

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

A.C., Appellant)	
)	
and)	Docket No. 11-1800
)	Issued: March 21, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
Ocala, FL, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2011 appellant filed a timely appeal from February 16 and May 16, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 13, 2010 appellant, then a 43-year-old letter carrier, filed a Form CA-1 for traumatic injury, alleging that he sustained right shoulder soreness starting October 26, 2010. He stopped work on November 13, 2010.²

In a November 13, 2010 duty status report, a physician's assistant noted that appellant strained his right shoulder on October 26, 2010. On examination, he observed tenderness, edema, muscular spasms and crepitation. The physician's assistant diagnosed right shoulder pain and possible supraspinatus tendinitis and released appellant to limited duty.³

The employing establishment controverted the claim in a November 18, 2010 letter, asserting that appellant did not submit sufficient medical evidence.

OWCP informed appellant in a November 24, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a medical report from a physician explaining how an employment incident or factor caused a right upper extremity injury.

Appellant submitted new medical evidence. A November 17, 2010 magnetic resonance imaging scan of the right shoulder, obtained by Dr. David A. Saks, a Board-certified diagnostic radiologist, exhibited thickening of the supraspinatus tendon as well as signal changes suggestive of underlying cuff tendinopathy, *inter alia*.

In a November 13, 2010 report, Heather Adams, an employee of a healthcare provider, related that appellant sustained right shoulder pain two to three weeks earlier. She pointed out that he used his right upper extremity to deliver mail. On examination, Ms. Adams observed right shoulder muscle tension, spasms, swelling, tenderness and crepitation. An x-ray conducted on November 13, 2010 was unremarkable. Ms. Adams diagnosed right shoulder pain and possible supraspinatus tendinitis.

Dr. Edward J. Lucas Jr., a Board-certified emergency physician, remarked in a November 20, 2010 report that appellant was unable to raise his right upper extremity above shoulder level on November 13, 2010. He observed muscle tension, stiffness and tenderness on inspection and to palpation of the right shoulder. After reviewing the prior radiological findings, Dr. Lucas diagnosed right supraspinatus tendinitis and partial rotator cuff tear. In a December 1, 2010 report, he also diagnosed chronic right degenerative shoulder joint changes. Dr. Lucas opined that appellant's condition was due to his federal employment, explaining that his job duties entailed repetitive right arm and shoulder movements.

In a December 8, 2010 report, Dr. Christopher J. Manseau, a Board-certified orthopedic surgeon, detailed that appellant's right shoulder pain arose on October 26, 2010 and worsened on November 13, 2010 while reaching for a mailbox. He added that the condition resulted from

² Appellant accepted the employing establishment's offer of modified assignment on January 20, 2011.

³ Other records from physician's assistants dated November 13 and 20 and December 1, 2010 reiterated this diagnosis and work restriction recommendations.

repetitive work activity such as casing mail. Dr. Manseau observed limited range of motion (ROM) due to pain, anterior capsule, biceps tendon, bicipital groove and subdeltoid tenderness and a positive impingement test. He diagnosed right rotator cuff tear, shoulder bursitis and shoulder pain. In a January 19, 2011 duty status report, Dr. Manseau recommended modified duty.

Appellant specified in a December 9, 2010 statement that he was casing mail when he felt pain in his shoulder a few weeks earlier. Thereafter, the shoulder “went out” while he was putting mail in a box.

In a January 19, 2011 report, Dr. Manseau examined appellant and observed limited right shoulder ROM due to pain, subdeltoid tenderness and a positive impingement test. He noted that appellant’s condition was “rapidly improving.”

By decision dated February 16, 2011, OWCP denied appellant’s claim, finding the medical evidence insufficient to demonstrate that his federal employment was causally related to his right upper extremity condition.

Appellant requested a review of the written record on March 8, 2011. He submitted a February 28, 2011 report, in which Dr. Manseau commented, “It is again my opinion within a degree of medical certainty that the continued need for care for this patient is causally related to his documented work injury.”⁴

In a May 16, 2011 decision, OWCP’s hearing representative reclassified appellant’s traumatic injury claim as one for occupational disease as the case record indicated that his right upper extremity condition developed over a period of time. He affirmed the February 16, 2011 decision on the grounds that the medical evidence did not sufficiently establish that the accepted employment factor caused or contributed to appellant’s injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or

⁴ Dr. Manseau also noted clinical findings, which were identical to those contained in his January 19, 2011 report.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the evidence generally required to establish that causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁸

ANALYSIS

While the case record supports that appellant routinely cased and delivered mail, the Board finds that he failed to establish his occupational disease claim because the medical evidence did not sufficiently establish that these accepted employment factors were causally related to his right upper extremity condition.

In a December 8, 2010 report, Dr. Manseau diagnosed torn right rotator cuff as well as right shoulder pain and bursitis. He opined that appellant's condition was the result of work activities, namely casing and delivering mail. Dr. Manseau later added in a February 28, 2011 report that "the continued need for care for this patient is causally related to his documented work injury." His opinion, however, failed to establish causal relationship because he did not adequately explain how casing and delivering mail caused or contributed to appellant's condition.⁹ Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.¹⁰

In November 20 and December 1, 2010 reports, Dr. Lucas diagnosed right supraspinatus tendinitis, partial rotator cuff tear and degenerative shoulder joint changes. Although he concluded that appellant's condition was due to repetitive right arm and shoulder movements on the job, his opinion was of diminished probative value on the issue of causal relationship because he did not provide fortifying medical rationale.¹¹ In addition, other reports from Drs. Manseau

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *I.J.*, 59 ECAB 408 (2008).

⁹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

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

¹¹ *George Randolph Taylor*, 6 ECAB 986, 988 (1954). The Board notes that Dr. Lucas did not identify the specific contributing factors. See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). See also *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

and Saks were of limited probative value because none offered an opinion regarding the cause of injury.¹²

The remaining medical evidence lacked any evidentiary weight on the matter of causal relationship. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.¹³ Appellant provided a November 13, 2010 report from Ms. Adams. However, this report did not indicate that she was a qualified physician.¹⁴ Because it cannot be determined whether Ms. Adams is a physician as defined in 5 U.S.C. § 8101(2), her report cannot constitute competent medical evidence.¹⁵ Furthermore, the various documents signed by physician's assistants lacked probative medical value because a physician's assistant is not a "physician" according to FECA.¹⁶ In the absence of rationalized medical opinion evidence, appellant failed to meet his burden.

Appellant contends on appeal that casing and delivering mail for 14 years led to his right upper extremity injury. As noted, the medical evidence was insufficient to demonstrate that these accepted employment factors caused or contributed to his condition. Appellant may submit new evidence or argument as part of a formal 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 establish that he sustained an occupational disease in the performance of duty.

¹² *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ See *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

¹⁴ *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

¹⁵ *R.M.*, 59 ECAB 690, 693 (2008).

¹⁶ 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551, 554 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 16 and February 16, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 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