

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

C.B., Appellant)
and) Docket No. 10-2185
U.S. POSTAL SERVICE, POST OFFICE,) Issued: May 16, 2011
Fort Washington, MD, Employer)

)

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 18, 2010 appellant, through his attorney, filed a timely appeal of an August 4, 2010 merit decision of the Office of Workers' Compensation Programs which denied his traumatic injury 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 met his burden of proof to establish that his cervical radiculopathy and C6 and C7 disc disease were causally related to the October 16, 2008 employment incident.

FACTUAL HISTORY

This case has previously been before the Board. In an April 21, 2010 decision, the Board affirmed the Office decisions dated March 12 and July 21, 2009, finding that appellant had not

¹ 5 U.S.C. § 8101 *et seq.*

established that he sustained a traumatic injury on October 16, 2008. The facts of the case are set forth in the Board's prior decision and incorporated herein by reference.²

On July 20, 2010 appellant, through his representative, filed a petition for reconsideration and provided a June 18, 2010 medical report by Dr. Philip B. Bovell, an orthopedic surgeon, who stated that appellant's diagnosed cervical condition developed from his repetitive work duties that were performed prior to the October 16, 2008 date of injury. Dr. Bovell explained that appellant's work duties consisted of repeated use of the right upper extremity while casing and carrying mail and that these duties, along with appellant's failure to recognize his problem, peaked on the October 16, 2008 date of injury. He further opined that appellant's daily work activities aggravated the preexisting underlying condition. Dr. Bovell ultimately concluded that the gradual development of appellant's cervical condition, which he diagnosed as cervical radiculopathy and compression, as well as disc syndrome at C6-7, resulted from the repeated use of excessive function on walking, standing, carrying mail on shoulder repeatedly, over lifting at work and the overuse of shoulders on casing.

By decision dated August 4, 2010, the Office denied modification of the Board's April 21, 2010 decision and found that appellant failed to establish that his cervical condition was causally related to the October 16, 2008 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act³ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence⁴ 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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁶ 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.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the

² Docket No. 09-2043 (issued April 21, 2010).

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Caralone*, 41 ECAB 354 (1989).

employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.¹⁰ 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 specified employment factors or incidents.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a neck and back injury on October 16, 2008, as alleged. The Office accepted that on October 16, 2008 his right arm muscles and wrist were extremely sore and tender when he pulled down his route and loaded his truck. The record further supports that appellant sustained a diagnosed cervical condition, but it does not contain a rationalized medical opinion establishing that this condition resulted from the October 16, 2008 employment incident.

Following the Board's last review of this case, appellant submitted a medical report by Dr. Bovell who noted appellant's date of injury as October 16, 2008 and diagnosed his cervical condition as cervical radiculopathy with compression and disc syndrome at C6-7. While an accurate date of injury is reported, Dr. Bovell ultimately concludes that appellant's diagnosed cervical conditions resulted from repeatedly carrying mail on his shoulder, overlifting and the overuse of shoulder on casing at work. He further explains that appellant's condition was brought on by repeatedly performing his work duties, which started before the October 16, 2008 date of injury, and that these daily work activities aggravated a preexisting underlying condition. Dr. Bovell's history of injury remains deficient because, while referencing repetitive job duties, he did not actually describe the frequency of any specific work activity. Also, while he acknowledges the October 16, 2008 incident, Dr. Bovell ultimately attributes the cause of appellant's cervical condition to a gradual development that reached its peak on October 16, 2008.

The medical evidence of record is ultimately insufficient to establish appellant's claim because Dr. Bovell's reports fail to provide a rationalized medical opinion explaining how

⁹ *T.H.*, 59 ECAB 388 (2008); see also *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *B.B.*, 59 ECAB 234 (2007); *Woodhams*, *id.* at 345, 352. D.S., Docket No. 09-860 (issued November 2, 2009).

appellant's specific work duties on the date alleged physiologically caused the diagnosed conditions.¹³

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁴ As appellant did not submit probative medical evidence establishing that his cervical condition is causally related to the October 16, 2008 work event, he did not meet his burden of proof to establish a traumatic injury on October 16, 2008.¹⁵

Appellant may submit additional evidence, together with a formal written request for reconsideration, to the Office within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on October 16, 2008, as alleged.

¹³ *Paul Foster*, 56 ECAB 208 (2004); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹⁴ *Apgar*, *supra* note 8. *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

¹⁵ To the extent that medical evidence of record refers to appellant's repetitive lifting, carrying mail and casing mail at work that caused an overuse of his shoulder occurring over more than one shift, rather than a single incident, the medical evidence implicates an occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board