

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

K.M., Appellant)	
)	
and)	Docket No. 13-305
)	Issued: May 22, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Honolulu, HI, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2012 appellant filed a timely appeal from an October 22, 2012 Office of Workers' Compensation Programs' (OWCP) decision denying his claim for an employment-related injury. 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.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty causally related to a September 12, 2012 employment incident, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the October 22, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 17, 2012 appellant, then a 62-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging a left shoulder rotator cuff tear as a result of lifting and loading bundles in the performance of duty on September 12, 2012.

In a September 17, 2012 report, Dr. Calvin S. Oishi, a Board-certified orthopedic surgeon, opined that appellant was totally disabled for the period September 14 through December 20, 2012. On September 19, 2012 he opined that appellant was totally disabled for the period September 14 to 19, 2012. Dr. Oishi released him to light-duty work effective September 20, 2012 with the following restrictions: no lifting more than two pounds with injured left arm.

By letter dated September 20, 2012, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a September 14, 2012 report from Dr. Oishi who noted that appellant complained of left shoulder pain of several months' duration. Upon examination, Dr. Oishi found positive impingement and Hawkins' sign.

A magnetic resonance imaging (MRI) scan of the left shoulder dated September 14, 2012 revealed mild rotator cuff tendinosis.

On September 17, 2012 Dr. Oishi reviewed the September 14, 2012 MRI scan and diagnosed rotator cuff tear. He advised that appellant was a candidate for repair.

Appellant submitted a narrative statement dated September 24, 2012 reiterating that he was filing a claim for a traumatic injury which he sustained while loading midweek bundles in a postal truck. While he was transferring the bundles to the front, he felt a sharp pain in the left shoulder. Appellant reported that midweek newspaper bundles weigh approximately 15 pounds. He indicated that he did not have any similar disability or symptoms before the injury.

By decision dated October 22, 2012, OWCP denied the claim finding that the evidence submitted was insufficient to establish causal relationship between appellant's condition and the September 12, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, that an injury⁴ was sustained in the performance of duty, as alleged,

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁷

ANALYSIS

OWCP accepted that the employment incident of September 12, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury in the performance of duty on September 12, 2012. The Board finds that the medical evidence of record is not sufficient to establish his claim for a compensable employment injury.

Dr. Oishi diagnosed rotator cuff tear and opined that appellant was totally disabled for the period September 14 through December 20, 2012. Although Dr. Oishi provided a firm diagnosis, he did not provide medical rationale explaining the mechanism of how lifting and loading bundles on September 12, 2012 resulted in appellant’s left shoulder condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.⁸ Dr. Oishi failed to adequately address the issue of causal relationship between the September 12, 2012 employment incident and the diagnosed condition. The Board finds that appellant did not meet his burden of proof with the submission of Dr. Oishi’s reports.

The September 14, 2012 MRI scan is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant’s claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a September 12, 2012 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

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 10.607.¹⁰

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on September 12, 2012, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2013
Washington, DC

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

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

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

⁹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁰ Should appellant wish to claim his condition is an occupational disease, as defined under 20 C.F.R. § 10.5(q), due to factors of his federal employment occurring in more than one day or shift, he may file such claim with OWCP.