

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, RADIO CITY
STATION, New York, NY, Employer**

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**Docket No. 09-1172
Issued: January 8, 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
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal from a February 27, 2009 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on December 13, 2006.

FACTUAL HISTORY

This is the second appeal before the Board. In a January 16, 2009 decision, the Board affirmed the Office's May 3 and June 18, 2007 decisions denying appellant's claim for an injury sustained on December 13, 2006.¹ However, the Board found that the Office improperly denied

¹ Docket No. 08-94 (issued January 16, 2009).

appellant's requests for further merit review. The facts and the law of the case are set forth in the prior decision and are incorporated herein by reference.² The relevant facts are set forth below.

Appellant submitted a May 19, 2007 report from Dr. Xiao-ke Gao, a treating Board-certified neurologist, who noted that appellant was examined on May 18, 2007. He diagnosed right shoulder osteoarthritis, right shoulder tendinitis and clavicle strain. Appellant told Dr. Gao that he had injured his shoulder at work while he was reaching "out to pick up some meals." Dr. Gao advised that appellant was partially disabled as a result of the December 13, 2006 incident due to right shoulder pain and difficulty raising his right arm.

On June 11, 2007 Dr. Gao diagnosed elbow epicondylitis and right subluxation of the sternoclavicular joint. A review of a magnetic resonance imaging scan revealed no right sternoclavicular joint dislocation and "findings suggestive of osteoarthritis of the right sternoclavicular joint." Physical examination revealed full strength, bilateral epicondyle tenderness and 90 degrees right shoulder abduction.

By decision dated February 27, 2009, the Office denied modification of the prior denial of his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁴ 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 nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁵

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

² On December 13, 2006 appellant, then a 50-year-old city carrier, filed a traumatic injury claim alleging that on that date he injured his neck while lifting mail.

³ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Paul Foster*, 56 ECAB 208 (2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

between the claimant's diagnosed condition and the implicated employment factors.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant⁷ and must be one of reasonable medical certainty⁸ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

Appellant alleged an injury on December 13, 2006 while lifting mail at work. The Office accepted that the incident occurred as alleged. The issue is whether the medical evidence submitted is sufficient to establish that he sustained injury. The Board finds that the medical evidence is insufficient to establish that appellant's right shoulder condition was caused or aggravated by the December 13, 2006 employment incident.

Appellant submitted the May 19 and June 17, 2007 report from Dr. Gao, who diagnosed right shoulder tendinitis, clavicle strain, elbow epicondylitis and right subluxation of the sternoclavicular joint. Dr. Gao attributed appellant's partial disability to the December 13, 2006 employment incident. He did not; however, address the cause of appellant's condition in his June 17, 2007 report beyond noting the date of injury as December 13, 2006. Dr. Gao did not provide any explanation for his opinion that appellant sustained a shoulder injury and resulting partial disability due to the accepted work incident. A mere conclusion without the necessary rationale explaining how or why the physician believes that a claimant's accepted incident could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.¹⁰ A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described, caused or contributed to appellant's diagnosed medical condition.¹¹

Appellant did not submit sufficient rationalized medical evidence supporting that he sustained an injury causally related to the December 13, 2006 work incident. Consequently, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

⁶ *G.G.*, 58 ECAB 389 (2007); *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *L.D.*, 58 ECAB 344 (2007); *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Roy L. Humphrey*, 57 ECAB 238 (2005); *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *J.M.*, 58 ECAB 303 (2007); *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁰ See *C.B.*, 60 ECAB ____ (Docket No. 08-2268, issued May 22, 2009) (rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician); see also *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 27, 2009 is affirmed.

Issued: January 8, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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