

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

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Harrison, OH, Employer**

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**Docket No. 09-62
Issued: February 17, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 9, 2008 appellant filed a timely appeal from a January 4, 2008 merit decision of the Office of Workers' Compensation Programs and a September 5, 2008 merit decision of a hearing representative denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained a right shoulder injury in the performance of duty.

FACTUAL HISTORY

On November 7, 2007 appellant, then a 52-year-old rural mail carrier, filed a claim for an occupational disease (Form CA-2) alleging that on October 17, 2007 she became aware of right shoulder pain and on October 20, 2007 she realized the pain was related to her employment.

In an October 29, 2007 medical report, Dr. O. Daniel Fox, a Board-certified orthopedic surgeon, reported that 12 years ago appellant experienced shoulder pain and was diagnosed with

tendinitis but was not treated. He stated that appellant continued to experience discomfort, which had recently worsened due to an increased workload. Dr. Fox noted that appellant had worked as a mail carrier for 12 years and that she was required to sort and deliver mail in the same day. He further stated that in the past two weeks the volume of mail had increased significantly, resulting in the onset of right shoulder pain.

In a duty status report (Form CA-17) dated October 29, 2007, Dr. Fox took appellant off work until an estimated date of November 12, 2007, noting that she was injured while lifting her shoulder.

By letter dated November 15, 2007, the Office notified appellant of the deficiencies in her claim and requested she provide additional information.

A November 21, 2007 magnetic resonance imaging (MRI) scan of the right shoulder revealed an intrasubstance tear of the supraspinatus tendon, an insertional tear of the subscapularis tendon and mild acromioclavicular degenerative change.

On December 3, 2007 appellant accepted a light-duty position as a modified clerk.

On December 5, 2007 appellant was examined by Dr. Fox, who noted that she returned to light duty but continued to experience persistent symptoms. Dr. Fox diagnosed chronic tendinitis of the right shoulder due to overuse at work and resulting from a shoulder strain that did not heal due to continued use. He stated that this was a work-related claim. Dr. Fox recommended appellant continue light duty with no lifting, carrying, pushing or pulling for at least six weeks and that all activities requiring the use of the right shoulder should be avoided.

By decision dated January 4, 2008, the Office denied appellant's claim on the grounds that she did not provide sufficient medical evidence establishing that her condition was related to the claimed work events.

On January 7, 2008 Dr. Fox examined appellant for a follow-up appointment. He reported that appellant had been off work since December 12, 2007 and that her light duty continued to aggravate her shoulder injury. Physical examination revealed restricted active range of motion and anterior glenohumeral pain in the bicipital groove region and subscapular and subacromial areas. Dr. Fox diagnosed an acute impingement and secondary tendinitis aggravating a preexisting partial tear of the rotator cuff.

On January 18, 2008 appellant, through her attorney, requested a telephonic hearing before a hearing representative.

In an April 1, 2008 statement, appellant described her employment duties, contending that the required continuous reaching and stretching caused the pain in her right shoulder. She further submitted an attending physician's report (CA-20) dated December 17, 2007, where Dr. Fox diagnosed her with chronic tendinitis of the right shoulder due to overuse at work and indicated by checking a box that he believed the condition was caused or aggravated by an employment activity.

On June 16, 2008 a telephonic hearing was held before a hearing representative. Appellant, who was represented by her attorney, testified that she previously had an accepted right shoulder claim for tendinitis 10 years ago. She contended that her job duties were recently changed to require that she case mail for over four hours in the morning, which is when her shoulder began hurting. Appellant further testified that on February 14, 2008 she underwent surgery to remove a bone spur and that she had recently returned to work only two weeks ago.

By decision dated September 5, 2008, the hearing representative affirmed the Office's January 4, 2008 decision, finding that appellant did not submit sufficient medical evidence to establish that the claimed right shoulder condition was causally related to her federal employment.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she is an "employee" within the meaning of the Act³ and that she filed her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty,

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ See *M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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 employee.⁷

ANALYSIS

The record reveals that appellant previously sustained tendinitis in her right shoulder approximately 10 years ago. The issue is whether she established that her right shoulder condition was aggravated by her increased mail casing duties at work. The Board finds that appellant did not submit sufficient medical opinion evidence to establish that her employment duties aggravated her right shoulder condition.

In support of her claim, appellant submitted October 29 and December 5, 2007 medical reports signed by Dr. Fox. In the October 29, 2007 medical report, Dr. Fox described appellant's history of tendinitis in her right shoulder and her continuing discomfort due to her condition. He discussed that appellant was recently required to sort and deliver an increased volume of mail, resulting in right shoulder pain. Further, in the December 5, 2007 medical report, Dr. Fox diagnosed appellant with chronic tendinitis of the right shoulder, attributing the condition to overuse at work, which exacerbated a preexisting, unhealed shoulder strain. He stated that appellant's condition was related to her federal employment.

In order to establish that she sustained a work-related shoulder injury, appellant is required to submit a rationalized medical opinion that her current condition is caused or aggravated by her employment duties.⁸ Here, Dr. Fox attributes appellant's right shoulder condition to her increased sorting and delivering duties at work, however, he fails to explain how her shoulder injury is specifically related to these work tasks. He does not describe how the movements associated with sorting and delivering mail caused or aggravated appellant's shoulder injury, but merely stated that her current condition is work related. A physician's opinion on causation is not dispositive simply because it is rendered by a physician. To establish a causal relationship, medical evidence must provide rationalized medical opinion.⁹ Thus, Dr. Fox's October 29 and December 5, 2007 medical reports are of little probative value.

Appellant further submitted a December 17, 2007 attending physician's report by Dr. Fox who diagnosed chronic tendinitis of the right shoulder due to overuse at work and checked a box to indicate that he believed the condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question without accompanying medical rationale, that opinion has little probative value.¹⁰ Thus, this report fails to establish causation as it is lacking the requisite medical rationale.

⁷ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ See *supra* note 6.

⁹ *Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹⁰ *Gary J. Watling*, 52 ECAB 278 (2001).

The remainder of the medical evidence, including a January 7, 2008 medical report by Dr. Fox and a November 21, 2007 MRI scan report, does not discuss the cause of appellant's right shoulder injury and is therefore insufficient to establish causation.¹¹

The Board finds that appellant did not meet her burden of proof in establishing that her employment caused or aggravated her right shoulder condition and thus has not sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant did not establish that she sustained a right shoulder injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2008 merit decision of the Office of Workers' Compensation Programs and the September 5, 2008 decision of the hearing representative are affirmed.

Issued: February 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Robert Broome*, 55 ECAB 339 (2004).