

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

J.N., Appellant)
and) Docket No. 08-1947
U.S. POSTAL SERVICE, POST OFFICE,) Issued: February 3, 2009
Campbell, CA, Employer)

)

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 July 7, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated June 18, 2008 denying appellant's claim for compensation. 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 occupational disease in the performance of duty.

FACTUAL HISTORY

On January 28, 2008 appellant, then a 43-year-old city route mail carrier, filed an occupational disease claim alleging that he sustained bilateral tendinitis of the right and left shoulders. He stated that he first became aware of his condition on August 21, 2007 when his shoulders started to hurt. Appellant further stated that he did not file the claim within 30 days because his doctor informed him the pain would eventually go away. He did not stop work and

had been on light duty at the time he filed his claim, restricted to casing two bottom shelves and nothing above his shoulders.

In a January 28, 2008 letter, the employing establishment controverted appellant's claim asserting that he had been working under physical medical restrictions since August 9, 2007, including no lifting, carrying, standing, walking or reaching above the shoulders.

On February 8, 2008 the Office notified appellant of the type of factual and medical evidence needed to establish his claim and allowed him 30 days to submit such evidence. In particular, it asked him to describe in detail which employment-related activities contributed to his bilateral tendinitis of the shoulders. The Office also requested that appellant submit comprehensive medical reports from his treating physicians.

In a March 18, 2008 decision, the Office denied appellant's claim for compensation on the grounds that the factual evidence was insufficient to establish that the injury occurred as alleged and there was no medical evidence providing a diagnosis.

On March 25, 2008 appellant filed a request for reconsideration. In support of his request, he submitted a February 20, 2008 treatment report from Dr. Samir Sharma, a Board-certified orthopedic surgeon, in which the physician concluded that appellant sustained bilateral shoulder impingement syndrome and developed subacromial bursitis with rotator cuff tendinitis due to repetitive casing of mail for six to eight hours a day.

In an April 29, 2008 letter to the employing establishment, which appellant also was sent, the Office noted that appellant had not responded to the February 8, 2008 development letter in which the Office requested specific information regarding which work duties he believed caused his claimed condition. The Office invited the employing establishment to comment on the evidence submitted within 20 days.

Appellant subsequently submitted several reports from Dr. Dinesh Bhuva, a Board-certified orthopedic surgeon. In an October 22, 2007 treatment note, Dr. Bhuva noted bilateral shoulder pain. In the treatment notes dated November 15 and December 19, 2007 and January 14, 2008, he also noted bilateral shoulder pain and treated appellant with cortisone injections in both shoulders.

On June 18, 2008 the Office modified its denial of appellant's claim finding that the medical evidence now supported a diagnosis of a medical condition. However, it found that the claim remained denied because appellant did not identify specific work duties that he alleged caused his bilateral tendinitis condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing 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 filed within the applicable time limitation, that an injury was sustained while 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. These are the essential

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹

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 diagnosed condition is causally related to the employment factors identified by the claimant.²

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, he must submit medical evidence showing that a medical condition was caused by such a factor.³ It is the claimant's responsibility to prove that work was performed under these specific conditions at the time, in the manner and to the extent alleged.⁴

ANALYSIS

As noted, three criteria must be established in an occupational disease claim. The record supports that the first requirement, establishing the existence of a disease or medical condition, has been met as treatment notes from Drs. Sharma and Bhuva support that appellant has bilateral shoulder impingement syndrome and that he is also being treated for bilateral tendinitis of both shoulders.

However, appellant has not met his burden of proof in establishing his claim because he has not identified employment factors alleged to have caused or contributed to the presence or occurrence of his claimed condition. His Form CA-2 states that his "shoulders started to hurt" but does not indicate any particular work assignments or describe the types of duties he performs at work. The employing establishment also disputed appellant's claim noting that he had been restricted from carrying, lifting and reaching above his shoulders since August 9, 2007. Additionally, the Office's February 8, 2008 letter requested that appellant provide a detailed description of the employment-related activities causing or contributing to his bilateral tendinitis. Despite the fact that the Office advised appellant of the type of factual and medical evidence

¹ *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *Effie Morris*, 44 ECAB 470 (1993).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a) (April 1993) (in occupational disease cases, the claimant must submit evidence to identify fully the particular work conditions alleged to have caused the disease); *see also L.B.*, 59 ECAB ____ (Docket No. 07-1748, issued December 18, 2007) (stating that the claimant has the burden of proof to identify employment factors believed to have caused or aggravated a claimed employment-related condition).

needed to support his claim, he failed to provide any evidence identifying specific employment factors alleged to have caused or contributed to his claimed condition. The Office also noted this deficiency in the evidence of its March 18, 2008 decision and in its April 29, 2008 letter to the employing establishment which was also sent to appellant. However, appellant did not submit a statement in which he identified specific employment duties that he believes caused or aggravated his claimed shoulder conditions.

Because appellant has not identified employment factors alleged to have caused or contributed to a diagnosed condition, it is not necessary to consider medical evidence addressing causal relationship.⁵ In any event, Dr. Sharma's February 20, 2008 report, in which he attributed bilateral shoulder impingement syndrome to repetitive casing is insufficient since, is insufficient. The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant.⁶ Because appellant failed to identify specific work duties or activities alleged to have caused his condition, Dr. Sharma's diagnosis is not based on a complete background of appellant's history. Additionally, the treatment notes from Dr. Bhuva do not reference contributing employment factors and also do not provide an opinion as to whether employment factors caused or adversely affected appellant's condition.⁷

As a result, the evidence of record insufficiently meets appellant's burden of proof in establishing that his bilateral tendinitis is causally related to specific employment factors of his federal employment.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

⁵ See *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Bonnie Contreras*, 57 ECAB 364 (2006) (where a claimant has not established an employment incident alleged to have caused an injury, it is not necessary to consider the medical evidence).

⁶ See *M.D.*, 59 ECAB ___ (Docket No. 07-908, issued November 19, 2007).

⁷ See *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007); *Willie Miller*, 53 ECAB 697 (2002) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 18, 2008 is affirmed.

Issued: February 3, 2009
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