a car accident in February 2006.

The Office received a copy of a July 28, 1993 letter from Dr. Howard R. Dewey, clinical psychologist, who discussed appellant's abilities and restrictions due to his history of brain damage.

In his October 26, 2006 letter to appellant's employer, Dr. John C. Austin, diagnosed supraspinatus tendinopathy and bursitis with partial tearing and discussed appellant's work history and current condition. Dr Austin stated that appellant told him he injured his left shoulder in December 2004 when pushing a container of mail weighing approximately 1,500 pounds. Appellant also told Dr. Austin that someone walked in front of the container and he had to stop it from moving which caused more shoulder pain. He also told Dr. Austin that he was in a car accident in February 2005.

By decision dated December 12, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the event occurred as alleged and to establish that appellant's medical condition was causally related to the claimed work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵ The second component is whether the employment incident caused a personal injury.⁶ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷

ANALYSIS

The Board finds that the Office was incorrect when it found that appellant's claimed event did not occur as alleged. The Board also finds that the medical evidence is not sufficient to establish that appellant sustained an injury as a result of the event.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 4. Additionally, in order to be considered rationalized; the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

Appellant alleges that he injured his left shoulder and back when he was pushing a general postal mail container one day in December 2004.⁸ In the supporting letter from appellant's mother on September 17, 2006, she states that appellant told her the same thing that he was pushing a container when he felt a sharp pain in his shoulder. In the September 6, 2006 report, Dr. Austin discussed the initial cause of appellant's injury being when he pushed a 1,500 pound container of mail and discussed appellant's subsequent car accident on December 23, 2005. In his October 26, 2006 letter, Dr. Austin discussed appellant's injury event in more detail as well as the car accident. The only evidence challenging appellant's statement is a September 20, 2006 letter from Evelyn McCord in which she states that she was not told about the December 2004 event until August 2006, however, she was told the same story by appellant, that he was pushing a general postal mail container when he felt shoulder and back pain. She also mention's appellant's car accident. Appellant's recollection of the event in December 2004 has been the same one told to his mother, his doctor and his supervisor. He has been forthcoming to everyone about his car accident on December 23, 2005. An employee's statement alleging that an incident occurred at a given time, place and in a manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹ The Board finds that the December 2004 event occurred as claimed.

The second element required to prove a traumatic injury is whether the employment incident caused a personal injury. The Board finds that the medical evidence proves that appellant has a diagnosed condition. In a September 6, 2006 letter, Dr. Austin diagnosed appellant with a partial left rotator cuff tear. The August 22, 2006 MRI scan revealed that appellant had a supraspinatus tendinopathy and partial tearing with the bursitis. In his October 26, 2006 letter, Dr. Austin confirmed the MRI scan and diagnosed appellant with supraspinatus tendinopathy and bursitis. However, the case turns on whether the medical evidence demonstrates that the accepted work-related event caused appellant's personal injury. To establish causal relationship, appellant must submit a physician's report in 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, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.¹⁰ None of Dr. Austin's reports contain any medical discussion of how appellant, by pushing the container, physiologically sustained a left shoulder and back condition. The Board finds that the evidence is deficient as it does not contain a rationalized medical opinion which addresses whether the established event was the cause of appellant's personal injury.

⁸ Although appellant filed an occupational disease claim the Office was correct in assessing the claim as a traumatic injury as the event, pushing a general postal mail container, occurred within a single workday. Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. *See also Ellen Noble*, 55 ECAB 530 (2004).

⁹ *Louise F. Garnett*, 47 ECAB 639 (1996).

¹⁰ *Calvin E. King*, 51 ECAB 394 (2000).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers Compensation Programs dated December 12, 2006 is affirmed.

Issued: July 24, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board