

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

W.W., Appellant

and

**U.S. POSTAL SERVICE, CHARLOTTE
PROCESSING & DISTRIBUTION CENTER,
Charlotte, NC, Employer**

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**Docket No. 12-969
Issued: October 4, 2012**

Appearances:

Daniel F. Read, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 28, 2012 appellant filed a timely appeal from an October 4, 2011 merit decision 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 this case.

ISSUE

The issue is whether appellant has established that he sustained a traumatic back injury in the performance of duty on March 27, 2010.

On appeal, counsel asserts that OWCP should have accepted appellant's claim as one for an occupational condition of the left shoulder as OWCP accepted bilateral shoulder conditions under a separate claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 12, 2010 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) claiming that on March 27, 2010, he sustained a left upper back strain when lifting a tray of mail from a postal container. An employing establishment accident report corroborated the March 27, 2010 lifting incident. Appellant stopped work from June 9 to 24, 2010.²

In a June 9, 2010 report, Dr. Jeffrey A. Knapp, an attending Board-certified orthopedic surgeon, diagnosed a thoracic strain with left trapezial pain, superimposed on congenital spondylolisthesis.³ He administered a series of cervical facet injections and released appellant to light duty as of June 24, 2010.⁴

In a June 28, 2010 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a detailed narrative report from his attending physician explaining how and why the identified work factors would cause the claimed back injury. It afforded appellant 30 days in which to submit such evidence.

In response, appellant submitted reports from January 17, 2007 to February 26, 2008 in which Dr. Knapp diagnosed lumbar syndrome and an L5-S1 spondylolisthesis. On April 7, 2010 Dr. Knapp diagnosed thoracic strain syndrome and a scapulothoracic strain, noting that appellant did not “recall any specific injury, but he does do a lot of heavy lifting” at work. In reports from April 14 to July 8, 2010, Dr. Knapp diagnosed cervical spondylogenic disc disease, most severe at C5-6. Appellant also submitted his statement that he did not sustain any injury subsequent to March 27, 2010.

By decision dated August 11, 2010, OWCP denied the claim on the grounds that causal relationship was not established. It found that the March 27, 2010 lifting incident occurred at the time and place and in the manner alleged. OWCP further found that appellant submitted insufficient rationalized medical evidence to establish that the March 27, 2010 lifting incident caused the claimed back injury.

In an October 28, 2010 letter, counsel requested reconsideration. He contended that the claimed thoracic spine and left shoulder injury were due to “left shoulder impingement and arthrosis” caused by repetitive motion at work. In a January 19, 2011 letter, counsel advised

² On June 6, 2010 appellant claimed a recurrence of disability from June 9 to 24, 2010. He attributed the recurrence to sweeping and lifting mail at work in late May 2010. Appellant received continuation of pay from June 12 to 19, 2010. OWCP did not issue a formal decision regarding the recurrence claim.

³ A June 10, 2010 magnetic resonance imaging (MRI) scan showed a normal thoracic spine and multilevel degenerative disc disease of the cervical spine.

⁴ Appellant submitted medical records regarding bilateral plantar fasciitis. There is no claim of record for a foot condition.

OWCP that appellant's claim for right shoulder impingement was accepted under File No. xxxxxx068. He submitted additional medical evidence.⁵

Dr. Ranjan Maitra, an attending Board-certified orthopedic surgeon performed left shoulder arthroscopy with subacromial decompression and distal clavicle resection on October 1, 2010. He opined that appellant's bilateral shoulder impingement syndrome was due to repetitive lifting at work which irritated the rotator cuff tendons and subacromial bursa. Dr. Maitra submitted progress notes through October 11, 2010.

By decision dated February 3, 2011, OWCP denied modification on the grounds that the additional medical evidence submitted was insufficient to establish that the accepted March 27, 2010 lifting incident caused or aggravated any medical condition.

In a March 10, 2011 letter, counsel again requested reconsideration. He explained that he changed his theory in the case to assert that appellant sustained an occupational condition of the left shoulder and not a traumatic injury. Counsel submitted appellant's undated statement attributing his left shoulder condition to repetitive lifting over time. Appellant also submitted literature regarding postal equipment.

By nonmerit decision dated March 23, 2011, OWCP denied reconsideration on the grounds that the evidence submitted was irrelevant to the claim.

In a March 29, 2011 letter, counsel asserted that OWCP should accept that the claimed traumatic injury was actually a left shoulder condition because OWCP accepted a right shoulder condition under File No. xxxxxx068. On April 14, 2011 OWCP requested clarification regarding which appeal right counsel intended to exercise. In a September 2, 2011 letter, counsel requested reconsideration. On September 9, 2011 he asserted that appellant was entitled to wage-loss compensation for work absences from March 27 to June 9, 2010.⁶ Counsel submitted a November 18, 2010 operative report from Dr. Maitra noting a right shoulder arthroscopy with subacromial decompression and distal clavicle resection.

By decision dated October 4, 2011, OWCP denied modification on the grounds that the evidence submitted did not contain sufficient medical opinion supporting a causal relationship between the March 27, 2010 lifting incident and the claimed thoracic and left shoulder injury.

⁵ An April 22, 2010 MRI scan showed mild left foraminal stenosis at C5-6. Dr. Knapp opined on August 18, 2010 that appellant's condition was unchanged.

⁶ In an August 10, 2011 letter, counsel requested that OWCP combine File No. xxxxxx076 for a traumatic March 27, 2010 back and left shoulder injury with File No. xxxxxx068 for bilateral shoulder conditions as the two claims were based on an identical mechanism of injury and similar medical evidence. In a September 13, 2011 letter, OWCP explained that it could not double File No. xxxxxx076 and File No. xxxxxx068 as the traumatic injury claim under File No. xxxxxx076 had been denied.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 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.⁸ 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.⁹

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.¹⁰ 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.¹¹

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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.¹²

ANALYSIS

Appellant claimed that he sustained a left upper back strain on March 27, 2010 when he lifted a tray of mail. The employing establishment corroborated the lifting incident as factual. In support of his claim, appellant submitted reports dated from January 17, 2007 to July 8, 2010 from Dr. Knapp, an attending Board-certified orthopedic surgeon, diagnosing cervical disc disease and congenital L5-S1 spondylolisthesis. On April 7, 2010 Dr. Knapp diagnosed a scapulothoracic strain but stated that appellant “did not recall any specific injury.” On June 9, 2010 he diagnosed a left trapezial strain but did not provide a date of injury. As Dr. Knapp did not provide medical rationale explaining how and why lifting a tray of mail on March 27, 2010 would cause the diagnosed strains, his opinion is insufficient to establish causal relationship.¹³

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹² *Solomon Polen*, 51 ECAB 341 (2000).

¹³ *Deborah L. Beatty*, *supra* note 11.

OWCP denied the claim by decision dated August 11, 2010 due to the lack of rationalized medical evidence. On reconsideration, counsel submitted a surgical report for a left shoulder arthroscopy under a separate claim. OWCP issued a February 3, 2011 decision denying modification as the new medical evidence did not establish causal relationship.

Counsel then introduced a new theory of causation. In his March 10, 2011 reconsideration request, he asserted that appellant had a left shoulder condition due to repetitive lifting, not a traumatic back injury. On March 23, 2011 OWCP denied reconsideration as counsel's arguments were irrelevant to the claim. Counsel again requested reconsideration on September 9, 2011, asserting that OWCP should have processed appellant's claim as one for an occupational condition as the claimed back injury, in effect, did not occur. By October 4, 2011 decision, OWCP denied modification as causal relationship was not established.

The Board notes that in his May 12, 2010 claim form, appellant clearly identified a date and mechanism of injury. He asserted that lifting a tray of mail from a postal container on March 27, 2010 caused a back strain. The employing establishment corroborated the lifting incident. Counsel later contended that the claimed traumatic injury did not occur, that appellant mistook chronic pain from a bilateral shoulder condition as a new injury. But this line of reasoning negates causal relationship. It runs contrary to appellant's burden of proof, which is to establish causal relationship by submitting medical evidence showing that the corroborated lifting incident caused a back strain. Instead, on reconsideration, counsel asserted that there was no separate injury on March 27, 2010. In light of this argument, and in the absence of supportive medical evidence, appellant cannot prevail.

The Board notes that in a June 28, 2010 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a statement from his attending physician explaining how and why the identified work incident would cause the claimed back injury. As appellant did not submit sufficient medical evidence supporting causal relationship, OWCP properly denied his claim.¹⁴

On appeal, counsel asserts that OWCP should have accepted appellant's claim as one for an occupational condition of the left shoulder as OWCP accepted bilateral shoulder conditions under a separate claim. As stated above, appellant claimed a traumatic injury to his upper back due to lifting a tray of mail at work on March 27, 2010. Appellant did not submit sufficient medical evidence to establish a causal relationship between the claimed injury and the accepted incident. Therefore, OWCP properly issued the October 4, 2011 decision denying 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 10.607.¹⁵

¹⁴ *Gary J. Watling, supra* note 10.

¹⁵ The Board notes that appellant also filed an appeal regarding OWCP claim number xxxxxx068. This matter is proceeding separately before the Board as appeal No. 12-1007.

CONCLUSION

The Board finds that appellant has not established that he sustained a left upper back injury in the performance of duty on March 27, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2011 is affirmed.

Issued: October 4, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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