

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

M.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fresno, CA, Employer**

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**Docket No. 07-842
Issued: July 17, 2007**

Appearances:
Zedie E. Ramage, for the appellant
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 31, 2007 appellant filed a timely appeal from a January 31, 2006 Office of Workers' Compensation Programs' hearing representative decision. Under 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 established that he sustained an injury to his left arm and left shoulder in the performance of duty on December 17, 2004.

FACTUAL HISTORY

Appellant, a 51-year-old mail processor, filed a Form CA-1 claim for benefits on December 17, 2004 alleging that he experienced pain and a trembling sensation in his left arm and hand while casing mail that day.

Appellant submitted a form report from Community Medical Center dated December 17, 2004. The history of injury states that "left shoulder pain shoots to fingertips.

Tingling and tremors when holding ... in that hand.” The report diagnosed a work-related muscle strain to back and neck. In a Form CA-17 duty status report date December 17, 2004, the description of injury indicated that appellant experienced pain in his left shoulder and that his left hand began to tremble. Under clinical findings diffuse numbness was noted. A notation under the heading “Diagnosis due to injury” stated “no new injury.” The form listed restrictions for permanent, modified work with no need to change. Another Form CA-17 duty status report also dated December 17, 2004, stated that appellant had been injured while casing mail and felt burning pain in his left arm and left hand. The same restrictions were indicated.

Appellant also submitted a December 17, 2004 witness statement from Celsa Sanchez, a coworker. Ms. Sanchez stated that on December 17, 2004 at 1:45 p.m., appellant showed her his left hand which was shaking. Appellant told Ms. Sanchez that his hands were shaking and that he experienced left arm pain. Ms. Sanchez told appellant that he should inform his supervisor of his symptoms and consult a physician. She noted that appellant left the work area and reported to the office. On December 17, 2004 appellant notified his supervisor, Denis Gagnon, that, while casing mail he sustained a strain injury to his left arm and left shoulder at 1:50 p.m.

On December 28, 2004 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a further description of the employment incident. The Office also asked appellant to submit a report from a treating physician containing a diagnosis of his condition and an opinion as to whether his claimed condition was causally related to his federal employment.

Appellant submitted a December 17, 2004 form report from Dr. Anthony W. Montana, a Board-certified family practitioner, who related a history of injury that appellant felt a sharp burning pain in his left shoulder and arm and experienced tingling in his left arm and hand while casing mail on that day. He diagnosed “pain in joint involving upper arm.” In a report dated December 21, 2004, Dr. Montana stated:

“[Appellant] gives [a] date of injury as December 17, 2004. [He] states, while casing [mail] he felt a sharp burning pain in his left shoulder and arm and also felt his left arm and hand tingling and trembling.... Of note, [appellant] has previously been seen by this same examiner on August 27, 2001 for fitness-for-duty/return to work evaluation. [He] at that time, had extensive multi-year history of problems involving his cervicothoracic and upper extremity complaints and, in fact, I find similar complaints in that report to the ones he is currently having. [Appellant] had extensive evaluation including CT [computerized tomography] scans, MRI [magnetic resonance imaging] scans, x-rays, nerve conduction studies and EMG [electromyograms]. [He] states that he has been permanent and stationary since 1997 and on permanent light-duty work since that time for his neck and back problems.

“[Appellant] presents with a history of left arm pain with no evidence of any new work-related injury. [His] symptomatology is nearly identical to that which he had when last seen in 2001 and for which it appears he has been permanent and stationary since 1997.

“[Appellant], therefore, is to be on restrictions per his primary care physicians as in the past. [He] is to be on permanent modified work status, as per his old injuries. [Appellant] is released from care. No further medical care is needed as I cannot identify any new injury as of December 17, 2004.”

By decision dated February 3, 2005, the Office denied the claim finding that appellant failed to submit medical evidence in support of his claim. The Office determined that he failed to submit medical evidence providing a diagnosis resulting from the December 17, 2004 work incident.

On February 30, 2005 appellant requested an oral hearing which was held on September 13, 2006.

By decision dated January 31, 2006, an Office hearing representative affirmed the February 3, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical 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,

¹ 5 U.S.C. § 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

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.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

Appellant experienced the December 17, 2004 employment incident at the time, place and in the manner alleged.⁸ However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on December 17, 2004 caused a personal injury and resultant disability.

The reports from Dr. Montana failed to provide a rationalized medical opinion that his claimed left arm condition was causally related to the December 17, 2004 employment incident. He diagnosed "pain in joint involving upper arm" in his December 17, 2004 form report. Dr. Montana related in his December 21, 2004 report, that appellant felt a sharp burning pain while casing mail on December 17, 2004 in addition to tingling and trembling in his left arm and left hand. He indicated that he had treated appellant in August 2001 for long-standing cervicothoracic and upper extremity complaints. Based on these complaints, appellant was placed on restrictions which have apparently been permanent and stationary since 1997. Dr. Montana advised that appellant's symptoms as of August 2001 were similar to those he was currently experiencing. He noted that appellant had undergone extensive diagnostic testing including CT scans, MRI scans, x-rays, nerve conduction studies and EMGs. With regard to his current complaints, Dr. Montana advised that appellant had presented with a history of left arm pain with no evidence of any new work-related injury as of December 17, 2004. He, therefore, recommended that appellant be given restrictions for permanent modified work status, to accommodate his old injuries.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ The medical reports of record do not provide a firm diagnosis

⁶ *Id.*

⁷ *Id.*

⁸ Although the Office made some conflicting statements in this regard, the findings in this case implicitly indicated that appellant met this part of his burden. The Office proceeded to evaluate the medical evidence and base its ultimate determination on whether appellant submitted sufficient medical evidence to establish that he sustained an injury in the performance of duty.

⁹ *John J. Carlone, supra* note 4.

¹⁰ *See Anna C. Leanza*, 48 ECAB 115 (1996).

of appellant's left arm condition or how it relates to the work activities he was performing on December 17, 2004. The record reflects prior treatment for neck and left arm symptomatology. Dr. Montana did not address how the December 17, 2004 incident would contribute to or aggravate any preexisting conditions. He did not provide an explanation of how the December 17, 2004 incident aggravated any prior medical condition. Dr. Montana noted that appellant felt a sharp burning pain while casing mail, in addition to tingling and trembling in his left arm and left hand on December 17, 2004. He did not provide a diagnosis of appellant's left arm condition, did not identify the cause of any injury or explain the process by which his duties resulted in an injury.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a firm diagnosis of his left arm condition or a medical opinion to sufficiently describe or explain the medical process through which the December 17, 2004 work activities caused an injury. As he has failed to submit any probative medical evidence establishing that he sustained an injury in the performance of duty, the Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establish that his claimed left arm and left shoulder injury was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 17, 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