

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

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**M.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Orleans, LA, Employer**

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**Docket No. 10-944  
Issued: December 22, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 24, 2010 appellant filed a timely appeal from a December 29, 2009 merit decision of the Office of Workers' Compensation Programs. 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 has established that he sustained an injury in the performance of duty as alleged.

**FACTUAL HISTORY**

On July 1, 2009 appellant, then a 38-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed pain in his left arm, shoulder and neck as a result of employment activities. He first became aware of the pain in his left arm, shoulder and neck in

January 2000 and realized he had an employment-related injury on May 19, 2009.<sup>1</sup> Appellant did not stop working.

On June 16, 2009 Dr. Chris Lawrence, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's left shoulder showed mild to moderate amounts of fluid in the subacromial bursa anteriorly and posteriorly with no evidence of a rotator cuff tear. He further stated that there was minimal fluid found in the glenohumeral joint and the axillary recess, as well as in the superior subscapular recess. Dr. Lawrence also noted a prior shoulder repair in 2001.

In a letter dated August 18, 2009, the Office requested additional factual and medical evidence, including a detailed description of the employment activities which contributed to appellant's shoulder condition. It also requested a comprehensive medical report containing a diagnosis, description of his symptoms, the results of examinations and tests and medical rationale explaining how his diagnosed condition was causally related to specific factors of his employment.

On September 21, 2009 appellant submitted a factual statement describing his work duties and the employment factors he believed caused his condition. He claimed his injury was a result of his duties as a letter carrier which required repetitive shoulder motions. Appellant noted that his job included completing such tasks as carrying mail in a satchel for delivery, clutching mail in his left arm and hand for six to seven hours a day, casing, pulling down mail, manually loading his postal truck and bending down to pick up parcels. He also submitted a June 1, 2009 exercise program for his neck, upper back and shoulder provided by Dr. A. Jay Binder, a Board-certified orthopedic surgeon.

By decision dated October 28, 2009, the Office denied appellant's claim finding that the evidence was insufficient to establish that he sustained an injury where there was no medical evidence that provided a diagnosis which could be connected to the claimed event.

On November 12, 2009 appellant requested reconsideration from the Office and submitted a September 28, 2009 medical report from Dr. Binder. In his report, Dr. Binder provided a history of appellant's treatment for his previous January 21, 2000 employment injury. He noted that in July 2000 appellant underwent surgery by Dr. Tregre Brown to repair a bony Bankart lesion with capsular avulsion as well as a labrum tear. Dr. Binder further stated that his physical examination of appellant showed a positive O'Brien's test and some apprehension in abduction external rotation, decreased to 40 degrees. After evaluating the June 16, 2009 MRI scan of appellant's left shoulder, he found appellant to have a superior labrum or SLAP lesion based on an increased signal in the superior labrum, appellant's reported symptoms, the positive O'Brien's test and his own physical examination. Dr. Binder recommended a left shoulder arthroscopic SLAP lesion repair and determined that appellant's shoulder injury is related to his original injury, having progressively worsened over time due to superior labrum tearing.

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<sup>1</sup> Appellant contends that his shoulder had been previously repaired on July 10, 2000 due to a January 21, 2000 employment injury which was accepted by the Office, claim number xxxxxx187.

By decision dated December 29, 2009, the Office denied modification of its October 28, 2009 decision on the grounds that the evidence of record failed to establish that appellant sustained an injury due to specific employment factors.<sup>2</sup>

### **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.<sup>3</sup> 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.<sup>4</sup>

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.<sup>7</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of

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<sup>2</sup> Following the Office's December 29, 2009 decision, appellant submitted additional new evidence to the Board on appeal. As this evidence was not before the Office at the time of its final decision, the Board may not review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *D.U.*, 61 ECAB \_\_\_\_ (Docket No. 10-144, issued July 27, 2010).

whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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. This medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

The Office accepted that appellant performed the duties of a letter carrier as alleged. The issue is whether appellant established that the accepted employment activities caused or contributed to his condition. The Board finds that he has not met his burden of proof. While appellant submitted additional medical evidence addressing his shoulder injury, it is not sufficiently well reasoned in explaining the causal connection between appellant's shoulder injury and his employment factors as a letter carrier.<sup>9</sup>

On June 16, 2009 diagnostic testing was obtained by Dr. Lawrence and the MRI scan of appellant's left shoulder showed mild to moderate amounts of fluid in the subacromial bursa anteriorly and posteriorly with minimal amounts of fluid in the glenohumeral joint, axillary recess and the superior subscapular recess. Dr. Lawrence also noted that there was no evidence for a rotator cuff tear and briefly stated that appellant had a previously repaired shoulder in 2001. While he diagnosed appellant's left shoulder injury, he did not explain why appellant's condition was due to his employment activities as a letter carrier. The Board has held that 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.<sup>10</sup> Without medical reasoning explaining how appellant's employment factors caused his shoulder injury, Dr. Lawrence's report is insufficient to meet appellant's burden of proof.<sup>11</sup>

In a September 28, 2009 medical report, Dr. Binder provided a brief narrative of appellant's treatment history from his prior January 21, 2000 employment injury. He explained that in July 2000 appellant underwent surgery to repair a bony Bankart lesion with capsular avulsion as well as a labrum tear, performed by Dr. Tregre Brown. In his report, Dr. Binder reviewed appellant's MRI scan and diagnosed appellant with a superior labrum or SLAP lesion, recommending a left shoulder arthroscopic SLAP lesion repair. He also noted that appellant's shoulder injury was related to the original January 21, 2000 injury, having become progressively worse over time due to superior labrum tearing.

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<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>10</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009); *C.B.*, 61 ECAB \_\_\_\_ (Docket No. 09-2027, issued May 12, 2010).

<sup>11</sup> *C.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-1583, issued December 9, 2008).

The Board finds that the opinion of Dr. Binder is not well rationalized. While briefly noting a history of appellant's shoulder injury, Dr. Binder did not set out adequate detail pertaining to appellant's prior treatment and failed to explain how appellant's work activities contributed to or aggravated his shoulder injury. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.<sup>12</sup> Dr. Binder's report is vague and speculative, failing to set out a clear explanation on the causal connection of appellant's shoulder injury to his factors of employment as a letter carrier and, as such, is of diminished probative value. Thus, his report is insufficient to meet appellant's burden of proof in establishing causal relationship between appellant's shoulder condition and his factors of employment as a letter carrier.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>13</sup> An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.<sup>14</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office properly denied his claim for compensation.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his shoulder injury is causally related to factors of his employment as a letter carrier.

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<sup>12</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>13</sup> *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>14</sup> *D.D.*, 57 ECAB 734 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2010  
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