

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

C.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Jacksonville, FL, Employer)

**Docket No. 13-2009
Issued: July 14, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Acting Chief Judge¹
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 3, 2013 appellant filed a timely appeal from an August 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act² (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 met his burden of proof to establish that his right shoulder rotator cuff tear was causally related to a June 23, 2013 employment incident.

¹ Effective May 20, 2014, Patricia Howard Fitzgerald was appointed Acting Chief Judge.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 25, 2013 appellant, then a 46-year-old mail handler, filed a traumatic injury claim alleging that on June 23, 2013 he strained his right shoulder while unloading letter trays from pallets that were over 6.5 feet high. At approximately 4:30 a.m. he was unloading and fitting letter trays in the robot area and noted that the pallets were too high. At 6:00 a.m. appellant reported that he experienced pain in his left wrist and right shoulder.³

On June 25, 2013 appellant was provided a Form CA-16, authorization for medical treatment by his supervisor, who noted that on June 23, 2013 he strained his right shoulder and experienced left wrist pain.⁴ In a June 25, 2013 note, Dr. Ulysses D. Findley, a Board-certified family practitioner, advised that appellant would not be able to work for one week as he was being treated for a work injury.

In a June 28, 2013 letter, Ruby Smith, a health and resource management specialist with the employing establishment, controverted appellant's claim. She contended that he failed to establish fact of injury or provide probative medical evidence on causal relationship.

By letter dated July 8, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional evidence to establish that the June 23, 2013 employment incident occurred as alleged and that he sustained a right shoulder condition as a result of the alleged incident.

In a June 25, 2013 treatment report, Dr. Findley stated that he saw appellant for a right shoulder and wrist injury incurred while lifting at work on June 23, 2013. He related appellant's complaint of sharp paresthesias, weakness, fatigue and anxiety. Appellant's past medical history included prior left shoulder surgery in 2010. On examination, Dr. Findley observed cervical spasm throughout appellant's neck with a decreased range of motion of the right shoulder secondary to abduction and adduction and internal and external rotation. He assessed shoulder and wrist pain and noted that a magnetic resonance imaging (MRI) scan and x-rays of the right shoulder and wrist would be obtained. Appellant would begin physical therapy the next day.

A June 25, 2013 x-ray of the right shoulder obtained by Dr. Jonathan Eugenio, a Board-certified radiologist, found no evidence of fracture or dislocation and the soft tissues were unremarkable. He also stated that x-rays of the left wrist were normal.

A June 28, 2013 MRI scan of the right shoulder obtained by Dr. Robert H. Hardage, a Board-certified radiologist, revealed a supraspinatus tendon tear at the articular surface near the insertion, which involved a little greater than 50 percent of the tendon thickness. He stated that

³ The record reflects that appellant filed five previous traumatic injury claims for a December 23, 2005 injury (File No. xxxxxx789), a May 25, 2007 injury (File No. xxxxxx761), a November 10, 2007 injury (File No. xxxxxx013), a July 31, 2009 injury (File No. xxxxxx879) and an August 25, 2010 injury (File No. xxxxxx591).

⁴ A properly completed CA-16 form can create a contractual agreement for payment of medical treatment even if the claim is not ultimately accepted. OWCP has not made a finding as to whether this form properly authorized treatment. See *Tracy P. Spillane*, 54 ECAB 608 (2003); 20 C.F.R. § 10.300.

the tear was of an indeterminate age and could be related to the recent history of injury and clinical correlation was recommended. No other abnormality was seen.

In a July 2, 2013 progress note, Dr. Findley stated that physical examination revealed a decreased range of motion secondary to abduction and adduction and internal and external rotation. He diagnosed a rotator cuff tear and referred appellant to an orthopedic surgeon for repair. On July 3, 2013 Dr. Findley stated that on June 23, 2013 appellant was working and lifting above his shoulder level. He diagnosed a rotator cuff tear based on the MRI scan. Dr. Findley checked “yes” that appellant’s condition was caused or aggravated by the described employment activity. He listed the dates of medical treatment and reported that appellant was totally disabled from June 23 to July 13, 2013. Dr. Findley advised that appellant could return to light duty on July 3, 2013. He provided work restrictions for appellant.⁵ On July 11, 2013 appellant accepted a limited-duty assignment as a modified mail handler effective July 10, 2013.

In a July 15, 2013 narrative report, Dr. Findley listed the history that appellant hurt his right shoulder and wrist on June 23, 2013 while lifting at work. On examination, he observed cervical spasm and tenderness throughout appellant’s neck with a decreased range of motion. Examination of the right shoulder also revealed decreased range of motion secondary to abduction and adduction and internal and external rotation. There was moderate to severe spasm and tenderness in the trapezius, deltoid, triceps, biceps and flexor tendons bilaterally. Examination of appellant’s back revealed moderate to severe spasm and tenderness and severe sacroiliac joint tenderness. Straight leg raise testing was positive at 30 degrees. Dr. Findley reported that the June 28, 2013 MRI scan of the right shoulder demonstrated a partial supraspinatus tendon tear at the articular surface near the insertion a little greater than 50 percent. He diagnosed a rotator cuff tear with shoulder pain. Dr. Findley opined that based on his examination, diagnostic imaging and appellant’s subjective complaints there was reasonable medical probability that the injury he suffered was caused by the June 23, 2013 work-related injury. He explained that positive orthopedic findings and decreased range of motion in appellant’s right shoulder were consistent with the nature of the injury experienced by appellant, for which there was a need for medication and/or surgery. Dr. Findley reported that appellant’s subjective complaints and reduced functional capacities were concurrent with the results and objective findings of the physical examination. He advised that appellant was at maximum medical improvement and, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, had eight percent impairment of the whole person due to the right shoulder injury.

In a decision dated August 7, 2013, OWCP denied appellant’s claim. It accepted that the June 23, 2013 incident occurred as alleged and that he was diagnosed with a right shoulder rotator cuff tear. However, OWCP denied the claim finding insufficient medical evidence to establish that appellant’s shoulder condition was causally related to the accepted incident.

⁵ Appellant submitted physical therapy records dated June 26 to July 10, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁷ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.⁹ There are two components involved in establishing the fact of injury. The employee must submit sufficient evidence to establish that he or she experienced the employment incident at the time, place and in the manner alleged.¹⁰ The employee must also submit probative medical evidence to establish that the employment incident caused a personal injury.¹¹ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.¹²

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical evidence.¹³ 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.¹⁴ 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.¹⁵

ANALYSIS

Appellant alleged injury to his right shoulder as a result of unloading trays from high pallets on June 23, 2013. OWCP accepted that the work-related incident occurred as alleged. It

⁶ See *supra* note 1.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁸ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

¹⁰ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

¹¹ *David Apgar*, 57 ECAB 137 (2005).

¹² *T.H.*, 59 ECAB 388 (2008); see also *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹³ See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁵ *James Mack*, 43 ECAB 321 (1991).

denied the claim, however, finding that the medical evidence was insufficient to establish causal relation. The Board finds that this case is not in posture for decision as to whether appellant sustained a right shoulder condition as a result of the June 23, 2013 employment incident.

The Board finds that the medical reports from Dr. Findley are sufficient to establish a *prima facie* claim of injury. Appellant was first treated on June 25, 2013, at which time Dr. Findley obtained an accurate history of the June 23, 2013 lifting incident at work. On physical examination, Dr. Findley observed decreased range of motion of the right shoulder secondary to abduction and adduction and internal and external rotation. He subsequently obtained x-rays and an MRI scan of the right shoulder which showed a partial tear (greater than 50 percent) of the supraspinatus tendon at the articular surface near the insertion. Dr. Findley provided findings from clinical examination of appellant's right shoulder, noting that appellant's prognosis was poor with need for long-term medication and/or surgery. He stated that to a reasonable degree of medical probability the right shoulder injury sustained by appellant on June 23, 2013 was due to the lifting above the shoulder level at work. Dr. Findley noted that appellant's condition was considered chronic with a high chance of adhesions. The range of motion limitations exhibited by appellant on physical examination were consistent with the nature of the injury and caused reduced functional capacity.

The Board finds that the reports of Dr. Findley are sufficient to require further development of the medical evidence. Dr. Findley accurately described the June 23, 2013 employment incident and reviewed appellant's history. Upon examination, he observed decreased range of motion of the right shoulder secondary to abduction and adduction and internal and external rotation. Further, the June 28, 2013 MRI scan examination demonstrated a partial supraspinatus tendon tear at the articular surface near the insertion at the rotator cuff. Dr. Findley opined to a reasonable degree of medical probability that the injury was caused by the June 23, 2013 lifting incident.¹⁶

On remand, OWCP should prepare a statement of accepted facts and refer appellant to an appropriate medical specialist for an opinion as to whether his right shoulder condition was caused by or contributed to the June 23, 2013 lifting incident. Following any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on his claim.

CONCLUSION

The Board finds that this case is not in posture for a decision and requires additional development of the medical evidence.

¹⁶ See *R.O.*, Docket No. 13-626 (issued June 18, 2013); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.¹⁷

Issued: July 14, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

¹⁷ Richard J. Daschbach participated in the preparation of the decision but was no longer a member of the Board after May 16, 2014.