

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

T.Y., Appellant)	
)	
and)	
)	Docket No. 10-2078
U.S. POSTAL SERVICE, POST OFFICE,)	Issued: May 10, 2011
Gretna, LA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 8, 2010 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' July 6, 2010 merit decision denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ and 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 a left upper extremity condition causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 20, 2009 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that he sustained a left shoulder injury (deformity of the humeral neck, supraspinatus tendinitis and probable tear of the anterior labrum) due to the repetitive nature of his federal employment. He stated that his position required him to constantly lift his arms above his shoulders when casing mail and he developed a bone spur.²

In a November 25, 2009 letter, the Office informed appellant that the information submitted was insufficient to establish his claim. It advised him to provide a description of employment activities he alleged caused his claimed condition and a rationalized medical report, with a diagnosis and rationalized opinion as to the cause of his diagnosed condition.

In a November 25, 2009 letter to the employing establishment, the Office requested comments from a knowledgeable supervisor on the accuracy of the statements provided by appellant relative to his claim. The employing establishment was asked to provide a full explanation, as well as any appropriate supportive evidence, as to any points of disagreement, a description of tasks performed which required physical exertion such as lifting, pushing, pulling, bending or stooping, and the frequency and duration of these activities, a copy of her position description and physical requirements of the job and an explanation as to how the actual duties varied from the official description. It did not respond to the Office's request.

By decision dated January 4, 2010, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the events occurred as alleged and that there was no medical evidence providing a diagnosis which could be connected to the claimed events.

On January 12, 2010 appellant, through his attorney, requested a telephonic hearing.

Appellant submitted a January 16, 2008 report from Dr. Mark Juneau, Jr., a Board-certified orthopedic surgeon, who noted appellant's complaints of left arm and shoulder pain. Dr. Juneau related the history of injury as reported by appellant, including a work-related jeep accident in 1983, which resulted in fractured ribs, a fractured humerus and a left arm injury. Physical examination of the left arm revealed pain and weakness. Abduction was to 110 degrees. Appellant could flex the arm fully and passively he could be pushed to 160 degrees. There was a clunking sensation with rotation of the arm. X-rays showed a small osteophyte at the proximal humerus and also reactive bone in the surgical neck of the humerus. Dr. Juneau recommended a magnetic resonance imaging (MRI) scan of the shoulder in order to determine whether appellant had rotator cuff pathology or a glenolabral tear.

On January 22, 2008 Dr. Juneau reported appellant's continuing complaints of shoulder pain. Examination revealed tenderness in the anterior subacromial area and positive impingement sign, caused by a spur on the tip of the acromion causing impingement. Dr. Juneau diagnosed impingement syndrome with an early tear of the rotator cuff. He also suspected some abnormality in the anterior labrum. Dr. Juneau opined that the impingement syndrome was

² The Office developed appellant's August 12, 1981 traumatic injury claim under File No. xxxxxx926 and accepted the claim for closed rib fractures, lung contusion.

caused by appellant's "repetitive abduction of the arm which he does daily while working for the [employing establishment]." He recommended acromioplasty and repair of the tear. Dr. Juneau stated that repeated abduction could cause further wearing of the muscle. The record contains a report of a January 16, 2008 CT scan of the thorax and a January 18, 2008 report of an MRI scan of the left shoulder.

During an April 15, 2010 telephonic hearing, appellant's representative reviewed the history of this prior claim (File No. xxxxxx926), which was accepted for fractured humerus, fractured ribs and lung contusion. He noted that appellant had been working in a light-duty job with restrictions, which included the use of a "rest bar" while casing mail.³ Appellant's impingement syndrome developed when the employer denied him access to the rest bar in 2007. Counsel noted that appellant had initially filed a claim for recurrence of disability under File No. xxxxxx926. The Office reportedly denied the recurrence claim and instructed him to file a new claim.

By decision dated July 6, 2010, the Office hearing representative affirmed the January 4, 2010 decision. He found that the evidence was sufficient to establish that appellant had an impingement syndrome. However, the hearing representative found that the case lacked a complete detailed description of appellant's work activities alleged to have caused or contributed to the presence of the left shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing 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 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.⁴ 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.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for

³ Counsel stated that a rest bar was used to provide support for appellant as he performed his duties.

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

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 between the claimant's diagnosed condition and the implicated employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

Although it is appellant's burden to establish his claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹³ The Office shares responsibility to see that justice is done.¹⁴

ANALYSIS

The Board finds that this case is not in posture for a decision. The case will be remanded to the Office for further development.

Appellant attributed his left shoulder condition to the repetitive nature of his federal employment. He stated that his position required him to constantly lift his arms above his shoulders when casing mail, and he developed a bone spur due to using a rest bar. Appellant's treating physician opined that his diagnosed impingement syndrome was causally related to his daily employment activities, which involved repeated abduction of his arm. The Office requested specific information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of appellant's statements relative to his claim; a full explanation, as well as any appropriate supportive evidence, as to any points of disagreement; a description of tasks performed which required physical exertion such as lifting, pushing, pulling, bending or stooping, and the frequency and duration of these activities; a copy of appellant's position description and physical requirements of the job; and an explanation as to how the

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

¹³ *R.E.*, 59 ECAB 323 (2008); *Willie A. Dean*, 40 ECAB 1208 (1989). See *Claudia A. Dixon*, 47 ECAB 168 (1995).

¹⁴ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

actual duties varied from the official description. The employing establishment failed to provide any information regarding appellant's work activities, as requested.

Although it is appellant's burden to establish his claim, the Office is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹⁵ The employing establishment is responsible for submitting the relevant factual and medical evidence in its possession.¹⁶ In this case, the Office's obligation to obtain information regarding appellant's job duties was not discharged by its initial development letter to the employing establishment.

On remand the Office should obtain relevant evidence from the employing establishment regarding appellant's job requirements and the extent of any repetitive activities performed. Upon securing the information, it should prepare a statement of accepted facts and request an opinion from Dr. Juneau, or a second opinion physician, based on a complete and accurate factual history addressing the causal relationship between any diagnosed conditions and the accepted work factors. After such further development as is deemed necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁵ *R.E.*, *supra* note 13; *see Claudia A. Dixon supra* note 13.

¹⁶ 20 C.F.R. § 10.118(a).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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