

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, CA, Employer**

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**Docket No. 15-1732
Issued: December 8, 2015**

Appearances:
Appellant, pro se
Joseph G. Gilliland, Esq., for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2015 appellant filed a timely appeal from a February 19, 2015 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.

ISSUE

The issue is whether appellant met his burden of proof to establish cervical and right shoulder conditions causally related to his employment.

The Director of OWCP has filed a memorandum in justification of the February 19, 2015 decision arguing that appellant failed to meet his burden of proof to establish his occupational disease claim as the medical evidence did not provide a reasoned medical explanation as to how appellant's employment factors caused his diagnosed condition.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 21, 2014 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bulging discs in his neck and torn tendons in his right shoulder as a result of repetitive motion at work. He first became aware of his condition and realized it resulted from his employment on March 27, 2014. Appellant stated that he underwent a magnetic resonance imaging (MRI) scan and x-rays of his shoulder and spine. He was told by his doctor that he had torn tendons in his right shoulder and bulging discs in his neck.

In a March 6, 2014 MRI scan report of the right shoulder, Dr. Christian Neumann, a Board-certified diagnostic radiologist, noted that appellant had degenerative joint disease. He observed limited range of motion and mild degenerative changes at the acromioclavicular (AC) joint and abnormal signal intensities on the articular surface of the supraspinatus tendon. Dr. Neumann determined that appellant had partial articular surface tear of the distal supraspinatus tendon, full-thickness tear of the distal subscapularis tendon, anterior labral tear and degeneration, and partial thickness tear of the intraarticular portion with signs of tendinitis.

In a handwritten April 8, 2014 report, Dr. Germaine J. Frid, a family practitioner, indicated that appellant's condition had lasted for years and provided the dates that she treated appellant. She noted that he was unable to perform his job functions due to his condition. Dr. Frid reported that appellant had right shoulder partial tear and full thickness tear of the supraspinatus. She noted that she had also referred him for treatment of the cervical spine. In a Family and Medical Leave Act (FMLA) form, Dr. Frid reported that appellant worked as a city carrier whose essential job functions included delivering mail, lifting up to 70 pounds, and casing mail.

By letter dated May 5, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he provide a detailed description of the employment-related activities he believed contributed to his condition and a medical report from a physician with medical rationale explaining how his employment caused or contributed to his medical condition.

Dr. Frid noted in a May 13, 2014 attending physician's report (Form CA-20), that appellant had a right shoulder tear with significant limitation. She checked a box marked "yes" that his condition was caused or aggravated by his employment. Dr. Frid reported that appellant was totally disabled from March 27 to April 8, 2014. She authorized him to return to regular duty on April 9, 2014. Dr. Frid referred appellant for pain management treatment.

In response to OWCP's request for further information, on May 30, 2014 appellant explained that his job duties of casing and carrying mail for 14 years contributed to his cervical and right shoulder condition. He listed activities outside of employment as playing golf five or six times a year and gardening.

In a June 2, 2014 report, Dr. David Wilgarde, Board-certified in internal medicine and physical medicine and rehabilitation, related appellant's complaints of bilateral neck pain with

occasional numbness in both hands. He diagnosed cervical spinal stenosis and cervical radiculopathy. Dr. Wilgarde administered cervical epidural steroid injections.

By decision dated July 21, 2014, OWCP denied appellant's occupational disease claim. It accepted that he worked as a letter carrier and was diagnosed with a cervical and right shoulder condition, but denied his claim finding insufficient medical evidence to establish that his conditions were causally related to his employment.

On August 22, 2014 OWCP received appellant's request for review of the written record by an OWCP hearing representative. Appellant resubmitted the March 6, 2014 right shoulder MRI scan report.

Appellant also submitted a February 17, 2014 cervical MRI scan report by Dr. Neumann. Dr. Neumann observed anatomical alignment of the vertebral bodies and disc space narrowing. Bone marrow, signal, and caliber of the cervical spinal cord were normal. Dr. Neumann determined that appellant had moderate bilateral foraminal narrowing at C3-4 and moderate-to-marked bilateral foraminal narrowing and slight effacement of the anterior surface at C5-6.

In an August 18, 2014 FMLA form, Dr. Howard Baer, a Board-certified internist, indicated that appellant's condition began in February 2014 based on his surgical consult. He noted that appellant was unable to perform his job due to his condition. Dr. Baer reported that appellant was examined at the pain clinic for complaints of pain with chronic, poorly controlled cervical neck, shoulder, and arm movement. He related that appellant had chronic mild-to-low neck pain that was accompanied by radicular symptoms. Dr. Baer explained that, because conservative treatment and epidural injections were not helping appellant, he had been referred for possible cervical surgery intervention.

By decision dated February 19, 2015, OWCP's hearing representative affirmed the July 21, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence² 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.³ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁵ 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.⁶

ANALYSIS

Appellant alleged that he developed neck and right shoulder conditions as a result of repetitively casing and carrying mail for the past 14 years as a letter carrier. OWCP accepted appellant's employment duties as a letter carrier and that he was diagnosed with cervical and right shoulder conditions. However, it denied his claim because there was insufficient medical evidence to establish that his conditions resulted from his employment duties. The Board finds that appellant failed to establish that his cervical and right shoulder conditions were causally related to his employment duties.

Appellant received medical treatment from Dr. Frid. In an April 8, 2014 report, Dr. Frid noted that appellant's condition had lasted for several years and that he worked as a city mail carrier. She described appellant's duties as delivering and casing mail and lifting up to 70 pounds. Dr. Frid reviewed various medical records and conducted an examination. She diagnosed right shoulder partial and full-thickness tear. In a May 13, 2014 report, Dr. Frid checked a box marked "yes" that appellant's condition was caused or aggravated by appellant's employment. She reported that appellant was disabled from March 27 to April 8, 2014 and could return to full duty on April 9, 2014. The Board notes that Dr. Frid did not provide any medical explanation or rationale for her opinion that appellant's right shoulder condition resulted from his employment. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.⁷ Dr. Frid's reports, therefore, are insufficient to establish causal relationship.

The various diagnostic reports by Dr. Neumann dated February 17 and March 6, 2014 are also insufficient to establish appellant's occupational disease claim. Although Dr. Neumann conducted an examination and provided medical diagnoses of degenerative joint disease, tear of the right shoulder, and moderate narrowing of the cervical spine, he did not provide any opinion on the cause of appellant's condition. 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

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁵ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁷ *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

the issue of causal relationship.⁸ Likewise, Dr. Wilgarde's June 2, 2014 report failed to establish causal relationship. While he diagnosed cervical spinal stenosis and cervical radiculopathy, he did not offer an opinion on the cause of appellant's condition. Because neither physician offered an opinion on whether appellant's right shoulder or cervical conditions were causally related to appellant's federal employment, these reports are insufficient to establish appellant's claim.⁹

Appellant was also examined by Dr. Baer who indicated in an August 18, 2014 FMLA form that appellant had chronic mild-to-low neck pain that was accompanied by radicular symptoms. The Board notes that pain is a description of a symptom, and not considered compensable medical diagnosis.¹⁰ Because Dr. Baer did not provide a diagnosis based on physical examination findings, his report fails to establish appellant's claim.

On appeal, appellant alleges that his doctors were not helping him to obtain the reports needed to establish his claim. Although appellant may have experienced difficulty in obtaining proper evidence from his physician, it is his burden of proof to submit sufficient evidence to establish his occupational disease claim.¹¹ The Board has reviewed the evidence of record and finds that appellant has not established with a reasoned medical opinion that his employment caused or contributed to his medical condition. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹²

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 cervical and right shoulder conditions were causally related to his employment duties.

⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

⁹ *Id.*

¹⁰ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹¹ *Supra* note 3.

¹² *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board