

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

R.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Longmont, CO, Employer**

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**Docket No. 08-938
Issued: September 12, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2008 appellant filed a timely appeal from a November 16, 2007 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. 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 met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On January 25, 2007 appellant, then a 56-year-old rural letter carrier, filed an occupational disease claim alleging his left shoulder bursitis condition resulted from the repetitive nature of his job. He became aware of his condition on June 1, 2004 but did not stop work. Appellant believed his condition was part of the aging process and that cortisone injections would help. He started working limited duty on October 2007.

The employing establishment controverted the claim on August 20, 2007. It submitted an August 14, 2007 statement from Connie Hanlon, a supervisor, who advised that appellant worked as a retail and night stock clerk for 20 years prior to his current employment. Appellant was observed a month prior by numerous people grabbing and lifting another carrier onto his left shoulder. He operated a right-hand drive postal vehicle.

In a February 6, 2007 duty status report, Dr. Peter Wood, a Board-certified orthopedic surgeon, noted that appellant was a rural letter carrier who repetitively used the left shoulder. A diagnosis of left impingement was provided on June 21, 2006. Dr. Wood indicated that appellant was able to perform limited duty with the following restrictions as per patient: “by nature of delivering mail; [with] a right-hand drive vehicle, left side of body is used for lifting articles for transfer to right side of body for delivery as well as actual steering of vehicle.”

In a letter dated August 27, 2007, the Office advised appellant of the factual and medical evidence needed to establish his claim.

In a September 4, 2007 statement, appellant noted that he did not have any diagnosed shoulder condition until 2004, when he had cortisone injections for impingement of the left shoulder and arthritis of the right shoulder. In an August 28, 2007 duty status report, Dr. Wood diagnosed a left shoulder impingement and advised that appellant could return to work on August 29, 2007, with restrictions which “patient tells me he can do.”

In a September 18, 2006 letter, the employing establishment submitted the requirements of appellant’s position as a regular rural carrier as well as copies of limited-duty job offer documents dated October 3 and 16, 2007. A copy of Job Analysis/Essential Functions of a rural carrier, with the tasks of delivering and casing, was of record. The description noted that the tasks of carrying parcels and lifting contained repetitive action.

In an October 16, 2007 work restriction evaluation, Dr. Wood indicated that there were no changes from the last evaluation. On October 16, 2007 he approved the limited-duty assignment offered by the employing establishment, which consisted mainly of answering telephones.

By decision dated November 16, 2007, the Office denied appellant’s claim on the grounds that the evidence did not establish that he sustained an injury. It noted that appellant did not provide evidence of any specific work-related task(s) performed, which he believed caused or aggravated his left shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact that an injury was

¹ 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged² and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁴

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁵ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁶ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁷ Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,⁸ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.⁹

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to that claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete

² *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (occupational disease or illness and traumatic injury defined).

³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁴ *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341 (2000).

⁵ *D.B.*, 58 ECAB ____ (Docket No. 07-440, issued April 23, 2007); *V.F.*, 58 ECAB ____ (Docket No. 06-1497, issued January 30, 2007); *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁶ *Id.*, *Barbara R. Middleton*, 56 ECAB 634 (2005) (a consistent history of the injury, as reported on medical reports to the claimant's supervisor and on the notice of injury, can be evidence of the occurrence of the incident).

⁷ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

⁸ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

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.¹⁰ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.¹¹

ANALYSIS

The Office denied appellant's claim on the grounds that he failed to describe or establish work factors alleged to have caused his claimed condition. The Board finds that the evidence supports that appellant's duties as a rural letter carrier involved repetitive tasks such as the carrying of parcels and lifting in delivery and casing requirements. Appellant's claim form asserted that he performed repetitive duties. Ms. Hanlon, appellant's supervisor, did not dispute that appellant drove a right-hand drive postal vehicle, the work duties of a rural letter carrier or that repetitive tasks were involved in the job. Appellant provided a consistent description of his work duties as listed in the medical evidence. In a February 6, 2007 report, Dr. Wood noted that appellant was a rural letter carrier who repetitively used his left shoulder and drove a right-hand drive postal vehicle. The Board finds that the evidence supports that appellant's work duties as a rural letter carrier involved some repetitive activities and driving a right-hand drive postal vehicle.

The Board finds, however, that the medical evidence is insufficient to establish that appellant's left shoulder condition was caused or aggravated by the accepted employment factors. On August 27, 2007 the Office advised appellant of the medical evidence needed to establish his claim. While appellant claimed that his shoulder problem began in 2004, he provided insufficient medical evidence to support causal relation.

In February 6 and August 28, 2007 reports, Dr. Wood diagnosed a left shoulder impingement; however, he did not provide a full opinion of causal relationship. In an October 16, 2007 report, he advised that appellant's restrictions were unchanged from his last evaluation. While Dr. Wood noted that appellant was a rural letter carrier and was aware that he drove a right-hand drive postal vehicle, he failed to explain with rationale the process by which the specific employment duties would cause or aggravate appellant's left shoulder condition.¹² He further did not address whether appellant had this condition since 2004 as claimed or how appellant's duties could aggravate or cause such a condition. Therefore, these reports are insufficient to meet appellant's burden of proof.

¹⁰ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

¹² *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

There are no other medical reports of record. 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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹³ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2007 is affirmed.

Issued: September 12, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ See *Dennis M. Mascarenas*, *supra* note 3.