

FACTUAL HISTORY

On November 19, 2010 appellant, then a 53-year-old sales distribution clerk, filed a notice of occupational disease claim (Form CA-2) alleging that he developed an injury from his employment at the downtown station.³ He stated that a steroid shot relieved his pain for the short term. Appellant had first become aware of his condition on November 10, 2008 and of its relationship to his employment later on April 9, 2010. His supervisor indicated that he was not disabled for work.

In medical reports dated March 5, 2009 to March 3, 2010, Dr. George Salloum, a Board-certified orthopedic surgeon, reported that appellant complained of bilateral knee pain, left shoulder pain and an increasing mass on the top of his left hand. Appellant experienced bilateral knee pain with kneeling, squatting, getting up from a sitting position and prolonged standing. Upon examination of the left shoulder, Dr. Salloum diagnosed shoulder impingement syndrome and provided appellant with a cortisone injection. He also noted early degenerative changes of the knees and a nonmalignant nodule of the left hand. Dr. Salloum further diagnosed localized arthritis in the lower leg, a meniscus tear, patellofemoral syndrome, joint knee instability and a traumatic ligament tear.

In medical reports dated March 8 to July 29, 2010, Dr. Henry Leis, a Board-certified orthopedic surgeon, reported that appellant complained of left shoulder pain. He diagnosed osteoarthritis, acute rotator cuff tear and shoulder impingement syndrome and restricted appellant from lifting over 20 pounds.

By letter dated December 6, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days. No further evidence was submitted.

By decision dated February 18, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the occupational exposure occurred as alleged. It also noted that he failed to establish that he sustained an injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing 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 FECA, that the claim was filed within the applicable time

³ On the CA-2 form application, appellant did not identify either an affected body part or an occupational disease process. He simply mailed various medical records to OWCP. This raises the inference that appellant potentially believes his left shoulder, left hand and bilateral knee conditions are causally related to factors of his federal employment.

⁴ 5 U.S.C. §§ 8101-8193.

limitation period of FECA⁵ and that an injury was sustained in the performance of duty.⁶ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁷

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.⁸ Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.⁹

ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty as a sales distribution clerk.

Appellant alleged that he sustained an injury from his duties as a sales distribution clerk. He has not provided sufficient detail to establish that an occupational exposure occurred as alleged.¹⁰ Appellant failed to adequately describe the circumstances of his injury, how the diagnosed condition, and his employment factors caused his injury. He did not respond to the questionnaire in OWCP's December 6, 2010 development letter and did not provide OWCP with the additional factual evidence requested. Moreover, the employing establishment indicated that appellant was not disabled for work.

OWCP found that appellant did not submit sufficient medical evidence to establish a firm medical diagnosis. Dr. Salloum's medical reports established a diagnosis of localized arthritis in the lower leg, a meniscus tear, patellofemoral syndrome, joint knee instability and a traumatic ligament tear. Dr. Leis' reports showed a diagnosis of osteoarthritis, acute rotator cuff tear and shoulder impingement syndrome. The Board finds that, contrary to OWCP decision, the medical evidence of record establishes a diagnosis.

While Dr. Salloum noted that appellant experienced bilateral knee pain with kneeling, squatting, getting up from a sitting position and prolonged standing, no report provided an adequate explanation of the activities performed during employment which might have caused his injuries. The medical evidence failed to describe a mechanism of injury. Further, the

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁸ *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

physicians did not offer a rationalized opinion reporting that appellant's conditions were a result of his employment activities as a sales distribution clerk.¹¹

Though appellant has established a firm medical diagnosis, the record lacks any evidence that his conditions were caused by his employment factors. An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence that his injuries were caused by his employment, OWCP properly denied his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F. R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty as a sales distribution clerk.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 17, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).