

FACTUAL HISTORY

On March 7, 2005 appellant, then a 59-year-old sales and services associate, filed a Form CA-2 claim for an occupational disease.¹ On November 22, 2004 he first realized that the pain in his shoulders was caused by factors of his federal employment. In an accompanying narrative statement dated March 7, 2005, appellant provided a history of his employment beginning July 1, 1989. He described his work duties which included heavy lifting and work-related injuries. Appellant contended that he was required to work outside his prescribed physical restrictions.

Appellant submitted a January 27, 2005 medical report from Dr. I. Grant Orlin, a general practitioner, who noted appellant's employment history, including his work duties which required heavy lifting and reported findings on physical examination. Dr. Orlin diagnosed bilateral shoulder tendinitis with subacromial spur formation, acromioclavicular (AC) arthritis and impingement syndrome with industrial acceleration. He opined that the physical requirements of appellant's work duties since 1989, which included heavy-duty lifting, pushing and pulling, caused the acceleration of his arthritis. Dr. Orlin concluded that, since there was no other history obtained regarding outside hobbies, sports activities or other nonindustrial injuries that may have contributed to appellant's arthritis, it was medically reasonable and historically probable to infer that a causal relationship existed between the diagnosed conditions and appellant's employment.

In a February 2, 2005 report, Dr. James C. Thomas, Jr., a Board-certified orthopedic surgeon, noted appellant's employment history which included work duties that involved heavy lifting, pushing and pulling. He reported findings on physical examination and diagnosed chronic bilateral subacromial bursitis and impingement syndrome secondary to subacromial spurring and AC joint hypertrophy bilaterally. Dr. Thomas opined that appellant's shoulder injuries were related to 14½ years of repetitive distribution of mail at or above shoulder level, resulting in increased stress to the AC joint and causing the development of subacromial bone spurs as repetitive trauma ensued with the repetitive work activity at or above shoulder level.

By letter dated March 22, 2005, the Office addressed the additional factual and medical evidence appellant needed to submit to establish his claim. In a letter of the same date, the Office requested that the employing establishment respond to the evidence submitted by appellant.

¹ Prior to the instant claim, appellant filed a Form CA-2 claim on January 5, 2004. He alleged that he sustained injuries to his left upper extremity, hand and lower extremities that were caused by his federal employment. The Office, by decisions dated April 13 and October 28, 2004, found that appellant did not sustain an injury while in the performance of duty. In a decision dated June 13, 2006, the Office denied his May 30, 2006 request for reconsideration on the grounds that it was untimely and failed to establish clear evidence of error. By decision dated October 26, 2006, the Board affirmed the Office's June 13, 2006 decision. Docket No. 06-1605 (issued October 26, 2006).

In a letter dated March 8, 2005 and received by the Office on March 28, 2005, the employing establishment controverted appellant's claim. It described his work duties and disputed his contention that he was required to perform heavy lifting, pushing and pulling. The employing establishment denied that appellant was required to work outside his physical restrictions.

In an April 12, 2005 letter, appellant further described the development of his shoulder condition and his work duties. He first sought medical treatment for his shoulder condition in October 2004 and diagnosed with bilateral tendinitis and tenosynovitis in the shoulders. Appellant noted his treatment by Dr. Orlin. His work duties included repetitive motion of his right hand, reaching above his head, deep bending, standing for long periods of time, heavy lifting and keyboarding.

Duty status reports dated February 25 and March 24, 2005, from physicians whose signatures were illegible indicated that appellant had bilateral shoulder problems and released him to return to limited-duty work on the date of the report, respectively.

By decision dated June 2, 2005, the Office found that appellant did not sustain an injury while in the performance of duty. The factual evidence failed to establish his work duties. The Office found that the accuracy of appellant's description of his work duties was unclear based on the employing establishment's description of his work duties. The Office further found that the medical evidence of record failed to provide a rationalized opinion establishing a causal relationship between appellant's shoulder conditions and his employment.

In a letter dated June 30, 2005, appellant requested an oral hearing before an Office hearing representative. At a December 14, 2005 hearing, he submitted statements from his coworkers, which indicated that he performed heavy-duty work. In a March 8, 2005 letter, appellant further described his work duties involving pitching mail and unloading cages.

In a July 15, 2005 report, Dr. Orlin stated that appellant's stressful physical work duties which involved pushing up to 700 pounds, repetitive and cumulative trauma six hours a day for several years, frequent extension and reaching above the shoulders, lifting tubs of mail weighing 20 to 30 pounds repetitively added stress to his shoulders. He opined that there was no other preexisting history of injury, accidents, recreational activities or problems resulting in treatment for degenerative disease or arthritis. Dr. Orlin stated that, if appellant had preexisting osteoarthritis, particularly at his age, then it would seem more likely that his condition was accelerated by his work activities at the employing establishment. He further stated that, if appellant had not worked at the employing establishment, then he would not have had this amount of problems and symptoms. Dr. Orlin's August 26, 2005 report reiterated the diagnoses and opinion regarding causal relation set forth in his January 27, 2005 report.

In a September 7, 2005 report, Dr. Thomas stated that appellant sustained bilateral shoulder impingement syndrome, shoulder disorders of the bursa and tendons and arthritis and tendinitis of the shoulder.

By decision dated March 21, 2006, an Office hearing representative set aside the June 2, 2005 decision and remanded the case for further development of the medical evidence. The

hearing representative found the evidence of record sufficient to establish that appellant performed strenuous physical work duties from 1989 to 1997, which included unloading heavy containers of mail from trucks, dumping sacks of mail weighing up to 70 pounds, pitching parcels into gurneys and taking trays of letters and tubs of flats to the carrier area. He found that the medical opinions of Drs. Orlin and Thomas, that appellant's bilateral shoulder conditions were causally related to his work duties, were not based on a fully accurate history or sufficiently rationalized, but they were uncontroverted. On remand, the hearing representative instructed the Office to refer appellant, together with a statement of accepted facts and the case record, to a Board-certified orthopedic surgeon for a second opinion medical examination.

By letter dated May 17, 2006, the Office referred appellant to Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a June 6, 2006 report, Dr. Bleecker reviewed the statement of accepted facts and appellant's medical records. He provided a history of his medical, social and family background. Dr. Bleecker reported limited range of motion of the neck and full internal and external rotation, both actively and passively of the shoulders. Appellant had positive Phalen's test and Tinel's sign results in both wrists and normal range of motion of the fingers. Dr. Bleecker reported findings on motor and sensory examination. He diagnosed right C6-7 radiculopathy, bilateral carpal tunnel syndrome and bilateral AC degenerative arthritis. Dr. Bleecker stated that the diagnoses were due to nonindustrial, degenerative preexisting conditions including degenerative disc disease of the cervical spine and degenerative AC arthritis. Based on his objective neurological findings the limitation of motion of shoulder abduction and elevation was a voluntary inhibition in view of the fact that appellant had full internal and external rotation that was done easily both actively and passively. Dr. Bleecker opined that his shoulder complaints related to bilateral posterior trapezil which referred from the neck and were manifestations of the underlying degenerative condition. He also opined that appellant's shoulder symptoms appeared to be secondary to the degenerative disease in the cervical spine with C6-7 radiculopathy and bilateral carpal tunnel syndrome. Dr. Bleecker stated that the prognosis was somewhat poor as appellant had degenerative changes that would continue to progress. He related that surgical intervention was not necessary for any work-related conditions and provided appellant's physical limitations. In an accompanying work capacity evaluation (Form OWCP-5c), he stated that appellant was unable to perform his usual job but that he could work eight hours per day within specified physical restrictions.

By decision dated June 19, 2006, the Office found that appellant did not sustain an injury while in the performance of duty based on Dr. Bleecker's June 6, 2006 medical report.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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

² 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.³ These are the essential elements of each 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 a causal relationship 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

ANALYSIS

The Office referred appellant and the medical evidence of record to Dr. Bleecker, a Board-certified orthopedic surgeon, for a second on whether appellant sustained an injury causally related to factors of his federal employment. In a report dated June 6, 2006, Dr. Bleecker reported limited range of motion of the neck, full range of motion of the shoulders both actively and passively and fingers and positive Phalen's and Tinel's sign results. He diagnosed right C6-7 radiculopathy, bilateral carpal tunnel syndrome and bilateral AC degenerative arthritis. Dr. Bleecker opined that appellant's degenerative disc disease of the cervical spine and degenerative AC arthritis were preexisting nonindustrial conditions. Based on his objective neurological findings, he stated that the limitation of motion of the shoulder abduction and elevation was voluntary inhibition in view of the fact that appellant had full internal and external rotation that was done easily both actively and passively. Dr. Bleecker further stated that his shoulder complaints were manifestations of the underlying degenerative condition and that his shoulder symptoms were secondary to his C6-7 radiculopathy and bilateral carpal tunnel syndrome. He completed a Form OWCP-5c, which indicated that appellant could work eight hours per day with physical restrictions.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The Board finds that Dr. Bleecker's report is detailed, well rationalized and based upon a complete and accurate history. While he reported a limited range of motion, he did not attribute it to the accepted factors of appellant's federal employment in his capacity as a sales and services associate. Dr. Bleecker's opinion represents the weight of the medical evidence in finding that appellant did not sustain an injury causally related to factors of his federal employment.

The medical evidence submitted by appellant in support of his claim is insufficient to overcome the weight accorded to Dr. Bleecker's report. Dr. Orlin's January 27, July 15 and August 26, 2005 reports found that the physical requirements of appellant's work duties which included heavy-duty lifting, pushing and pulling, repetitive reaching above the shoulders caused the acceleration of his bilateral shoulder tendinitis with subacromial spur formation, AC arthritis and impingement syndrome. He stated that there was no other history of hobbies, sports or recreational activities and nonindustrial or industrial injuries that may have contributed to appellant's arthritis. The Board has held that an opinion that a condition is causally related to an employment injury merely because the employee was asymptomatic before an incident but symptomatic after it is insufficient, without supporting rationale, to establish causal relation.⁶ Dr. Orlin did not provide sufficient rationale explaining how appellant's bilateral shoulder tendinitis or arthritis with impingement were caused or contributed to by his employment duties. The Board finds that Dr. Orlin's opinion is not sufficient to establish appellant's claim.

Dr. Thomas' February 2, 2005 report stated that appellant's work duties involved heavy lifting, pushing and pulling. He made the same diagnoses as reported by Dr. Orlin. Dr. Thomas opined that appellant's conditions were caused by 14½ years of repetitive distribution of mail at or above shoulder level. However, he did provide any medical rationale explaining how the onset of the diagnosed conditions was caused to appellant's work duties over the stated period of time. Dr. Thomas' February 2, 2005 opinion is insufficient to establish appellant's claim. In a September 7, 2005 report, Dr. Thomas noted that appellant sustained bilateral shoulder impingement syndrome, shoulder disorders of the bursa and tendons and arthritis and tendinitis of the shoulder. He did not address the issue of whether the diagnosed conditions were caused by factors of appellant's employment. The Board finds that Dr. Thomas' September 7, 2005 report is insufficient to establish appellant's claim.

The February 25 and March 24, 2005 reports from physicians whose signatures are illegible have no probative value because the authors cannot be identified as a physician.⁷ As the reports lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.⁸

The Board, therefore, finds that the reports of Drs. Orlin and Thomas and physicians whose signatures are illegible are not of such probative value that they are sufficient to overcome the weight accorded to Dr. Bleecker's June 6, 2006 report. Because appellant has not submitted

⁶ *John F. Glynn*, 53 ECAB 562 (2002).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (Reports not signed by a physician lack probative value).

sufficiently rationalized medical evidence establishing that he sustained an injury while in the performance of duty, he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 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