

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

C.D., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Bloomfield, MI, Employer

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

**Docket No. 10-1115
Issued: January 20, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2010 appellant, through her attorney, filed a timely appeal from the September 22, 2009 and January 19, 2010 merit decisions 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 sustained a right shoulder injury in the performance of duty on March 6, 2009.

FACTUAL HISTORY

Appellant, a 51 year-old letter carrier, filed a claim for benefits on March 7, 2009, alleging that she injured her right shoulder on March 6, 2009 when her motor vehicle was struck from behind at a traffic intersection.

By letter dated March 13, 2009, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits.

It asked her to submit a comprehensive medical report from a treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether it was causally related to her federal employment. The Office requested the additional evidence within 30 days.

Appellant submitted a March 12, 2009 treatment slip from Dr. Richard S. Bartholomew, an osteopath specializing in orthopedic surgery, who recommended that she remain off work from March 12 to May 14, 2009.

By decision dated April 17, 2009, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence to establish a right shoulder injury on March 6, 2009.

By letter dated July 6, 2009, appellant requested reconsideration.

In a March 7, 2009 report, Brian W. Hill, a physician's assistant, indicated that appellant injured her right shoulder on March 6, 2009 as a result of a motor vehicle accident on March 6, 2009.

In a March 12, 2009 report, Dr. Bartholomew stated that appellant had been involved in a motor vehicle accident in which a driver backed his car into her postal truck. Appellant had her hand on the horn and the impact from the collision jammed her shoulder. Dr. Bartholomew stated that she experienced right shoulder pain, particularly with overhead activities and reaching. On examination, appellant's right shoulder showed a good range of motion, strength and stability. Dr. Bartholomew diagnosed right rotator cuff tendinitis and recommended a course of physical therapy.

In a May 28, 2009 report, Dr. Bartholomew stated that a May 20, 2009 magnetic resonance imaging (MRI) scan and arthrogram of the right shoulder showed a superior labrum from anterior to posterior (SLAP) lesion of the right shoulder and some right rotator cuff tendinitis. He discussed the option of having arthroscopic surgery.

On June 22, 2009 Dr. Bartholomew performed arthroscopic surgery of the right shoulder, an arthroscopic extensive debridement and subacromial decompression to repair the SLAP lesion. Appellant submitted a July 2, 2009 treatment slip from Dr. Bartholomew, who diagnosed a right SLAP tear and stated, "injury is job related."

By decision dated September 22, 2009, the Office denied modification of its April 17, 2009 decision.

In a letter dated November 2, 2009, appellant requested reconsideration. She submitted October 22, 2008 and January 7, 2010 reports from Dr. Bartholomew, who reiterated his treatment of appellant for her shoulder injury sustained while driving her mail truck. Dr. Bartholomew noted that appellant underwent surgical repair, a debridement and subacromial decompression procedure for the SLAP lesion. He opined that her injury was work related and occurred secondary to the motor vehicle accident.

By decision dated January 19, 2010, the Office denied modification of the September 22, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical 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 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 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.

The Board has held 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.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term traumatic injury 10.5(ee), see 20 C.F.R. § 10.5(a)(14).

⁶ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁷ *Id.*

ANALYSIS

The Office accepted that appellant's motor vehicle was struck from behind by another motorist on March 6, 2009. The question is whether the employment incident caused a personal injury. This can only be established by probative medical evidence.⁸ The Board finds that appellant has not submitted rationalized, probative medical evidence to establish that the March 6, 2009 employment incident would have been competent to cause the claimed injury.

Appellant submitted several reports from Dr. Bartholomew. In a May 28, 2009 report, Dr. Bartholomew advised that a May 20, 2009 right shoulder MRI scan and arthrogram revealed a SLAP lesion of the right shoulder. On June 22, 2009 he performed arthroscopic surgery of the right shoulder, an arthroscopic extensive debridement and subacromial decompression to repair her SLAP lesion. Dr. Bartholomew indicated in a July 2, 2009 treatment note that the SLAP lesion/tear was job related. In October 22, 2009 and January 7, 2010 reports, he reiterated that appellant developed significant pain in her right shoulder after the March 6, 2009 vehicular incident and sustained a SLAP lesion tear for which she underwent surgical repair on June 22, 2009. Dr. Bartholomew indicated that the injury and subsequent surgery were work related as they were caused by the March 6, 2009 motor vehicle accident.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of 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.⁹ Although Dr. Bartholomew presented a diagnosis of appellant's condition, he did not adequately address how this condition was causally related to the March 6, 2009 work incident. The medical reports of record did not explain how medically appellant would have sustained a SLAP lesion/tear because her vehicle was struck by a car on March 6, 2009. Dr. Bartholomew's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.¹⁰ He did not describe appellant's accident in any detail or how the accident would have been competent to cause the claimed right SLAP lesion/tear. Moreover, Dr. Bartholomew's opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's condition was causally related to the March 6, 2009 work incident. There is insufficient rationalized evidence in the record that appellant's right SLAP lesion/tear was work related. Therefore, she failed to provide a medical report from a physician that explains how the work incident of March 6, 2009 caused or contributed to the claimed right shoulder injury.¹¹

⁸ *Carlone, supra* note 4.

⁹ *See Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

¹¹ The Board notes that the March 7, 2009 report from Mr. Hill does not constitute medical evidence under section 8101(2).

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the March 6, 2009 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a right shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right shoulder injury in the performance of duty on March 6, 2009.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2010 and September 22, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 20, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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