United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
and	)	**Docket No. 13-1247**
	)	**Issued: November 1, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 30, 2013 appellant, through his attorney, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' (OWCP) dated February 13, 2013. Pursuant to the Federal Employees' Compensation Act[1] (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 sustained injuries to his neck, left shoulder and left arm in the performance of duty on June 3, 2011.

FACTUAL HISTORY

On December 20, 2011 appellant, a 52-year-old letter carrier, filed a claim for benefits, alleging that he injured his neck, left shoulder, left arm and back while placing mail into a mailbox on June 3, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

By letter to appellant dated January 6, 2012, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition.

By decision dated February 8, 2012, OWCP denied appellant's claim, finding that he failed to establish fact of injury. It found that he failed to establish that he sustained the claimed injuries at the time, place and in the manner alleged.

On February 24, 2012 appellant requested an oral hearing, which was held on June 6, 2012.

Appellant submitted a report of a magnetic resonance imaging (MRI) scan of the cervical spine dated July 12, 2010, received by OWCP on March 2, 2012. The results of this test indicated that he had mild, multi-level discovertebral ridging, maximal C5-6 through C7-T1, particularly on the left at C5-6, with mild multi-level cord compression without cord signal alteration; and mild to moderate multi-level foraminal stenosis, most prominent at C4-5 and C5-6.

In a report of a cervical MRI scan dated March 5, 2012, it was indicated that appellant had multilevel disc pathology essentially unchanged from the previous examination.

In a July 9, 2012 report, Dr. Nirav K. Shah, Board-certified in neurosurgery, stated that appellant had complaints of pain in his neck and shoulders. He stated findings on examination and opined that appellant had cervical radiculopathy, the primary diagnosis, cervical neck pain and cervical root lesion. Dr. Shah asserted that appellant had left-sided cervical left radiculopathy and weakness due to cervical disc herniation on MRI scan at C5-6 and C-7, with foraminal compromise. He further opined that a left shoulder MRI scan showed a probable left rotator cuff tear. Dr. Shah stated that these injuries were causally related to the June 3, 2011 incident.

By decision dated July 30, 2012, an OWCP hearing representative modified the February 8, 2012 decision in part, finding that appellant established that he experienced pain in his neck, left shoulder and left arm while placing mail into a mailbox on June 3, 2011. It found, however, that he failed to submit sufficient medical evidence to establish that he sustained a diagnosed condition causally related to the June 3, 2011 work incident. .

In a report dated August 10, 2012, Dr. Shah indicated that appellant was experiencing intermittent pain and numbness in his neck and both shoulders. He advised that appellant had recently undergone an MRI scan, which showed that his symptoms had worsened since his previous visit. Dr. Shah rated appellant's pain as a 6 on a scale of 1 to 10; appellant described his pain as aching and tingling in nature and stated that it was aggravated by typing or writing. He advised that this pain was associated with weakness in the bilateral arms and shoulders and with numbness in the right shoulder. Dr. Shah stated that appellant had cervical neck pain, his primary symptom, cervical neck pain, cervical neck strain and cervical radiculopathy.

Dr. Shah advised that appellant still had left shoulder and left arm pain causally related to the injury of June 3, 2011. He related that, prior to this injury, appellant had denied having these

particular symptoms. Dr. Shah opined that the mechanism of injury was consistent with the injuries sustained, including cervical herniation and radiculopathy. He advised that appellant's injury had occurred while he had the heavy mailbag over his left shoulder and turned acutely to the right to walk away; at that time, appellant developed a severe headache and experienced pain down his left side. Dr. Shah advised that appellant would benefit from a gradual return to work, particularly with the use of a mail pushcart. He stated that appellant had worsening left shoulder and left arm pain with radiation; the left shoulder pain was constant and was associated with weakness and numbness in his left arm. Dr. Shah reiterated his previous diagnoses.

In an October 17, 2012 report, Dr. Thomas K. Bills, Board-certified in orthopedic surgery, stated that appellant had complaints of bilateral shoulder, elbow and wrist pain. He advised that there was no obvious atrophy of the left shoulder in comparison to the right shoulder. Dr. Bills stated that appellant had tenderness in his left rotator cuff, with a positive impingement sign. He found that the March 5, 2012 left shoulder MRI scan demonstrated acromioclavicular arthritis; a glenoid labral tear both anteriorly and posteriorly with a secondary ganglion cyst and an attenuation of the rotator cuff in the impingement zone and watershed zone without full thickness tear. Dr. Bills also stated that the cervical March 5, 2012 MRI scan showed diffuse spondylitic changes with degenerative disc changes at C2-3, C3-4, C4-5, C5-6, C6-7 and C7-T1. He asserted that appellant had facet arthropathy at the same multiple levels, all of which was causing foraminal stenosis at multiple levels, including C5-6 and C6-7.

Dr. Bills opined that appellant's primary problem was rotator cuff tendinitis secondary to impingement. He also diagnosed secondary cervical spondylitis, which caused some cervical radiculopathy. Dr. Bills prescribed cortisone injections and physical therapy for the left shoulder and advised that appellant might eventually require surgery for his left shoulder condition.

By decision dated February 13, 2013, OWCP denied modification of the February 8, 2012 hearing representative's decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing that 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 injury was sustained 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.[3] 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.[4]

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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. 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.[5] 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.[6]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7]

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 the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[8] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

It is uncontested that appellant experienced pain in his neck, left shoulder and left arm while placing mail into a mailbox on June 3, 2011. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[9] Appellant has not submitted rationalized, probative medical evidence to establish that the June 3, 2011 employment incident caused a personal injury and that the work accident would have been competent to cause the claimed injury.

Appellant submitted reports from Drs. Shah and Bill. These physicians submitted reports which stated findings on examination, diagnosed cervical radiculopathy, cervical herniation, left-sided rotator cuff tendinitis, left-sided rotator cuff tear and left-sided impingement syndrome of the left shoulder and generally related appellant's cervical, left shoulder and left arm conditions to the June 3, 2011 work incident. Neither of these physicians, however, provided a probative, rationalized opinion regarding whether the June 3, 2011 work incident caused a personal injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[10] With regard to appellant's left shoulder condition, appellant provided diagnoses of left-sided rotator cuff tear and left-sided impingement syndrome of the left

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(ee).

[7] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[8] *Id.*

[9] *Carlone*, *supra* note 5.

[10] *See Anna C. Leanza*, 48 ECAB 115 (1996).

shoulder. He, however, did not submit a report from a physician which related these diagnoses to appellant's left shoulder conditions and sufficiently address how these diagnosed conditions were causally related to the June 3, 2011 work incident.

Dr. Shah stated in his July 9, 2012 report that a left shoulder MRI scan showed a probable left rotator cuff tear. He indicated that this injury was causally related to the June 3, 2011 incident. In his report dated August 10, 2012, Dr. Shah advised that appellant was experiencing intermittent pain and numbness in his left shoulders. He stated that appellant had recently undergone an MRI scan, which showed that his symptoms had worsened since his previous visit. Dr. Shah rated appellant's pain as a 6 on a scale of 1 to 10; appellant described his pain as aching and tingling in nature and stated that it was aggravated by typing or writing. He advised that this pain was associated with weakness in pain in his arms and shoulders. Dr. Shah advised that appellant still had left shoulder and arm pain causally related to the injury of June 3, 2011. He related that, prior to this injury, appellant had denied having these particular symptoms. Dr. Shah opined that the mechanism of injury was consistent with the injuries he sustained. He advised that appellant's injury occurred while he had the heavy mailbag over his left shoulder and then suddenly turned to the right to walk away; at that time, he developed a severe headache and experienced pain down his left side. Dr. Shah stated that appellant had worsening left shoulder and left arm pain with radiation; the left shoulder pain was constant and was associated with weakness and numbness in his left arm. In his October 17, 2012 report, he stated that appellant had complaints of bilateral shoulder, elbow and wrist pain; he noted on examination that there was no obvious atrophy of the left shoulder in comparison to the right shoulder.

Dr. Bills asserted that appellant had tenderness in his left rotator cuff, with a positive impingement sign; he opined that appellant's primary problem was rotator cuff tendinitis secondary to impingement. He found that the March 5, 2012 left shoulder MRI scan demonstrated acromioclavicular arthritis; a glenoid labral tear both anteriorly and posteriorly with a secondary ganglion cyst and an attenuation of the rotator cuff in the impingement zone and watershed zone without full thickness tear. Dr. Bills indicated that appellant might eventually need surgery to ameliorate his left shoulder condition. He, however, did not state an opinion as to whether these diagnosed left shoulder conditions were causally related to the June 3, 2011 work incident.

The medical reports from Drs. Shahs and Bills did not sufficiently explain how medically appellant would have sustained a left shoulder or left arm injury while delivering mail on June 3, 2011. The reports from Drs. Shah and Bills did not adequately describe appellant's accident or how the accident would have been competent to cause the claimed condition. There is, therefore, no rationalized evidence in the record that appellant's left shoulder and left arm injuries were work related.

As to the claimed cervical injury, Dr. Shah indicated that appellant had sustained a cervical neck strain and cervical radiculopathy. He advised that the mechanism of injury which occurred on June 3, 2011 was consistent with the cervical herniation and cervical radiculopathy he sustained. Dr. Shah explained that appellant's injury had occurred while he had the heavy mailbag over his left shoulder and turned acutely to the right to walk away. His opinion regarding causal relationship is of limited probative value, however, in that he did not provide

adequate medical rationale in support of his conclusions.[11] Dr. Shah's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's June 3, 2011 work incident and his claimed cervical condition. Causal relationship must be established by rationalized medical opinion evidence. The reports from Dr. Shah are of limited probative value for the further reason that if they are generalized in nature and equivocal in that he only noted summarily that appellant's cervical condition was causally related to the June 3, 2011 incident in which appellant experienced cervical pain while placing mail into a mailbox.

Dr. Bills stated in his October 17, 2012 report that the cervical March 5, 2012 MRI scan showed diffuse spondylitic changes with degenerative disc changes at C2-3, C3-4, C4-5, C5-6, C6-7 and C7-T1. He asserted that appellant had facet arthropathy at the same multiple levels, all of which was causing foraminal stenosis at multiple levels, including C5-6 and C6-7. However, the March 5, 2012 MRI scan indicates that appellant had multilevel disc pathology essentially unchanged from his previous diagnostic test, with no significant new disc pathology noted. In addition, Dr. Bills did not provide an opinion stating that appellant's diagnosed cervical conditions were causally related to the June 3, 2011 work incident.

Appellant's attorney argues on appeal that Dr. Shah's reports were sufficiently well-rationalized to establish a causal relationship between the June 3, 2011 work incident and his claimed neck and left shoulder conditions. The Board does not accept counsel's contention. As discussed above the reports from Dr. Shah did not constitute probative, rationalized medical opinion evidence required to establish causal relationship.

Accordingly, appellant failed to provide a medical report from a physician that explains how the work incident of June 3, 2011 caused or contributed to the claimed injuries to his neck, left shoulder or left arm injuries. OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the June 3, 2011 work accident would have caused the claimed injuries. Accordingly, he did not establish that he sustained his neck, left shoulder and left arm injuries in the performance of duty. OWCP properly denied appellant's 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.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained neck, left shoulder or left arm injuries in the performance of duty on June 3, 2011.

[11] *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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