

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

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**A.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bronx, NY, Employer**

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**Docket No. 07-1476  
Issued: October 17, 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  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 2, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 6, 2006 and February 8, 2007 merit decisions denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On April 1, 2006 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that he sustained pain in his right shoulder, arm and index and middle fingers due to his repetitive work duties which included reaching up to put mail in mailboxes. He indicated that he first became aware of his condition on March 23, 2006 and first realized that it was employment related on March 24, 2006. Appellant stopped work on April 3, 2006.

On April 19, 2006 the Office requested that appellant submit additional factual and medical evidence in support of his claim. In an April 29, 2006 letter, appellant stated that he felt some right shoulder pain prior to March 23, 2006 but that he experienced more severe pain in his right shoulder, arm and index and middle fingers after that date. He noted that two of the four buildings he delivered mail to had high mailboxes which required him to reach above shoulder height and stated that the small size of the mailboxes required him to “squeeze and shape” the mail so it would fit. In a May 8, 2006 letter, appellant’s supervisor stated that appellant was required to lift, push, pull, bend and stoop while casing and delivering mail about six hours per day for five days a week. The supervisor stated, “In two of his buildings which have approximately 12 sections the mailboxes are approximately 10 to 12 inches above the standard for delivery of mail.”

On April 26, 2006 Dr. Jean Kalache, an attending Board-certified orthopedic surgeon, stated that appellant reported that he had noticed increasing discomfort in the past two or three months when he performed his letter carrier job, including when he “placed mail and packages in high boxes.” She noted that appellant did not recall any particular incident or trauma. Dr. Kalache indicated that on examination appellant showed no tenderness over the right acromioclavicular joint with no deformity of the right shoulder but that he had severe discomfort when his shoulder was taken to 70 degrees of abduction and externally rotated. She stated, “The patient was advised that we are probably dealing with a rotator cuff pathology, x-rays and magnetic resonance imaging (MRI) [scan] are requested.”

On May 23, 2006 the Office requested that appellant submit a rationalized medical report relating his claimed condition to employment factors. Appellant submitted additional factual statements which were similar to those already submitted. He also submitted the findings of May 25, 2006 magnetic resonance imaging testing of his right shoulder which showed an osteophyte at the inferior acromioclavicular joint (rule out impingement syndrome clinically), bicipital tenosynovitis, bursitis, and superior subluxation of the glenohumeral joint with a complete tear of the supraspinatus and infraspinatus tendons, and evidence of complex glenoid labrum tears. The findings of May 25, 2006 x-ray testing showed an osteophyte at the inferior acromioclavicular joint and degenerative osteophyte at the greater tuberosity.

On June 5, 2006 Dr. Kalache stated that appellant’s MRI scan testing showed the presence of multiple pathologies including severe retraction and atrophy of the muscles and labral tears. She indicated that she advised appellant about his surgical options and stated:

“The patient at this point indicates to me that those pathologies are related to his profession whereby he has to do repetitive motion when placing objects on a high level. The patient was advised that this is a possibility although it is difficult to prove it.... The patient at this point wants to proceed into establishing a work-related injury to this particular pathology and was advised to return to the office in two days to pick up a copy of his notes to establish his case.”

In a July 6, 2006 decision, the Office denied appellant’s claim for an employment-related occupational disease. The Office found that he established employment factors in the form of casing and delivering mail, including reaching well above his shoulder height to place mail in

small mailboxes. The Office further found, however, that appellant did not submit sufficient medical evidence to show that he sustained an occupational disease due to these injuries.

Appellant submitted a June 12, 2006 report in which Dr. Osama Sayegh, an attending Board-certified family practitioner, indicated that appellant was seen on April 3, May 11 and 25 and June 8, 2006 “due to lifting and reaching of right shoulder with decreased range of motion and tenderness.” Dr. Sayegh stated that MRI scan testing showed labral tears and severe retraction and atrophy of the right shoulder muscles, that appellant’s range of motion and pain had not improved, and that he was totally disabled.

Appellant requested a hearing before an Office hearing representative. At the hearing held on December 18, 2006, appellant testified that his attending physicians appeared reluctant to provide an opinion on causal relationship. He stated that he had right shoulder surgery on August 8, 2006 which was not authorized by the Office and that he returned to full-duty work on October 23, 2006. Appellant indicated that he does not currently have any trouble with his right shoulder because the mailboxes on his route had been lowered.

In a February 8, 2007 decision, the Office hearing representative affirmed the Office’s July 6, 2006 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> 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 specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.<sup>4</sup>

### ANALYSIS

Appellant alleged that he sustained an occupational disease which affected his right shoulder, arm and fingers due to the repetitive duties required by his job as a letter carrier, particularly having to reach high mailboxes to "squeeze and shape" mail into small mailboxes. The Board finds that appellant has established employment factors in the form of casing and delivering mail, including reaching well above his shoulder height to place mail in small mailboxes. The Board further finds, however, that appellant did not submit sufficient medical evidence to show that he sustained an occupational disease due to these factors.

Appellant submitted a June 5, 2006 report in which Dr. Kalache stated that his May 25, 2006 MRI scan testing showed the presence of multiple right shoulder pathologies including severe retraction and atrophy of the muscles and labral tears. Dr. Kalache stated that appellant "at this point indicates to me that those pathologies are related to his profession whereby he has to do repetitive motion when placing objects on a high level. The patient was advised that this is a possibility although it is difficult to prove it..."<sup>5</sup> The submission of this report would not establish appellant's claim that he sustained an employment-related occupational disease because this report is of limited probative value due to its equivocal and speculative opinion on causal relationship.<sup>6</sup> Dr. Kalache did not provide a clear opinion that appellant's right shoulder condition was related to the implicated employment factors.

Appellant also submitted a June 12, 2006 report in which Dr. Sayegh, an attending Board-certified family practitioner, indicated that he was seen on several occasions in mid 2006 "due to lifting and reaching of right shoulder with decreased range of motion and tenderness." Dr. Sayegh stated that appellant had labral tears and severe retraction and atrophy of the right shoulder muscles and indicated that he was totally disabled. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.<sup>7</sup> Dr. Sayegh reported appellant's own belief about the cause of his injury, but

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> Dr. Kalache also stated, "The patient at this point wants to proceed into establishing a work-related injury to this particular pathology and was advised to return to the office in two days to pick up a copy of his notes to establish his case."

<sup>6</sup> See *Jennifer Beville*, 33 ECAB 1970, 1973 (1982), see *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative in nature is of limited probative value on the issue of causal relationship).

<sup>7</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

he did not provide an opinion that appellant sustained an employment-related right shoulder condition.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 8, 2007 and July 6, 2006 decisions are affirmed.

Issued: October 17, 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