United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 09-102**
	)	**Issued: March 13, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Red Bank, TN, Employer	)	

Appearances:
J. Shannon Garrison, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2008 appellant, through his attorney, filed a timely appeal from a September 29, 2008 merit decision of the Office of Workers' Compensation Programs denying his 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 he sustained a right shoulder injury in the performance of duty, as alleged.

FACTUAL HISTORY

On March 20, 2006 appellant, then a 48-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 2, 2006 he felt his right shoulder pull while lifting a bucket of mail.

In a letter dated March 30, 2006, the Office notified appellant of the deficiencies in his claim and that he was required to submit medical evidence supporting his claim.

On July 17, 2006 appellant submitted several progress notes dated February 21 through June 5, 2006, signed by Dr. Neil H. Spitalny, a Board-certified orthopedic surgeon, addressing the right shoulder injury. In a February 21, 2006 progress note, Dr. Spitalny reported that appellant injured his shoulder two weeks ago at work, while lifting a bucket of magazines weighing approximately 30 pounds. He noted a positive impingement sign. In progress notes dated April 4 and May 18, 2006, Dr. Spitalny stated that appellant experienced continuing trapezial discomfort and that he had difficulties playing golf.

By decision dated July 17, 2006, the Office denied appellant's claim finding that he did not submit any medical evidence supporting his claim.

On August 18, 2006 appellant filed a request for a review of the written record by a hearing representative.

In a July 31, 2006 medical report, Dr. Spitalny stated that on February 21, 2006 appellant presented with an injury to his right shoulder and alleged that two weeks prior he was at work lifting a 30-pound bucket of magazines and felt a tearing-type sensation in his right shoulder. He diagnosed rotator cuff strain with some impingement. Dr. Spitalny opined that the traumatic exposure was related to the strain of the rotator cuff muscles.

In a decision dated November 27, 2006, a hearing representative denied modification of the July 17, 2006 decision. The hearing representative determined that appellant established that he lifted a bucket of mail on February 2, 2006 in the performance of duty and felt a pull in his right shoulder. However, the evidence did not include rationalized medical opinion that the lifting incident caused a rotator cuff strain with impingement.

In a June 20, 2007 medical report, Dr. Michael Tew stated that appellant first injured his shoulder at work a year ago, but that his workers' compensation claim was closed because Dr. Spitalny did not feel that his problem was related to a work injury. He reported that appellant injured himself while throwing objects back hand using abduction and external rotation type movement and that he felt a sudden pain or ripping in his shoulder while at work. Dr. Tew also noted that appellant makes a motion similar to throwing darts when inserting letters presumably into pigeon holes or other places directly in front of his body. He diagnosed either rotator cuff tear or superior labral anterior posterior (SLAP) lesion of the right shoulder.

On June 28, 2007 appellant underwent a magnetic resonance imaging (MRI) scan revealing moderately severe right acromioclavicular joint arthritis, bursal surface thinning and supraspinatus tendinopathy, with a small intrasubstance tear of the supraspinatus tendon, consistent with impingement syndrome.

In an August 24, 2007 medical report, Dr. Tew stated that he recently received the details regarding appellant's February 2006 work injury. He relayed appellant's claims that he was lifting a bucket, weighing approximately 30 pounds, with his right arm off the floor and then went to sling it to the right side, causing his shoulder to rapidly abduct and externally rotate. Appellant then slung it back and developed a sharp pain and tearing sensation in his right shoulder. Dr. Tew opined that this mechanism was probably the cause of his injury. He diagnosed a SLAP lesion or labral tear. Dr. Tew addressed the prior treatment of appellant's

right shoulder, commenting that neither the MRI scan nor his physical examination demonstrated a tear of the rotator cuff. He stated that appellant had a legitimate workers' compensation claim and that his current symptoms were related to the original injury.

On a September 20, 2007 medical opinion form, Dr. Spitalny indicated with a checkmark that his diagnosis of rotator cuff strain with impingement was based on history taken from the patient and a physical examination. He further indicated that the diagnosis was caused by a February 2, 2006 lifting incident at appellant's work. In a similar medical opinion form dated October 3, 2007, Dr. Tew diagnosed appellant with a SLAP lesion on the right shoulder based on history from the patient, review of medical records and other documents, physical examination and medical tests. He indicated with a checkmark that the diagnosis was caused by a February 2, 2006 lifting incident at appellant's work.

Appellant further submitted duplicate copies of progress notes dated February 21 through May 18, 2006 signed by Dr. Spitalny, as well as two physical therapy reports dated July 20 and August 23, 2007, signed by Dr. Tew. The July 20, 2007 physical therapy report included a subjective notation that appellant's symptoms began in February 2006 while transferring a bucket of magazines at work.

On October 29, 2007 appellant, through his attorney, filed a request for reconsideration on the merits.

By decision dated September 29, 2008, the Office denied modification of the November 27, 2006 decision. It cited inconsistencies in the medical evidence, specifically that the contemporaneous medical evidence did not connect appellant's injury with his work incident and that recent medical opinions of Drs. Tew and Spitalny were contradictory.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he is an "employee" within the meaning of the Act[3] and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

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[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).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

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, 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.[8]

ANALYSIS

The issue is whether appellant established that he sustained a right shoulder injury while lifting a bucket of magazines at work, as alleged. The Board finds that he has not met his burden of proof in establishing causation.

In progress notes dated February 21 through June 5, 2006, Dr. Spitalny reported that appellant injured his right shoulder while lifting a bucket of magazines, weighing approximately 30 pounds, and that he continued to have trapezial discomfort. In a July 31, 2006 medical report, he relayed appellant's claims that he was injured at work and opined that appellant's exposure to trauma was related to his strained rotator cuff muscles. Further, on a September 20, 2007 medical opinion form, Dr. Spitalny indicated with a checkmark that appellant's diagnosed rotator cuff strain with impingement was caused by a February 2, 2006 lifting incident at work. This evidence lacks medical rationale explaining how appellant's injury was related to his February 2, 2006 employment incident. Dr. Spitalny failed to provide any detail to rationalize his opinion that appellant strained his rotator cuff while lifting magazines at work, thus his medical opinions are of diminished probative value.[9]

Further, Dr. Tew's medical reports are similarly insufficient to establish causation. By way of a checkmark, he indicated on an October 3, 2006 medical opinion form that appellant's

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[7] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

[9] *See Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

injury was caused by a February 2, 2006 lifting incident. As Dr. Tew did not include any medical rationale to explain his opinion, this form is of diminished probative value.[10]

Further, in an August 24, 2007 medical report, Dr. Tew reported appellant's claims that he lifted a 30-pound bucket off the floor and when he slung the bucket to the right, his shoulder rapidly abducted and externally rotated. He opined that this mechanism was probably the cause of appellant's injury. Here, Dr. Tew equivocally relates the shoulder injury to the employment incident, as described by appellant. He appears to rely on appellant's unsupported assertion of an employment relationship, speculatively opining that appellant's injury is probably related to the reported work incident.[11] Further, the probative value of Dr. Tew's medical opinions is questionable in light of the contradictory June 20, 2007 medical report, where he stated that appellant's injury was caused by throwing objects back hand at work and that appellant makes a throwing darts motion at work. Because of the speculative and contradictory history of injury contained in Dr. Tew's reports, the Board finds that his medical opinion is insufficient to establish causation.[12]

The Board, therefore, finds that the medical evidence is insufficient to support appellant's claims that he sustained an employment-related right shoulder injury.

CONCLUSION

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

[10] *See id.*

[11] Appellant's unsupported assertion of an employment relationship is not proof of the fact. Proof must include supporting rationalized opinion of a physician. *Margaret A. Donnelly*, 15 ECAB 40 (1963).

[12] *See Jennifer L. Sharp*, 48 ECAB 209 (1996); *Arthur A. Knox*, 31 ECAB 1495 (1980).

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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