United States Department of Labor
Employees' Compensation Appeals Board

D.U., Appellant	)	
and	)	**Docket No. 14-1670**
	)	**Issued: December 15, 2014**
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:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On July 28, 2014 appellant, through counsel, filed a timely appeal from a May 9, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder injury on May 19, 2012 in the performance of duty.

FACTUAL HISTORY

On May 24, 2012 appellant, then a 56-year-old city carrier, filed a recurrence claim alleging that on May 19, 2012 he sustained a recurrence of a November 8, 1989 work-related

[1] 5 U.S.C. § 8101 *et seq.*

right shoulder injury; OWCP File No. xxxxxx566.[2] On May 19, 2012 he delivered mail to over 400 apartment units which he alleged involved reaching up and pressing his right shoulder joint past its range of motion. Appellant indicated that this was a chronic condition as a result of the original injury, which has gotten progressively worse. OWCP converted the recurrence claim into a new traumatic injury claim as he alleged new employment factors. Appellant stopped work on May 19, 2012 and returned to work on May 22, 2012.[3]

Evidence predating the claimed May 19, 2012 work injury included: a September 4, 2008 progress report from Dr. William Anderson, a Board-certified physiatrist; medical information intake form dated September 24, 2008; a September 24, 2008 physical medicine and rehabilitation examination; medical reports from Dr. Alexander Vaccaro, a Board-certified orthopedic surgeon, dated November 2 and 22, 2000, and January 10, 2001; and magnetic resonance imaging (MRI) scan reports of the thoracic spine dated August 30, September 5, and October 9, 2008.

Evidence contemporaneous to the claimed May 19, 2012 injury included: diagnostic studies of right shoulder dated May 23 and June 6, 2012; outreach laboratory report dated June 19, 2012; and a copy of a modified assignment dated March 22, 2013.

Medical reports from Dr. Mark Lazarus, a Board-certified orthopedic surgeon, were also received. In a June 1, 2012 report, Dr. Lazarus noted that appellant presented for evaluation of his right shoulder. He noted that in 1987 appellant had a dislocation which required reduction. Appellant related persistent pain in the shoulder since then and more recently he has had progressively worsening pain and loss of motion. He also indicated a prior left shoulder rotator cuff repair with good but not great result. Appellant had not had treatment recently to his right shoulder. Dr. Lazarus noted examination and radiographic findings, which included severe arthrosis with collapse of the humeral head and a very large inferior humeral osteophyte, flattened glenoid and flattened humerus, severe arthrosis and posterior subluxation. An impression of right shoulder severe post-traumatic arthrosis and posterior subluxation prior dislocation was provided. In a June 8, 2012 report, Dr. Lazarus noted the results of the computerized tomography (CT) scan, which included severe post-traumatic arthrosis, complete collapse of the glenohumeral joint with flattening on both surfaces, and large spurs off the humeral head. An impression of severe post-traumatic arthrosis right shoulder status post dislocation was provided.

Medical reports from Dr. Andrew F. Kuntz, a Board-certified orthopedic surgeon, were received. In October 15 and 16, 2012 reports, Dr. Kuntz stated that appellant was a new patient with a reinjured right shoulder problem. He noted a right shoulder dislocation August 26, 1987 and overuse most recently. The history was noted as a dislocation of the right shoulder at work in 1989 that appellant never fully recovered from and a reinjury in 1989 when he fell at work. Appellant indicated that his shoulder improved when he stopped physical therapy; however, he

[2] Under File No. xxxxxx566, appellant has an accepted contusion of right hand, date of injury November 8, 1989.

[3] Appellant has an accepted right shoulder strain and rotator cuff tear, date of injury January 17, 1996 under File No. xxxxxx508; and an accepted claim for a right knee contusion, right abrasion or friction burn of leg, and right knee sprain and leg, date of injury September 19, 2002 under File No. xxxxxx658.

reported a reduced range of motion for the past five years. On May 19, 2012 appellant was sorting mail and reinjured the shoulder. He did not have a specific event, but felt that it was an overuse injury. Appellant was unable to sleep that night and, since then, has had limited motion of the shoulder and significant pain. He noted that the pain was causing him to lose sleep and that he recently stopped work because of that. Dr. Kuntz opined that appellant had right shoulder post-traumatic degenerative joint disease. A total shoulder arthroplasty was recommended. In a November 19, 2012 report, Dr. Kuntz reported no changes since appellant's last visit concerning his right shoulder and provided an assessment of right shoulder post-traumatic arthritis. He indicated that given the chronicity of appellant's symptoms and his significant limitations on examination, an MRI scan was required and he needed to review his x-rays prior to undergoing joint replacement. Dr. Kuntz also indicated that a functional capacity evaluation would be beneficial, given his prolonged restrictions and disability.

In a November 20, 2012 duty status report and work capacity evaluation, Dr. John Lacorazza[4] indicated a history of appellant breaking right shoulder in 1987 and reinjured shoulder May 19, 2012 delivering mail. He opined that appellant was able to work with restrictions.

In a September 6, 2013 letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide the requested evidence.

In response, OWCP received statements from appellant dated June 26 and 27, 2012, describing his injury, and a September 18, 2013 statement of clarification; a September 19, 2013 appointment of representation letter from appellant; privacy act request from appellant's attorney dated September 19, 2013, and a September 25, 2013 letter from appellant's attorney.

In an undated letter received September 25, 2013, Dr. Lacorazza indicated that appellant has persistent, intractable right shoulder pain and weakness. He saw appellant on May 21, 2012 for a May 19, 2012 work injury. Dr. Lacorazza noted that appellant was placed on full duty and sustained the injury to his right shoulder at work when he was supposed to be on limited-work duty. He opined that this level of work was beyond appellant's specified work capacity at that time.

By decision dated October 11, 2013, OWCP denied the claim on the grounds that the medical evidence was not sufficient to establish that appellant's claimed right shoulder condition was causally related to the accepted work event of May 19, 2012.

On October 18, 2013 appellant, through his attorney, requested a hearing, which was held on February 19, 2014. At the hearing, appellant testified that he dislocated his right shoulder in 1987 at work and sustained a second injury to his right shoulder in 1989 when he fell at work. He stated the CT scan revealed a hairline fracture in his shoulder from the original injury. In 1996, appellant again fell at work and tore his left rotator cuff and underwent surgery. He worked with restrictions as a clerk for several years and, then worked a modified carrier job, in which he never carried a mailbag. On May 19, 2012 appellant delivered mail to two apartment

[4] Dr. Lacorazza's credentials are not of record.

complexes, but indicated that he had never delivered to both apartment complexes on the same day. One apartment complex had cluster boxes, which required him to reach out and place the mail in the slots, which caused pain in his right shoulder. By the next morning, appellant's shoulder pain was intense and he called his supervisor, who advised him to make a doctor's appointment. He returned to his modified carrier job and worked until August 2012, when he started having difficulty sleeping due to his shoulder pain and had sleep apnea testing. Appellant also began treatment with Dr. Kuntz.

Medical reports from Dr. Kuntz were received. In a September 23, 2013 report, Dr. Kuntz provided his interpretations of the x-rays of the right shoulder. In the September 23, 2013 progress report, as well as in subsequent reports, he provided an assessment of right shoulder post-traumatic arthritis. In a February 24, 2014 report, Dr. Kuntz noted that appellant's pain improved following an injection. He indicated that appellant requested documentation that his shoulder condition was related to an injury at work. Dr. Kuntz explained that, when appellant was first treated in October 2012, he was diagnosed with severe degenerative changes in the right shoulder that had been present for some time. He advised that appellant had a history of right shoulder dislocation, but that he had not viewed any records or images from that time to confirm that diagnosis.

Dr. Kuntz noted a strong association of shoulder arthritis with shoulder dislocations (post-traumatic arthritis) and that his current x-rays fit this diagnosis and history. He opined that it was reasonable to believe appellant's current shoulder arthritis was related to his initial shoulder dislocation in 1987. Appellant further injured the shoulder on May 19, 2012 while overusing the shoulder to deliver mail. Dr. Kuntz explained that he did not have x-rays prior to his injury or any imaging immediately after the injury. He noted that the CT scan from June 5, 2012 confirmed severe degenerative change in the shoulder consistent with post-traumatic arthritis. Dr. Kuntz stated that, with any arthritic shoulder, overuse of the shoulder could result in increased pain and decreased function. Appellant indicated that this is what happened on May 19, 2012 and, based on the imaging studies he reviewed, Dr. Kuntz opined that this was reasonable to believe. However, without being able to review imaging studies of his shoulder prior to the May 19, 2012 overuse injury, Dr. Kuntz stated that this was the only opinion he could offer.

In a March 21, 2014 report, Dr. Kuntz reviewed prior office notes from Drs. Maslow and Fenlin dating back to December 4, 1989 and indicated that all the notes indicated severe glenohumeral degenerative joint disease and restricted range of motion of the right shoulder along with a mention of imaging studies demonstrating a prior glenoid fracture. He stated that this information provides further rationale for his diagnosis of post-traumatic arthritis of the right shoulder. Dr. Kuntz further stated that he believed appellant's overuse injury on May 19, 2012 aggravated his preexisting right shoulder condition.

A copy of a December 4, 2013 MRI scan of the right shoulder was also submitted.

By decision dated May 9, 2014, an OWCP hearing representative affirmed the October 11, 2013 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.[5] 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.[6]

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.[7]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[8] 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.[9] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS

Appellant alleged an aggravation of his preexisting right shoulder condition as a result of his work activities on May 19, 2012. It is not disputed that he worked two apartment complexes

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[6] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[8] *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

[9] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *James Mack*, 43 ECAB 321, 329 (1991).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

containing over 400 units on May 19, 2012. However, appellant has not submitted sufficient medical evidence to establish that his current right shoulder condition was caused or aggravated by the May 19, 2012 work incident.

In reports of June 1 and 8, 2012, Dr. Lazarus provided an impression of right shoulder severe post-traumatic arthrosis postdislocation and posterior subluxation prior dislocation. However, he provided no opinion that appellant's condition was caused or aggravated by his work activities on May 19, 2012. In fact, appellant did not provide a history of a recent injury or work event as the cause of his right shoulder pain. Rather, he reported a persistent pain in his right shoulder since 1987 and loss of motion. Appellant did not advise Dr. Lazarus that the 1987 injury was work related and did not mention the May 19, 2012 work incident at this visit. Dr. Lazarus' report is of diminished probative value as it is based on an incomplete history of injury and fails to mention appellant's May 2012 work activities.

Appellant submitted several reports from Dr. Kuntz. In his initial reports of October 15 and 16 and November 19, 2012, Dr. Kuntz noted a history of a shoulder dislocation injury in 1987 with a reinjury in 1989 and a five-year history of reduced range of motion. Appellant advised Dr. Kuntz that he was sorting mail on May 19, 2012 and reinjured his shoulder. Dr. Kuntz noted that appellant did not note a specific event, but felt that it was an overuse injury. In those reports as well as in subsequent progress reports, he provided an assessment of right shoulder post-traumatic arthritis but provided no opinion on causal relationship. These reports are of limited probative value as medical reports which do not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12]

In his February 24 and March 21, 2014 reports, Dr. Kuntz advised that appellant had post-traumatic arthritis related to the original work injury of 1987, not the May 2012 work injury. He indicated that the diagnostic testing from June 2012 confirmed severe degenerative change in the shoulder consistent with post-traumatic arthritis. Dr. Kuntz noted that appellant attributed further injury to his shoulder on May 19, 2012 while overusing the shoulder to deliver mail. While he opined that appellant's overuse injury on May 19, 2012 aggravated his preexisting right shoulder condition, Dr. Kuntz failed to provide a well-rationalized explanation supporting his opinion. He generally stated that, with any arthritic shoulder, overuse of the shoulder could result in increased pain and decreased function. However, Dr. Kuntz did not identify specific work activities appellant was performing on May 19, 2012, how often he performed them and how those activities caused, aggravated or contributed to his preexisting right shoulder condition. As such, Dr. Kuntz's opinion that appellant's overuse injury on May 19, 2012 aggravated his preexisting right shoulder condition is of little probative value as he failed to adequately describe appellant's work duties that day and failed to provide an explanation as to how appellant's work duties would cause or aggravate a preexisting severe arthritic right shoulder condition. Additionally Dr. Kuntz did not provide any medical rationale to explain whether appellant's current symptoms and condition were related to the May 2012

[12] *Michael E. Smith*, 50 ECAB 313 (1999). *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

work incident. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[13] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[14] Dr. Kuntz's report does not meet that standard and is therefore insufficient to meet appellant's burden of proof.[15]

The other reports of record are of no probative value on the issue of causal relationship. Appellant submitted several medical reports and diagnostic tests from 2000 and 2008. As this evidence predated the May 19, 2012 work incident, it is insufficient to meet his burden of proof. The November 20, 2012 duty status report and work capacity evaluation from Dr. Lacorazza as well as the diagnostic testing of record are of no probative medical value as the reports provide no opinion on the causal relationship of appellant's right shoulder condition.[16] While Dr. Lacorazza subsequently opined in an undated letter received September 25, 2013 that appellant injured his right shoulder at work on May 19, 2012 as his level of work was beyond his specified work capacity, he provided no diagnosis other than right shoulder pain and weakness and failed to provide an explanation as to how exceeding his specified work capacity would cause or aggravate a preexisting right shoulder condition. Medical reports without adequate rationale on causal relationship are of diminished value and do not meet an employee's burden of proof.[17] The physical therapy reports are also of no probative medical value as lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA.[18]

The Board finds that the medical evidence does not establish that appellant sustained a medical condition causally related to his federal employment at work on May 19, 2012, as asserted. 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.[19] Causal relationship must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to

[13] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[14] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[15] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[16] *Michael E. Smith*, 50 ECAB 313 (1999). *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

[17] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[18] *David P. Sawchuk*, 57 ECAB 316 (2006). Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Roy L. Humphrey*, 57 ECAB 238 (2005).

[19] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

establish appellant's claim. Consequently, OWCP properly found that appellant did not meet his burden of proof in establishing his claim.

On appeal, appellant's attorney argued that, while it is clear that appellant has a significant preexisting right shoulder condition, the medical evidence of record establishes an aggravation of that condition. For the reasons discussed above, the medical evidence does not establish that appellant sustained an injury or medical condition on May 19, 2012. Reports from appellant's physicians failed to provide sufficient medical rationale based on a complete factual background explaining the reasons why his diagnosed conditions were caused or aggravated by particular employment duties. The need for such rationale is particularly important in view of the fact appellant has a significant preexisting right shoulder condition.

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 a right shoulder injury on May 19, 2012.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board