

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

A.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-1399
Issued: September 23, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2014 appellant filed a timely appeal from a March 25, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue in this case is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on June 13, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted evidence after the issuance of the March 25, 2014 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On June 14, 2013 appellant, then a 51-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging injury on June 13, 2013. He described the cause of his injury under the heading of “place where injury occurred” as: “while working on daily route 329 carrier case, employee reached to the floor to pick up a tub of NLM flat mail.” Under the heading of “cause of injury,” appellant stated that he experienced fatigue and a pulled muscle. He described the nature of his injury as a right shoulder strain.

On June 20, 2013 the employing establishment challenged appellant’s claim for compensation. It stated that he had not specified what event led to his injury, and that there was no objective medical rationale that would show that this injury occurred in the performance of duty.

In a report dated July 17, 2013, Dr. Shireen Rudderow, Board-certified in family medicine, assessed appellant with joint pain localized in the shoulder and diagnosed him with shoulder strain. She stated that appellant told her that he picked up a tub of mail on June 13, 2013 and felt a pulling or popping sensation in his right shoulder. Since that time, appellant had aching pain in his right shoulder, but no numbness or swelling. He stated that he had no prior history of shoulder problems. Dr. Rudderow recommended work restrictions of lifting no more than 10 pounds, repetitive lifting of no more than one pound, carrying of no more than 10 pounds and no overhead reaching.

In a diagnostic report dated July 18, 2013, Dr. Pio Hocate, a Board-certified radiologist, examined the results of an x-ray of appellant’s right shoulder. He stated that appellant’s right shoulder appeared normal.

On July 19, 2013 Dr. Steven Waskow, a Board-certified orthopedist, diagnosed appellant with impingement of the right shoulder and adhesions of the bicipital tendon of the right arm. He stated that appellant told him that he injured his shoulder on June 13, 2013 when picking up a tub of mail while at work and began to have pain after that time. However, Dr. Waskow also noted that appellant told him that he had pain since October. On examination of appellant’s right shoulder, Dr. Waskow noted no abnormalities concerning tenderness, acromioclavicular (AC) step-off, deformities, range of motion or crepitus with motion. Appellant exhibited a positive Neer impingement test, a positive Hawkins-Kennedy impingement test, but an intact rotator cuff and a negative cross-arm test. Dr. Waskow referred appellant for physical therapy.

In a diagnostic report dated July 22, 2013, Dr. Kristen LaChance, a specialist in interventional radiology, examined the results of an MRI scan of appellant’s right shoulder.³ She stated her impression of partial tearing of the supraspinatus tendon anteriorly with some associated tendinopathy, a thickened coracohumeral ligament and inflammation within the rotator cuff interval, os acromiale, mild tendinopathy of the infraspinatus tendon, possible mild thinning of the long head of the biceps tendons at the labral biceps anchor, a probable anterior labral foramen, and a degenerative tear and scarring of the posterior inferior labrum.

³ Dr. LaChance’s certification in a medical specialty could not be confirmed with a search of physicians certified by the American Board of Medical Specialties or the American Osteopathic Association.

By letter dated July 23, 2013, OWCP informed appellant of the evidence needed to support his claim and sent him a questionnaire for completion.

On July 26, 2013 Dr. Rudderow diagnosed appellant with right shoulder impingement and shoulder strain and assessed him with joint pain localized in the shoulder. She noted that he continued to have right shoulder pain despite his use of prescribed medications. Dr. Rudderow noted that appellant had weakness in grip, but no swelling or numbness. She recommended that his work restrictions continue unmodified. Dr. Rudderow prescribed appellant hydrocodone-acetaminophen, and noted current relevant medications of acetaminophen-codeine and naproxen.

In a report dated July 30, 2013, Dr. Waskow diagnosed appellant with adhesions of the bicipital tendon of the right arm, impingement of the right shoulder, and right shoulder strain, and assessed him with joint pain localized in the shoulder. He suggested that because appellant had a torn bicipital tendon, he could undergo surgery to reattach it. Dr. Waskow administered a subcoracoid depomedrol injection to appellant.

By decision dated September 9, 2013, OWCP denied appellant's claim. It found that he had not submitted sufficient evidence to establish a causal relationship between his diagnosed conditions and the incident of June 13, 2013. OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the incident occurred; that a medical condition had been diagnosed; and that he was within the performance of duty.

On September 17, 2013 Dr. Rudderow noted that appellant visited for a follow-up on a right shoulder injection. She noted that he told her that his prescription slips were stolen and he had not taken the medications she prescribed to him at his last appointment. Dr. Rudderow stated that appellant was still performing overhead movement and lifting 10 to 15 pounds with his left arm as much as possible. She noted that he was referred to physical therapy, but that he did not pursue it, because he told her that physical therapy had aggravated his symptoms in the past. Dr. Rudderow stated that appellant's injury occurred on June 13, 2013 and that the type of injury was musculoskeletal.

In a duty status report dated September 17, 2013, Dr. Rudderow recommended that appellant's work restrictions continue unmodified. She stated that he had signs of impingement and that her diagnosis was due to appellant's described injury on June 13, 2013. Dr. Rudderow submitted another duty status report recommending the same work restrictions on October 17, 2013.

In a report dated September 20, 2013, Dr. Waskow noted that appellant's shoulder girdle strain pain had worsened but that his subcoracoid pain had improved. Appellant told Dr. Waskow that his range of motion seemed to be "off" because when he moved his shoulder in a certain manner, it caused him pain.

On September 20, 2013 appellant requested a review of the written record before the Branch of Hearings and Review. With his request, he submitted an undated narrative statement. Appellant noted that he had worked for the employing establishment since October 22, 1988, and that during his employment he had cased and delivered one to three thousand pieces of mail per day. He stated that Dr. Rudderow had confirmed to him in an appointment on September 17,

2013 that the repetitive motion of casing mail “has and could have caused” his injury on June 13, 2013.

In a report dated October 17, 2013, Dr. Rudderow stated that appellant had “sign pain pushing open doors” and a constant ache of the posterior shoulder/trapezius. Appellant told her that his shoulder sometimes felt like it would slip out of its joint. On examination of the right shoulder, Dr. Rudderow noted tenderness to palpation on the posterior shoulder, signs of impingement, full range of motion with sign pain on flexion or abduction greater than 90 degrees, with no instability appreciated.

On March 25, 2014 the hearing representative affirmed the decision dated September 9, 2013, denying appellant’s claim on the grounds that he had not established a causal relationship between his condition and the incident of June 13, 2013. She found, “Nowhere in the medical record is there evidence that the claimant sustained an injury as claimed on June 13, 2013. First, there is no evidence of medical care prior to July 17, 2013. Second, the medical evidence of record refers to lifting a tub of mail. The claimant did not identify this as a cause of injury.”

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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.⁷ 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.⁸ 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.⁹

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁶ S.P., 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁷ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ D.B., 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁹ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 5.

specific employment incident or to specific conditions of employment.¹⁰ An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.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

ANALYSIS

Appellant alleged that on June 13, 2013 he sustained an injury to his right shoulder in the performance of duty while lifting a tub of mail. In the decision dated September 9, 2013, OWCP accepted that the incident occurred as alleged. The Board finds that appellant has not met his burden of proof to establish a causal relationship between his right shoulder conditions and the employment incident.¹⁵

On July 17, 2013 Dr. Rudderow stated that appellant told her that he picked up a tub of mail on June 13, 2013 and felt a pulling or popping sensation in his right shoulder. On September 17, 2013 she stated that his injury occurred on June 13, 2013, and that the type of injury was musculoskeletal. In a duty status report dated September 17, 2013, Dr. Rudderow stated that her diagnosis was due to appellant's described injury on June 13, 2013. However, she did not provide adequate medical rationale explaining the mechanism of how his right shoulder condition was caused or aggravated by lifting a tub of mail on June 13, 2013. Dr. Rudderow stated that appellant had been injured on June 13, 2013 by lifting a tub of mail, but such generalized statements do not establish causal relationship because they merely repeat

¹⁰ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹¹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹² *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹³ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹⁴ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁵ OWCP accepted in its decision dated September 9, 2013 that appellant had established the occurrence of the incident of June 13, 2013. However, the hearing representative noted in her March 25, 2014 decision that "the medical evidence of record refers to lifting a tub of mail. The claimant did not identify this as a cause of injury." The Board notes that appellant had, in fact, identified lifting a tub of mail as the cause of his injury on his Form CA-1.

appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.¹⁶ Lacking thorough medical rationale on the issue of causal relationship, Dr. Rudderow's reports are of limited probative value and are insufficient to establish that appellant sustained an employment-related injury on June 13, 2013.

Dr. Waskow's July 19, 2013 report is similarly deficient, as it merely repeats appellant's allegations without providing an adequate medical rationale. Furthermore, his July 19, 2013 report indicates that appellant told him both that his pain began after picking up a tub of mail on June 13, 2013 and that it began in October of the previous year. This unaccounted for inconsistency in appellant's account of the beginning of symptoms further diminishes the probative value of Dr. Waskow's opinion on causal relationship.¹⁷

Appellant also submitted reports from Drs. Hocate and LaChance containing diagnoses, but lacking opinion regarding the cause of the diagnosed condition, and specifically lacking any opinion on the issue of whether his conditions were caused or aggravated by the June 13, 2013 employment incident. The Board has held that 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.¹⁸

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a June 13, 2013 employment incident, he has failed to meet his burden of proof to establish a claim.¹⁹

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 to establish that his right shoulder conditions are causally related to a June 13, 2013 employment incident.

¹⁶ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (holding that medical opinions based upon an incomplete history have little probative value).

¹⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁹ The Board notes that appellant stated that his condition resulted from repetitive motion over a period of time since the beginning of his employment. If appellant believes that his right shoulder condition was caused or aggravated due to employment activities occurring over a period of more than one workday or shift, he has the right to file a claim for occupational disease. 20 C.F.R. § 10.5(q).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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