

On appeal appellant maintained that, because he had to continue to carry mail, he had to stop work when the pain became unbearable, and that after that time, his physician told him that his arm pain was coming from his neck and shoulder.

FACTUAL HISTORY

On December 20, 2012 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on December 17, 2012 he injured his left arm lifting a large box. He did not stop work. An employing establishment supervisor indicated that the package weighed approximately 20 to 25 pounds and was well within the weight limit for carriers.

In a treatment note dated December 20, 2012, Dr. Paul F. Maranzini, a Board-certified osteopath specializing in family medicine at Concentra, indicated that appellant felt pain in his left elbow and biceps on December 17, 2012 after lifting a heavy package. Examination of the left arm showed full range of motion with pain of the left elbow. Dr. Maranzini noted that a left elbow x-ray demonstrated a large olecranon spur and no fracture. He diagnosed left elbow pain and advised that appellant could work full duty. A copy of the December 20, 2012 x-ray report was attached.

By letter dated January 7, 2013, OWCP informed appellant of the evidence needed to support his claim. In a December 17, 2012 statement, appellant indicated that he told a manager that a package was too heavy to deliver and that, when he picked it up, he heard a snap in his left arm and, when he delivered it, it aggravated his arm more. On an OWCP questionnaire, signed by appellant on January 31, 2013, he stated that he had to lift the package from the floor, which caused pain in his left arm, and he then had to place it in a hamper and then into his truck and deliver it. He indicated that he had some help getting the package into the hamper, that his arm had hurt continuously since that time, and that he was working full duty. Andrew Howe, a coworker, stated that he witnessed appellant telling a manager that the box was too heavy and that his arm hurt when he attempted to pick up the box.

Nicola Hawk, a physician's assistant at Concentra, provided a treatment note dated January 4, 2013 in which she indicated that appellant had full range of motion of the left elbow with no pain or tenderness. She diagnosed elbow pain and ordered a magnetic resonance imaging (MRI) scan study. A January 11, 2013 MRI scan of the left elbow demonstrated no evidence of significant internal derangement. On January 22, 2013 Dr. Maranzini noted appellant's complaint of continued left elbow pain. Left shoulder range of motion was normal with negative drop test, apprehension test and Hawkins impingement test. Left elbow and wrist also demonstrated normal range of motion with no tenderness on examination. Dr. Maranzini diagnosed left elbow and arm pain and recommended an upper extremity electrodiagnostic study. On January 22 and February 1, 2013 he indicated that appellant could work regular duty.

The employing establishment controverted the claim. Florence Brittingham, manager of customer service, indicated that on Monday, December 17, 2012 appellant asked her if she would get someone to deliver a package that was too heavy for him to lift. She stated that, upon observation, the package was large and bulky but not too heavy, and that she and he lifted it from the floor, and that later that day appellant reported that he injured his arm lifting the package. Ms. Brittingham indicated that appellant signed a letter, stating that he did not wish to file a

CA-1 claim form, and that he was not scheduled to work the next day. She stated that he called in sick on Wednesday, December 19, 2012, and when he returned to work on Thursday, December 20, 2012, indicated that he wished to file a CA-1 form. Appellant was sent to Concentra and did not return to work. When he was reached by telephone, he indicated that he was agitated because the physician told him he could return to work. Appellant returned to work on December 21, 2012 and delivered mail without complaint.

In a February 7, 2013 decision, OWCP denied the claim on the grounds that appellant did not establish fact of injury.³ Appellant stated that he did not receive the February 7, 2013 decision and it was determined that it was mailed to an incorrect zip code.

On September 30, 2013 OWCP reissued the February 7, 2013 decision. On October 3, 2013 appellant requested reconsideration. He submitted a statement in which he indicated that on December 12, 2012 he had no help putting the package into his vehicle or delivering it.

The medical evidence submitted subsequent to the February 7, 2013 decision includes a December 19, 2012 report in which Allison Ferris, a nurse practitioner, ordered x-rays of the cervical spine and left shoulder for complaints of cervicgia and left shoulder pain. In an August 23, 2013 treatment note, Adrienne Willard, a nurse practitioner, indicated that she saw appellant in follow-up for muscle spasm, cervicgia, paresthesia, and left shoulder joint pain. She ordered cervical spine x-rays and a left shoulder MRI scan study. A cervical spine x-ray dated August 23, 2013 demonstrated mild-to-moderate degenerative disc disease and cervical lordosis and mild cervicothoracic scoliosis. An August 28, 2013 MRI scan study of the left shoulder demonstrated a partial thickness tear along the bursal aspect of the supraspinatus tendon that had progressed from a prior study done in 2009. In an August 30, 2013 treatment note, Sara Niedzwiecki, a physician's assistant, advised that appellant could return to work with physical restrictions. Duty status reports dated August 30 and September 24, 2013 with illegible signatures provided restrictions.

On September 13, 2013 Dr. Gautam Kothari, a Board-certified physiatrist, reported a history that appellant lifted a heavy object at work several months previously and had an onset of arm pain and later began to develop neck pain radiating into his left arm. Cervical spine examination demonstrated tenderness to palpation and decreased range of motion. Shoulder range of motion was full and active without impingement. Dr. Kothari reviewed the cervical spine MRI scan study and diagnosed axial neck and left arm pain due to cervical disc disease at C5-6 and left C5 radiculitis. He advised that appellant's symptomatology was due to a work incident that had occurred several months previously.

In a nonmerit decision dated October 16, 2013, OWCP denied appellant's October 3, 2013 reconsideration request. On October 23, 2013 appellant again requested reconsideration,

³ On August 28, 2012 appellant filed a recurrence claim, stating that he sustained a recurrence of disability on August 20, 2012 when carrying mail caused left upper extremity pain running up his arm into his neck. He stopped work that day. The employing establishment controverted the claim, noting that appellant had been on annual leave from July 20 to August 3, 2012 and had not returned to work since August 20, 2012.

Appellant telephoned OWCP on September 27, 2013, questioning the status of his recurrence claim. He was told that since his claim was denied, he could not be considered for a recurrence.

stating that from December 17, 2012 until August 20, 2013, he carried his mailbag which weighed 35 pounds, caused arm pain. He submitted a December 12, 2013 report in which Dr. Paul A. Marchetto, a Board-certified orthopedic surgeon, noted appellant's complaint of left shoulder pain, and that he had been treated for cervical and shoulder pain over the past six months, including aggressive physical therapy, with no improvement. He reported the left shoulder MRI scan findings and recommended arthroscopic rotator cuff repair and cervical decompression. Appellant also submitted evidence previously of record and duty status reports dated November 8, December 5 and 15, 2013 with illegible signatures.

In a merit decision dated February 13, 2014, OWCP denied appellant's traumatic injury claim on the grounds that, even if the December 17, 2012 incident occurred as alleged, the medical evidence was insufficient to establish causal relationship. It noted that the claimed cervical condition could be considered an occupational disease claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

OWCP regulations, at 20 C.F.R. § 10.5(ee) 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.⁵ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

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

⁴ Gary J. Watling, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.5(ee) (1999, 2011); Ellen L. Noble, 55 ECAB 530 (2004).

⁶ Gary J. Watling, *supra* note 4.

⁷ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ 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.⁹

ANALYSIS

The Board finds that the evidence establishes that on December 17, 2012 appellant lifted a large package of indeterminate weight from a hamper into his postal vehicle and delivered it that day, without help. The Board, however, finds that the medical evidence submitted by appellant is insufficient to establish that this incident caused a medical condition.

The reports from Ms. Hawk, Ms. Ferris, Ms. Willard and Ms. Niedzwiecki are not considered medical evidence as nurse practitioners and physician's assistants are not considered physicians under FECA.¹⁰ Likewise, a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8102(2). The Board has found that reports lacking proper identification, such as unsigned notes, do not constitute probative medical evidence.¹¹ Thus the duty status reports with illegible signatures are not probative.

The diagnostic studies, including the December 20, 2012 left elbow x-ray, the January 11, 2013 MRI scan study of the left elbow, the August 23, 2013 cervical spine x-ray and the August 28, 2013 MRI scan study of the left shoulder, do not address the cause of any diagnosed condition. 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.¹²

The medical evidence most contemporaneous with the December 17, 2012 work incident includes the December 20, 2012 report in which Dr. Maranzini noted that appellant felt pain in his left elbow and biceps on December 17, 2012 after lifting a heavy package. The physician provided examination findings, diagnosed left elbow pain and advised that appellant could return to full duty. On January 22, 2013 Dr. Maranzini noted appellant's complaint of continued left elbow pain. He again provided physical examination findings, noting that left shoulder, elbow and wrist demonstrated normal range of motion with no tenderness on examination. Dr. Maranzini diagnosed left elbow and arm pain and recommended an upper extremity electrodiagnostic study. On January 22 and February 1, 2013 he indicated that appellant could work regular duty. Dr. Maranzini did not provide a cause of the diagnosed conditions in any of his reports. His reports are therefore insufficient to meet appellant's burden of proof.

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *Roy L. Humphrey*, 57 ECAB 238 (2005). 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. 5 U.S.C. § 8101(2).

¹¹ *R.M.*, 59 ECAB 690 (2008).

¹² *Willie M. Miller*, 53 ECAB 697 (2002).

There are no medical reports of record subsequent to the February 1, 2013 note from Dr. Maranzini until appellant claimed that he sustained a recurrence of disability on August 20, 2013. In a September 13, 2013 report, Dr. Kothari reported a history that appellant lifted a heavy object at work several months previously and had an onset of arm pain. He indicated that appellant later began to develop neck pain radiating into his left arm, and cervical spine examination demonstrated tenderness to palpation and decreased range of motion. Shoulder range of motion was full and active without impingement. Dr. Kothari reviewed the cervical spine MRI scan study and diagnosed axial neck and left arm pain due to cervical disc disease at C5-6 and left C5 radiculitis. He advised that appellant's symptoms were due to work incident that occurred several months previously.

The Board finds that Dr. Kothari's report lacks sufficient detailed medical rationale to discharge appellant's burden of proof that he sustained an injury on December 17, 2012. Dr. Kothari seemed unaware of the date the claimed incident occurred, which was almost nine months prior to his examination. He also did not describe the circumstances of the claimed injury other than to say that appellant lifted a heavy object at work. Dr. Kothari did not offer any explanation of the mechanics of the incident and resulting injury. Without a detailed medical report describing the employment incident in detail and noting how and why appellant sustained a left shoulder and cervical condition as a result of the December 17, 2012 incident, Dr. Kothari's opinion is not sufficient to meet appellant's burden of proof.¹³ Appellant also submitted a December 12, 2013 report from Dr. Marchetto who noted appellant's complaint of left shoulder pain, and that he had been treated for cervical and shoulder pain over the past six months. As Dr. Marchetto also did not discuss a cause of appellant's cervical and shoulder conditions, his report is of no probative value on the issue of causation.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition. Dr. Kothari, the only physician who discussed causal relationship, did not do so.¹⁴ Appellant, therefore, did not meet his burden of proof to establish that he sustained a traumatic injury on December 17, 2012.

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 establish that he sustained an employment-related injury on December 17, 2012.

¹³ *D.L.*, Docket No. 13-1226 (issued August 22, 2013).

¹⁴ *Leslie C. Moore*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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