

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

_____)	
P.T., Appellant)	
)	
and)	Docket No. 14-100
)	Issued: November 21, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
White Plains, NY, Employer)	
_____)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 18, 2013 appellant filed a timely appeal from the April 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim. 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on August 22, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 22, 2011 appellant, then a 52-year-old mail handler, filed a traumatic injury claim alleging that he injured his right shoulder that day while pushing a heavy hamper at work. He stopped work on August 22, 2011. The employing establishment controverted the claim.

On a September 26, 2011 facsimile transmittal sheet, the employing establishment advised that no medical evidence was received. It noted that appellant merely indicated that "his shoulder was 'hurt' as he 'started' to turn a hamper of mail." The employing establishment also noted that appellant was the subject of a disciplinary action, a removal from service, for attendance abuse.

By letter dated September 29, 2011, OWCP informed appellant of the evidence needed to support his claim. It requested that he submit such evidence within 30 days. OWCP noted that no documentation was received with his claim form. No further evidence was received.

In a November 10, 2011 decision, OWCP denied appellant's claim, finding that the evidence was insufficient to establish that he sustained the August 22, 2011 employment incident as alleged. It also found that the medical evidence was insufficient on causal relationship.

On December 1, 2011 appellant requested reconsideration. On December 5, 2011 OWCP received his responses to the medical portion of its September 29, 2011 letter. Dr. Richard Seldes, a Board-certified orthopedic surgeon, noted examining appellant on December 1, 2011 for an August 22, 2011 injury to the right shoulder. Appellant had pain and weakness in the right shoulder. Dr. Seldes diagnosed clavicular arthritis causing impingement, tendinitis, distal infraspinatus tendinitis. He stated that his injury was caused by pushing a large orange plastic hamper.

In a December 1, 2011 progress report, Dr. Seldes listed an August 25, 2011 date of injury and diagnosed right rotator cuff tear and sprain of the right shoulder. In a December 1, 2011 duty status report, he noted complaints of pain and weakness in the right shoulder and indicated that appellant could not return to work.

A September 20, 2011 magnetic resonance imaging (MRI) scan obtained by Dr. Najma Ahmed, a Board-certified internist, revealed degenerative changes at the acromioclavicular joint causing impingement and findings consistent with tendinitis/tendinosis of the distal infraspinatus tendon and no evidence of rotator cuff tear. Dr. Ahmed provided treatment notes dated August 23 to November 3, 2011 and advised that appellant was under his care and should be excused from work due to a sprained right shoulder.

By decision dated March 6, 2012, OWCP denied modification of the prior decision. It found that the medical evidence was insufficient to establish the claim.

On February 26, 2013 counsel for appellant requested reconsideration and submitted new medical evidence. He argued that appellant had met his burden of proof to establish his claim. Counsel argued that the medical evidence established causal relationship.

OWCP received several treatment notes dated May 31 to June 29, 2012. The reports were electronically signed by a physician's assistant.

By decision dated April 30, 2013, OWCP denied modification of its prior decision.

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 FECA² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵ The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

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

⁷ *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

Appellant alleged that he developed a right shoulder condition on August 22, 2011 while pushing a hamper in the performance of his work duties as a mail handler. The employing establishment controverted the claim. It advised that appellant merely indicated that "his shoulder was 'hurt' as he 'started' to turn a hamper of mail." The employing establishment also noted that he was the subject of a disciplinary action, a removal from service, for attendance abuse. The Board notes in a letter dated September 29, 2011, that OWCP requested that appellant provide additional evidence to support his claim and address the factual aspects of his claim. However, appellant failed to provide any further details. After OWCP denied his claim on November 10, 2011, appellant requested reconsideration. He indicated that his injury was caused by pushing a large orange plastic hamper. This general statement did not describe the contents of the hamper or how much it weighed. Additionally, the treatment notes from August 23, 2011 reflect that appellant had a sprained right shoulder; there was no description of how the sprain occurred. Without additional details to confirm the activities that he was doing on that date, such as where he was when he was pushing the hamper or the time the incident occurred; the facts are unclear and the first component of fact of injury is not established. The Board finds that appellant has not established that the claimed incident -- that he was pushing a hamper on August 22, 2011 occurred.¹⁰

On appeal, counsel reiterated his arguments made on reconsideration. However, as noted above, the evidence is insufficient to meet appellant's burden of proof. 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 not met his burden of proof in establishing that he sustained an injury in the performance of duty on August 22, 2011.

⁹ *Id.*

¹⁰ As appellant has not established the factual component of his claim, the medical evidence need not be considered. See *Bonnie A. Contreras*, 57 ECAB 364 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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