United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 10-333**
	)	**Issued: September 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Miami, FL, Employer	)	

Appearances:
Alan J. Shapiro, 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 November 18, 2009 appellant filed a timely appeal from an October 19, 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 established that he sustained an injury in the performance of duty on January 29, 2009, causally related to his employment.

FACTUAL HISTORY

On February 4, 2009 appellant, a 63-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) for a left shoulder, neck and lower back injury he sustained on January 29,

2009 after lifting a tray of mail.[1] He alleged that he was attempting to transfer mail from the back to the front of his mail truck when his injury occurred.

In an undated note, Marco Noriega, a customer service supervisor, reported that, on January 29, 2009, while appellant was delivering his route, his route was also being inspected. Pat Ambrosino, the route inspector, telephoned the employing establishment and reported that an "industrial incident" occurred. Mr. Noriega and the station manager "rushed to the scene" where they found appellant being loaded into a "fire-rescue ambulance." The carrier told him that appellant was "suffering from some type of panic disorder and was unable to speak."

On January 29, 2009 Mr. Ambrosino, reported that, after appellant dropped a tray of mail, he "proceeded to [a] Pizza Hut where he called his wife and 911." He observed that appellant was "shaking" and complaining that his left shoulder hurt. Mr. Ambrosino reported that fire and rescue arrived on the scene, took appellant's vitals, which "were fine," and that appellant's wife arrived and gave him a blood pressure pill that "he said he forgot to take … [that] morning."

Appellant was taken to Kendal Regional Hospital for observation and treatment. He submitted hospital reports, dated January 29, 2009, diagnosing "anxiety." The report noted that appellant presented to the emergency room complaining of shoulder pain, dizziness and headaches.

Appellant submitted reports bearing illegible signatures. He also submitted a report dated February 4, 2009 in which Dr. David E. Font-Rodriguez, an orthopedic surgeon, noted that a magnetic resonance imaging (MRI) scan taken prior to January 29, 2009 showed a small recurrence of rotator cuff tear. Dr. Font-Rodriquez stated that appellant's left shoulder "gave way" while he was lifting a heavy box on January 29, 2009. He then diagnosed "recurrent rotator cuff tear." Dr. Font-Rodriquez noted that appellant "reinjur[ed]" his rotator cuff on January 29, 2009, while "at work."[2] He concluded his report by recommending that appellant undergo a new MRI scan to "reflect what possible additional damage and rotator cuff tear extension has occurred." In another report (Form CA-17), also dated February 4, 2009, Dr. Font-Rodriguez diagnosed rotator cuff tear and advised appellant not to return to work.

On February 12, 2009 Dr. Douglas Hornsby, a Board-certified diagnostic radiologist, reported that an MRI scan of appellant's left shoulder revealed a chronic enlargement of the acromioclavicular joint with superficial and deep spurring impingement upon the underlying supraspinatus muscle. He noted that the MRI scan revealed that appellant's glenoid labrum was intact, the interspace teres minor and subscapuluas muscle had normal appearance and there was no evidence of excessive fluid within the glenoid humeral joint space.

[1] Appellant has a prior claim, File No. xxxxxx105, which was accepted for shoulder sprain. He underwent left shoulder surgery on August 11, 2008 but, by decision dated February 25, 2009, the Office denied authorization for the surgery.

[2] The Board notes that the Office issued a (Form CA-16). A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 form issued to appellant authorized examination and treatment and was therefore properly executed.

On February 18, 2009 Dr. Font-Rodriguez diagnosed "recurrent rotator cuff tear." He disputed the results of the February 12, 2009 MRI scan because they were "completely contradictory to [appellant's] prerecent injury, [*sic*] and goes against his clinical findings [*sic*]." Dr. Font-Rodriquez recommended that appellant undergo another MRI scan examination.

By letter dated February 19, 2009, the employing establishment controverted appellant's claim.

By decision dated March 19, 2009, the Office denied the claim because the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed condition.

On March 24, 2009 appellant requested an oral hearing. On March 24, 2009 the Office received an additional report from Dr. Font-Rodriguez. In this March 17, 2009 report CA-17 form, Dr. Font-Rodriguez noted that MRI scan examination prior to January 29, 2009 showed a small recurrence of rotator cuff tear, but post injury there was no progression of the tear. He diagnosed recurrent rotator cuff tear.

At the hearing conducted on July 17, 2009, appellant and his attorney were present and he provided testimony concerning his medical condition, prior workers' compensation claims, his employment duties, his history of injury and the events of January 29, 2009.

By decision dated October 19, 2009, the Office affirmed its prior decision because the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed condition. The hearing representative also concluded that appellant had not submitted any medical evidence establishing causal relationship between appellant's emotional condition and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[4] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[5] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

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

[6] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

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.[8] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

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.[10]

ANALYSIS

The Office accepted that the January 29, 2009 incident occurred as alleged: appellant lifted and dropped a tray of mail while in the performance of duty. Appellant's burden is to demonstrate the accepted employment incident caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence. The medical opinion evidence of record lacks the requisite reasoning to establish the causal relationship between appellant's condition and the identified employment incident. Accordingly, the Board finds that he has not established that on January 29, 2009 he sustained an injury in the performance of duty causally related to his employment.

The illegibly signed notes have no probative value on the issue of causal relationship because, as they cannot be identified as prepared by a "physician" for purposes of the Act, they do not constitute competent medical evidence.[11] Accordingly, this evidence does not establish the required causal relationship.

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[7] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

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

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

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

[11] *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical form reports with illegible signatures did not constitute competent medical evidence).

Appellant's claim alleged a shoulder, neck and lower back condition. The hospital reports have no probative value on the issue of causal relationship regarding the alleged conditions because they diagnosed "anxiety." Although these reports stated that appellant presented to the emergency room complaining of shoulder pain, dizziness and headaches, "pain" is a symptom, not a compensable diagnosis.[12] Furthermore, this particular section of the report lacks proper identification that it was prepared by a "physician" as defined by the Act. Thus, this evidence does not establish the requisite causal relationship.

While appellant's counsel has not formally claimed an emotional condition, the Office hearing representative found that the evidence of record did not establish a causal relationship between appellant's emotional condition and the accepted incident. The Board concurs in this finding. There is no medical evidence of record causally relating a diagnosed emotional condition to appellant's act of lifting and dropping a tray at work on January 29, 2009. While the hospital reports note anxiety, no opinion was provided regarding the cause of this condition.

The reports signed by Dr. Font-Rodriguez have limited probative value on causal relationship because they lack an opinion explaining how the established employment incident caused the diagnosed condition.[13] Although Dr. Font-Rodriguez notes that appellant "reinjur[ed]" his rotator cuff on January 29, 2009, while "at work," such a statement does not establish the requisite causal relationship because his opinion is not sufficiently rationalized. He explained in his reports that appellant had a recurrent rotator cuff tear which was evident on MRI scan before the January 29, 2009 incident. Dr. Font-Rodriquez recommended that appellant undergo an additional MRI scan, which was performed on February 12, 2009. In his March 17, 2009 report, he stated that the post injury MRI scan showed no progression of the tear. While Dr. Font-Rodriquez also opined on February 18, 2009 that he believed the February 2009 MRI scan findings contradicted his clinical findings, he did not describe the mechanism of injury, the January 29, 2009 employment incident or explain how it caused appellant's condition. The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[14]

An award of compensation may not be based on surmise, conjecture or speculation.[15] Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[16] The fact that a condition manifests itself or worsens during a

[12] *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

[13] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[14] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[15] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[16] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

period of employment[17] or that work activities produce symptoms revelatory of an underlying condition[18] does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted medical opinion evidence containing a reasoned discussion of causal relationship that, explains how the accepted employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds that he has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on January 29, 2009, causally related to his employment

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 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

[17] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[18] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).