United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 08-2049**
	)	**Issued: April 15, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Traverse City, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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 July 21, 2008 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 14, 2008. Pursuant to 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 employment injury on June 14, 2006.

FACTUAL HISTORY

On July 13, 2006 appellant, then a 44-year-old mail processing clerk, filed an occupational disease alleging that he developed a left shoulder condition while lifting and pulling trays in his light-duty position on June 14, 2006. He indicated that his original injury occurred on May 6, 2005.[1] In support of his claim, appellant submitted a July 5, 2006 note from

[1] This is file number xxxxxx015.

Dr. James P. VanWagner, an osteopath, who found that he was totally disabled. Dr. VanWagner stated that appellant was unable to work due to a June 14, 2006 left shoulder injury.

Dr. VanWagner examined appellant on June 16, 2006 and reported that his left rotator cuff surgery still resulted in weakness and pain. He recommended a magnetic resonance imaging (MRI) scan. On July 5, 2006 the MRI scan demonstrated that appellant's rotator cuff was intact, but that there was muscle atrophy. Dr. VanWagner informed appellant that he could not do his job.

In a letter dated July 20, 2006, the Office requested additional factual and medical evidence in support of appellant's claim. In a note and a duty status report dated August 15, 2006, Dr. VanWagner indicated that appellant could return to work on August 15, 2006 using only his right arm.

By decision dated September 1, 2006, the Office denied appellant's claim, finding that he failed to submit sufficient evidence. It noted that appellant had not submitted the necessary medical evidence to support his claim for a work-related injury.

Dr. VanWagner completed a report on August 15, 2006 and stated that appellant sustained a work injury on May 6, 2005 to his left shoulder. He noted appellant's history of previous nonemployment-related left shoulder injuries and surgeries. On October 24, 2005 he underwent an open rotator cuff repair and debridement of the rotator cuff tissue. On June 14, 2006 appellant sustained a pulling type injury resulting in severe pain. Dr. VanWagner noted that the MRI scan revealed an intact rotator cuff with significant muscle atrophy. He found that appellant was totally disabled on July 5, 2006 and released him to right-handed work only on August 15, 2006.

Appellant requested an oral hearing on September 22, 2006 which was held on March 12, 2008. He stated that following his initial left shoulder injury he returned to limited duty with restricted motion of his left arm and hand sorting mail and "rip-ups" with his right arm lifting under 15 pounds. Appellant stated that he was sweeping mail into trays with his left arm when he developed increased pain. He noted that the pain developed over one work shift on June 14, 2006. Appellant contended that the work he was performing was outside his restrictions as he repetitively lifted between 5 and 15 pounds. He noted that he did not usually work on the machines, but due to mail volume he did so on June 14, 2006. He retired March 15, 2007.

By decision dated May 14, 2008, the hearing representative affirmed the September 1, 2006 decision. She adjudicated appellant's claim as a traumatic injury and found that the employment incident of June 14, 2006 occurred as alleged. However, the medical evidence was not sufficient to establish an injury resulting from the employment incident.

LEGAL PRECEDENT

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to

time and place of occurrence and member or function of the body affected.[2] 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. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[3] Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.[4] The Board has held that the mere diagnosis of "pain" does not constitute a basis for the payment of compensation.[5]

ANALYSIS

Appellant filed a claim alleging that on June 14, 2006 he sustained an injury to his left shoulder due to his work activities. The Office accepted that the employment incident occurred as alleged. However, it found that he did not submit sufficient medical opinion evidence to establish that an injury resulted from the employment incident.

Appellant submitted treatment notes from Dr. VanWagner, an osteopath, addressing his left shoulder condition and resulting disability. Dr. VanWagner examined appellant on June 16 and July, 5, 2006 and found left shoulder weakness and pain. He indicated that appellant had a preexisting left shoulder condition for which surgery had been performed. Dr. VanWagner noted that the MRI scan demonstrated no new rotator cuff tear, but that appellant had muscle atrophy. On August 15, 2006 he noted appellant's preexisting medical history of his left shoulder and stated that, on June 14, 2006, he sustained a pulling type injury resulting in severe pain. Dr. VanWagner again mentioned appellant's MRI scan findings and concluded that he had a period of total disability. Other than noting atrophy of the left shoulder, he did not provide a clear diagnosis of any condition resulting from appellant's work activities of June 14, 2006. Dr. VanWagner merely diagnosed pain. As noted, the diagnosis of pain is not sufficiently detailed to establish a new injury as claimed. He failed to provide any medical explanation of how appellant's left shoulder muscle atrophy was due to his accepted employment incident. Without a clear diagnosis or medical reasoning explaining the relationship of his findings to the accepted employment incident, the medical evidence found that Dr. VanWagner is not sufficient to meet appellant's burden of proof.

[2] 20 C.F.R. § 10.5(ee).

[3] *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

[4] *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

[5] *Robert Broome*, 55 ECAB 339, 342 (2004).

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he sustained an injury on June 14, 2006 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2009
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