

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

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Anaheim, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-42
Issued: December 17, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 5, 2009 appellant filed a timely appeal from a July 6, 2009 merit decision of the Office of Workers' Compensation Programs denying his occupational disease claim and the July 14, 2009 merit decision denying his claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a right knee or left shoulder injury causally related to factors of his federal employment; and (2) whether he established entitlement to wage-loss compensation for total disability from April 26 to June 27, 2009.

FACTUAL HISTORY

On August 19, 2008 appellant, a 33-year-old mail handler, filed an occupational disease claim alleging that he developed left shoulder and right knee conditions as a result of continuous pushing, pulling and lifting heavy equipment during the course of employment.

In a letter dated August 28, 2008, the Office informed appellant that the information and evidence provided was insufficient to establish his claim. It advised him to provide details regarding the employment activities alleged to have caused his condition and a report from a physician providing a diagnosis and an opinion as to the cause of the diagnosed condition.

Appellant submitted an August 25, 2008 report from Dr. Dana R. Johnson, a Board-certified family practitioner, who diagnosed bicipital tendinosis, scapulalgia and knee pain. Examination of the left shoulder was normal, with no redness or swelling. The right knee had full range of motion and there was no muscle or bony tenderness. Knee stability and motor strength were within normal limits. Dr. Johnson opined that appellant's condition was not caused, aggravated or accelerated by employment activities, but rather was due to his underlying medical condition, along with his previous history of multiple injuries to the affected site and activities of daily living.

Appellant submitted reports dated July 31 and August 25, 2008 from Dr. Charles H. Pai, a Board-certified family practitioner, who diagnosed rotator cuff syndrome of the left shoulder and tendinosis of the wrists and elbows. Dr. Pai stated that appellant was totally disabled from work on July 31, 2008. Examination revealed tenderness in the left acromioclavicular, with full range of motion. Appellant's symptoms, which began on July 29, 2008 at the work site, were exacerbated by lifting boxes.

In an August 21, 2008 report, Dr. Mark Ashley, a Board-certified family practitioner, who diagnosed scapulalgia and right knee pain. Appellant's medical history included a prior dislocation and injury to the left shoulder and three surgeries on the right knee for loose bodies and torn ligaments. Dr. Ashley stated that appellant sustained a work injury on August 14, 2008. He had twisted and was constantly hitting, his right knee at work and had developed a gradual soreness in his left shoulder. Examination findings included decreased range of motion in the left shoulder and right knee, with pain, tenderness and decreased strength. Reviewing x-rays of the right knee and left shoulder, he noted mild degenerative changes "suspicious for old osteochondritis disease defect."

On August 29, 2008 Dr. Paul Hsiang, a Board-certified family practitioner, diagnosed arthralgia of the right knee and left shoulder tenderness and stated that appellant was totally disabled from September 2 to 4, 2008. He found diffuse tenderness in the left shoulder and right knee and range of motion limited by 25 percent.

Appellant submitted a report dated August 6, 2008 from Dr. Adina W. Mercer, a treating physician, who diagnosed shoulder region pain. Dr. Mercer stated that appellant had an old shoulder injury sustained during his military career. He had "shoulder dislocations from jumping out of planes." On September 4, 2008 Dr. Gerald West, a Board-certified internist, diagnosed bicipital tenosynovitis and knee pain and stated that his findings were consistent with appellant's account of his injury.

On September 5, 2008 Dr. Erik Adel Salib, Board-certified in the field of emergency medicine, diagnosed lesion of the right knee and instability of the left shoulder, and noted that appellant performed significant overhead lifting at work, which exacerbated his condition. Examination of the right knee revealed no swelling, erythema, deformity, atrophy or

hypertrophy. On range of motion testing, flexion was 125 degrees and extension was 0 degrees. Patellar grind, lachman's test, anterior and posterior drawer, and valgus stress laxity were negative. McMurray's test was positive. Distal pulses were 2+, with no peripheral edema. Sensation was grossly intact distally. A left shoulder examination revealed positive Hawkins, sulcus and neers tests, as well as positive clunk maneuver, anterior apprehension, anterior and posterior glide. On range of motion testing, forward flexion and abduction were to 90 degrees with pain. X-rays of the left shoulder showed degenerative changes of the glenoid.

In an October 28, 2008 decision, the Office denied appellant's claim on the grounds that the evidence failed to demonstrate that the claimed medical conditions were causally related to the established work factors.

On November 10, 2008 appellant requested an oral hearing.

Appellant submitted reports from Dr. Marc H. Fogelson, a Board-certified orthopedic surgeon. On September 15 and October 6, 2008 Dr. Fogelson diagnosed degenerative joint disease osteoarthritis of the left knee and rotator cuff syndrome of the left shoulder, which he noted had worsened over the course of a year. On October 28, 2008 he provided examination findings and results of magnetic resonance imaging (MRI) scans, which revealed a possible undersided tear of the supraspinatus tendon of the right shoulder and a break in the medial femoral condyle cartilage toward the midline of the right knee.

Appellant submitted an August 21, 2008 report from Patrick John Garza, a physician's assistant, who diagnosed left knee pain and arthralgia of the right shoulder. Dr. Garza noted that appellant had undergone three previous surgeries on the right knee and had previously dislocated his left shoulder. In an August 29, 2008 report, Mark Allen Duncan, a physician's assistant, diagnosed right shoulder tendinosis and left knee althralgia. The record also contains notes from September 16 to 30, 2008 signed by Travis Soleski, Gregory Pollard and Dennis Blomberg, physical therapists.

At the April 20, 2009 hearing, appellant described his duties as a mail handler, which included loading and unloading equipment and mail from trucks, loading and dumping mail on a belt and pushing containers weighing up to 300 pounds. He repeatedly bumped his knee on various pieces of equipment. On August 14, 2008 appellant bumped his right knee on the largest container, whereupon his knee twisted, buckled and gave out. He underwent left shoulder surgery on December 18, 2008.

In a May 6, 2009 statement, appellant advised that his surgeon would not be able to provide an opinion on how his condition was related to his employment because he worked for Kaiser Permanente. He noted, however, that the surgeon told his wife that his condition was caused by his employment activities.

Appellant submitted a May 8, 2009 rating decision issued by the Department of Veterans Affairs, who found that service connection for osteoarthritis of the right knee had been established as related to the service-connected disability of residual instability, status post right knee injury, noting evidence of continued knee pain on increased use. Accordingly, "evaluation of residuals of [appellant's] right knee injury with instability, currently 0 percent disability,

increased to 10 percent effective September 8, 2008.” Additionally, evaluation of left shoulder tendinosis status post injury was continued at 10 percent disability, in part based on evidence of a work-related left rotator cuff tear.

In a decision dated July 6, 2009, an Office hearing representative affirmed the October 28, 2008 decision on the grounds that the medical evidence was insufficient to establish that appellant’s left shoulder and right knee conditions were causally related to factors of employment. On July 14, 2009 the Office denied his claim for compensation from April 26 to June 27, 2009 on the grounds that his underlying claim had been denied.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,² and that any disability and/or specific condition for which compensation is claimed is 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 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 the claimant’s diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete 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.⁵

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,

¹ 5 U.S.C. §§ 8101-8193.

² *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (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 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 (eel) (2002) (“Occupational disease or Illness” and “Traumatic injury” defined).

³ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁴ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁵ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁶

ANALYSIS -- ISSUE 1

The Office accepted that appellant established a factual basis for his claim, namely, that he engaged in the employment activities of mail handler, as alleged. The medical evidence of record, however, is insufficient to establish that his claimed left shoulder or right knee conditions were caused or aggravated by the accepted activities. Therefore, he has failed to meet his burden of proof.

Dr. Johnson's August 24, 2008 report did not support appellant's claim that his right knee and left shoulder conditions were caused, aggravated or accelerated by employment activities. Rather, He opined that appellant's conditions were due to his underlying medical condition, along with his previous history of multiple injuries to the affected site and activities of daily living.

Dr. Pai diagnosed rotator cuff syndrome of the left shoulder and tendinosis of the wrists and elbows and observed tenderness in the left acromioclavicular, with full range of motion. He opined that appellant's symptoms, which began on July 29, 2008 at the work site, were exacerbated by lifting boxes. Dr. Pai did not, however, address any of the identified employment activities or explain the medical process through which those activities would have been competent to cause the claimed conditions. Medical conclusions unsupported by rationale are of little probative value.⁷

On September 5, 2008 Dr. Salib diagnosed lesion of the right knee and instability of the left shoulder, and noted that appellant performed significant overhead lifting at work, which exacerbated his condition. He did not provide a rationalized explanation on how appellant's job activities caused or aggravated his shoulder or knee condition. Therefore, Dr. Salib report is of diminished probative value.

On August 21, 2008 Dr. Ashley provided examination findings and diagnosed scapulargia and right knee pain, noting a medical history which included a prior dislocation and injury to the left shoulder and three surgeries on the right knee for loose bodies and torn ligaments. He stated that appellant sustained a work injury on August 14, 2008, that he was constantly hitting his right knee at work and had developed a gradual soreness in his left shoulder. Dr. Ashley's report is insufficient to establish that appellant developed a knee or shoulder condition as a result of accepted employment activities. He did not provide a definitive diagnosis,⁸ nor did Dr. Ashley describe appellant's job duties or explain how these duties could have caused his right knee or left shoulder condition. Therefore, Dr. Ashley's report is of limited probative value.

⁶ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

⁷ *Willa M. Frazier*, 55 ECAB 379 (2004).

⁸ Pain is a symptom, not a compensable medical diagnosis. *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

On August 29, 2008 Dr. Hsiang diagnosed arthralgia of the right knee and left shoulder tenderness and stated that appellant was totally disabled from September 2 to 4, 2008. On August 6, 2008 Dr. Mercer diagnosed shoulder region pain, noting that appellant had an old shoulder injury sustained during his military career. Neither physician provided a definitive diagnosis or an opinion as to the cause of appellant's condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.⁹

On September 4, 2008 Dr. West diagnosed bicipital tenosynovitis and knee pain and stated that his findings were consistent with appellant's account of his injury. On September 15 and October 6, 2008 Dr. Fogelson diagnosed degenerative joint disease osteoarthritis of the left knee and rotator cuff syndrome of the left shoulder, which he noted had worsened over the course of a year. As none of these reports contain a complete factual or medical history or an opinion on the cause of appellant's shoulder or knee condition, they are of diminished probative value.

Appellant also submitted progress notes from physical therapists. A physical therapist is not a physician under the Act, these reports lack probative value.¹⁰ The remaining medical evidence of record, including disability slips, MRI scan reports and x-ray reports, which do not contain an opinion on the cause of appellant's right knee or left shoulder condition, are of limited probative value and insufficient to establish his claim.

In a May 8, 2009 decision, the Department of Veterans Affairs found that service connection for osteoarthritis of appellant's right knee had been established as related to the service-connected disability of residual instability, status post right knee injury. Accordingly, "evaluation of residuals of [appellant's] right knee injury with instability, currently 0 percent disability, increased to 10 percent effective September 8, 2008." Additionally, evaluation of left shoulder tendinosis status post injury was continued at 10 percent disability, in part based on evidence of a work-related left rotator cuff tear. The Board notes that determinations of other administrative agencies are not binding on the Office or the Board regarding questions arising under the Act.¹¹ In this case, the Department of Veterans Affairs decision regarding appellant's disability rating was not relevant to the issue of whether he sustained an occupational disease claim causally related to accepted factors of employment, as alleged.

Appellant expressed his belief that his alleged condition resulted from his duties as a mail handler. The Board has held, however, that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹² Neither the fact that the condition became apparent during a period of employment, nor

⁹ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ Physical therapists do not qualify as "physicians" under the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

¹¹ *See James E. Norris*, 52 ECAB 93 (2000).

¹² *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹³ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, his belief that his condition was caused by the accepted activities is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how his claimed conditions were caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained a right knee or left shoulder injury in the performance of duty causally related to factors of employment.

On appeal, appellant argues that Dr. Johnson's examination was inadequate and his opinion was based upon an incomplete medical record. The Board notes that Dr. Johnson was appellant's treating physician. It was appellant's burden to provide a rationalized medical report, based upon a full and complete factual and medical background, establishing a causal relationship between the accepted work activities and the claimed conditions. For reasons stated, the Board finds that the medical evidence of record is insufficient to establish appellant's claim, or to require further development.

LEGAL PRECEDENT -- ISSUE 2

In order for a claimant to obtain benefits under the Act, an injury must have resulted from the incident claimed, the injury or disease must have occurred in the performance of duty and it must be causally related to factors of employment.¹⁴

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury.¹⁵ Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹⁶ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁷

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving he was disabled on particular

¹³ *Id.*

¹⁴ Federal (FECA) Procedure manual, Part 2 -- Claims, *General Provisions of the FECA*, Chapter 2.200.2(b) (July 2004).

¹⁵ *Foredoom Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

¹⁶ *Foredoom Kharabi*, *supra* note 15; *see also Edward H. Horton*, 41 ECAB 301 (1989).

¹⁷ *Foredoom Kharabi*, *supra* note 15.

dates requires that he furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.¹⁸ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁹

ANALYSIS -- ISSUE 2

Appellant filed claims for compensation alleging that he was totally disabled from working from April 26 to June 27, 2009. In order for a claimant to obtain benefits under the Act, an injury must have resulted from the incident claimed, the injury or disease must have occurred in the performance of duty and it must be causally related to factors of employment.²⁰ As appellant's underlying claim was denied, he is not entitled to compensation under the Act.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right knee injury in the performance of duty. The Board finds that he has not established entitlement to wage-loss benefits for any period between November 16, 2001 and October 20, 2006.

¹⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004).

²⁰ *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the July 14 and 6, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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