

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

C.R., Appellant)

and)

U.S. POSTAL SERVICE, ANCHORAGE)
PROCESSING & DISTRIBUTION CENTER,)
Anchorage, AK, Employer)

**Docket No. 07-747
Issued: July 16, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2007 appellant filed an appeal of an August 8, 2006 decision denying his traumatic injury claim and an October 17, 2006 decision denying his request for a review of the written record. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has established that he sustained a right shoulder injury in the performance of duty; and (2) whether the Office properly denied his request for a review of the written record.

FACTUAL HISTORY

On June 20, 2006 appellant, then a 46-year-old mail handler, filed a claim (Form CA-1) for a right shoulder injury which he attributed to lifting and pushing mail and equipment at work

on June 19, 2006.¹ He asserted that moving equipment caused a sharp, sudden pain in his right shoulder with numbness into his fingers.

Appellant submitted June 19, 2006 notes and reports from Dr. Lawrence Dempsey, an attending neurosurgeon, who related appellant's account of right shoulder pain after lifting and pushing at work that day. On examination, Dr. Dempsey observed a restricted range of right shoulder motion with soft tissue fullness between the humeral head and the acromion. Right shoulder x-rays were normal. Dr. Dempsey diagnosed right shoulder pain with a possible rotator cuff tear or tendon injury. He held appellant off work pending further diagnostic studies.

In a July 3, 2006 letter, the Office advised appellant of the additional evidence needed to establish his claim. It emphasized the need for her physician to provide a specific diagnosis of injury and explain how the identified work factors would cause the injury. The Office afforded appellant 30 days in which to submit such evidence.

Appellant submitted June 24, 2006 reports from Dr. Dempsey diagnosing possible bicipital tendinitis. Dr. Dempsey opined that the pushing and lifting activities appellant described caused the right shoulder injury.

A July 7, 2006 magnetic resonance imaging (MRI) scan of the right shoulder showed mild degenerative changes of the acromioclavicular joint.

In a July 13, 2006 form report, Dr. Michael J. Morrison, an attending Board-certified family practitioner, diagnosed right shoulder pain and released appellant to full duty.

By decision dated August 8, 2006, the Office denied appellant's claim on the grounds that causal relationship was not established. It accepted that the work events of June 19, 2006 occurred at the time, place and in the manner alleged. The Office found that appellant's physicians did not diagnose a specific right shoulder injury or explain how the accepted work factors would cause or contribute to any pathology.

In a letter dated and postmarked on September 8, 2006, appellant requested a review of the written record by a representative of the Office's Branch of Hearings and Review. He submitted additional evidence.

In July 13, 2006 reports, Dr. Morrison noted tendon crepitus at the right distal clavicle. He diagnosed a shoulder sprain, shoulder injury and shoulder pain related to lifting and moving mail and equipment at work.

In an August 2, 2006 letter, appellant reiterated that he experienced sudden right shoulder pain and immobility at work on June 19, 2006.

¹ On June 21, 2006 appellant filed a notice of occupational disease (Form CA-2), asserting that he sustained sudden, sharp right shoulder pain on June 19, 2006 while lifting and pushing mail and equipment. As the Form CA-2 was duplicative of the Form CA-1 and both alleged the same traumatic incident, the Office developed the case as a traumatic injury claim.

By decision dated October 17, 2006, the Office denied appellant's request for a review of the written record on the grounds that it was not timely filed. The Office found that appellant's request for a review of the written record was postmarked on September 8, 2006 more than 30 days after the Office's August 8, 2006 decision. The Office further denied appellant's request for a hearing on the grounds that the issue involved could be addressed equally well by requesting reconsideration and submitting new evidence establishing that he sustained an injury as alleged.

LEGAL PRECEDENT -- ISSUE 1

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 filed within the applicable time limitation; that an injury was sustained while 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 on 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS -- ISSUE 1

Appellant asserted that he sustained a right shoulder injury on June 19, 2006 due to lifting and pushing mail and equipment at work. The Office accepted that he performed the identified work activities as alleged. The Office denied his claim on the grounds that the medical evidence submitted was insufficiently rationalized to establish that the accepted incident caused a right shoulder injury.

In support of his claim, appellant submitted June 19 and 24, 2006 reports from Dr. Dempsey, an attending neurosurgeon, who diagnosed right shoulder pain with a possible tendon injury or tendinitis. He also submitted a July 13, 2006 report from Dr. Morrison, an

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

attending Board-certified family practitioner, diagnosing right shoulder pain. The Board notes that pain is considered a symptom, not a diagnosis and does not generally constitute a basis for payment of compensation.⁷ Neither Dr. Dempsey nor Dr. Morrison definitively diagnosed a tendon injury or other medical pathology related to the accepted June 19, 2006 work activities. Thus, the medical evidence is insufficient to meet appellant's burden of proof.⁸

The Board finds that appellant submitted insufficient medical evidence to establish that he sustained an injury causally related to the accepted work factors. Therefore, the Office's August 8, 2006 decision denying appellant's claim is proper under the law and facts of this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."⁹ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁰ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹¹

ANALYSIS -- ISSUE 2

The Office denied appellant's claim by an August 8, 2006 decision. Appellant's letter requesting a review of the written record was postmarked September 8, 2006, more than 30 days after the August 8, 2006 decision. Thus, the Office properly found that his request for a review of the written record was not timely filed under section 8124(b)(1) of the Act and that he was not entitled to an examination of the written record as a matter of right.

The Office exercised its discretion and determined that appellant's request for a review of the written record could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that the claimed right shoulder injury was causally related to his federal employment. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.¹² The Board finds that there is no evidence of record that the Office abused its discretion

⁷ See *Robert Broome*, 55 ECAB 339 (2004).

⁸ *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ 5 U.S.C. § 8124(b)(1).

¹⁰ 20 C.F.R. §§ 10.616, 10.617.

¹¹ *Claudio Vasquez*, 52 ECAB 496 (2002).

¹² *Daniel J. Perea*, 42 ECAB 214 (1990).

in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for a review of the written record was proper under the law and facts of this case.

CONCLUSION

The Board finds that appellant has not established that he sustained a right shoulder injury in the performance of duty. The Board further finds that the Office properly denied appellant's request for a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 17 and August 8, 2006 are affirmed.

Issued: July 16, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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