United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 15-0783**
	)	**Issued: July 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2015 appellant filed a timely appeal from a February 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 is whether appellant met his burden of proof to establish consequential bilateral shoulder conditions are causally related to factors of his employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence following the February 2, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

This case was previously before the Board.[3] The facts and circumstances as outlined in the prior Board decisions are incorporated herein by reference. The relevant facts are set forth below.

On September 29, 2008 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that he developed carpal tunnel syndrome and osteoarthritis as a result of his employment.[4] He stopped work on September 29, 2008 and returned to full-time light duty on March 16, 2009. OWCP accepted his claim for bilateral carpal tunnel syndrome, bilateral lateral epicondylitis, and permanent aggravation of right elbow osteoarthritis. Appellant continued to receive medical treatment for his accepted conditions.

On May 29, 2009 appellant filed a claim for a schedule award. On February 4, 2010 OWCP granted a schedule award of four percent permanent impairment of the left arm and six percent permanent impairment of the right arm. On August 15, 2011 it granted an additional schedule award of seven percent impairment of the right arm.

In a letter dated April 16, 2013, appellant requested that OWCP expand his claim to include his right and left shoulders. He stated that over the past several months he experienced increasing pain and soreness in his shoulders as he used his shoulder more often to do his work. Appellant explained that his work at the employing establishment exacerbated his shoulder conditions and noted that he did not do any other activities that seemed to heighten the soreness or pain.

Appellant submitted April 24 and July 31, 2013 reports by Dr. Robert E. Holder, a Board-certified family practitioner. Dr. Holder stated that appellant began to experience pain in his right shoulder again when he raised his arms to shoulder height. Upon examination of appellant's right shoulder, he observed moderate tenderness in the greater tuberosity and mild-to-moderate tenderness along the long head of the biceps. Dr. Holder reported no swelling or edema, normal pulses, and intact circulation. Range of motion was full without pain. Acromioclavicular (AC) joint compression test and AC joint distraction tests were negative. Cross shoulder adduction, Hawkin's tests, Neer's test, and impingement sign were positive. Dr. Holder stated that examination of the left upper extremity demonstrated normal inspection, palpation, range of motion, muscle strength and tone, and stability. In the July 31, 2013 report, he diagnosed shoulder pain, rotator cuff syndrome, impingement syndrome, and other derangement of joint. Dr. Holder administered a steroid injection and recommended that appellant continue with work modifications as long as he was able to work.

[3] Docket No. 14-198 (issued April 8, 2014).

[4] The record reveals that appellant has a previously accepted traumatic injury claim for a September 17, 2007 employment injury. His claim was accepted for traumatic bursitis of the left elbow and permanent aggravation of osteoarthritis to the right elbow. This claim was adjudicated by OWCP under File No. xxxxxx847. On March 24, 2011 OWCP combined both claims under master File No. xxxxxx920.

On May 14, 2013 appellant underwent a magnetic resonance imaging (MRI) examination of the right shoulder by Dr. Chintan Desai, a Board-certified diagnostic radiologist. Dr. Desai observed mild T2 hyperintense signals within the substance of supraspinatus tendon, consistent with tendinosis and moderate fibro-osseous capsular hypertrophy with marrow edema at the contiguous articular margins. He diagnosed supraspinatus tendinosis, AC joint arthrosis, and type 1 superior labral tear.

In a May 22, 2013 report, Dr. Holder stated that appellant had a medical need for orthopedic consultation based on his diagnosis of rotator cuff syndrome and SLAP injury type 1.

OWCP referred appellant's claim, along with the statement of accepted facts and medical record, to an OWCP medical adviser to determine whether appellant's claim should be expanded to include a bilateral shoulder condition. In a July 19, 2013 report, Dr. Daniel D. Zimmerman, a Board-certified internist and OWCP medical adviser, stated that he reviewed medical records from March 3, 2010 to August 8, 2012 and noted that appellant never reported right shoulder pain. He stated that, in an August 8, 2012 report, appellant had mentioned that his right shoulder began to hurt, but there was no opinion on whether the right shoulder pain was work related. Dr. Zimmerman explained that there was no medical rationale by a physician to indicate how bilateral shoulder conditions could be consequential conditions of appellant's accepted conditions. He concluded that OWCP must have input explaining how and why the shoulder conditions were related to the August 1, 2003 injury before any consideration of diagnosis was possible under this claim number.

In a decision dated August 29, 2013, OWCP denied appellant's claim finding insufficient medical evidence to establish that appellant sustained consequential bilateral shoulder conditions causally related to his accepted conditions or to factors of his employment.

On September 30, 2013 OWCP received appellant's request for reconsideration. Appellant stated that he was requesting to expand his claim to include bilateral shoulder tendinitis based on information from Dr. Wesley Cox, a Board-certified orthopedic surgeon. He explained that he asked Dr. Cox to answer OWCP's questions regarding "causal association of a shoulder medical condition" and he believed that Dr. Cox's response was clear that he sustained a work-related injury.

In a September 20, 2013 report, Dr. Cox related that he had treated appellant for several years for bilateral elbow tendinitis and bilateral shoulder impingement and tendinitis. He opined that due to the repetitive nature of appellant's work and the significant elbow tendinitis for which he treated appellant there was clear evidence of "overuse and adjusted use which has led to his bilateral shoulder tendinitis."

By decision dated October 17, 2013, OWCP denied modification of the August 29, 2013 denial decision. Appellant filed an appeal to the Board.

On April 8, 2014 the Board affirmed the denial of appellant's claim as there was insufficient evidence to establish that he sustained a consequential bilateral shoulder condition causally related to factors of his employment.[5]

Following the Board's decision, OWCP received appellant's request for reconsideration on August 18, 2014. He stated that he was enclosing a response from Dr. Cox regarding whether his bilateral shoulder conditions were caused or exacerbated by his working conditions.

In an August 8, 2014 medical report, Dr. Cox stated that he had treated appellant for several years due to bilateral upper extremity injuries that he sustained in the course of his occupation as a letter carrier for the employing establishment. He reported that he reviewed in detail appellant's job description as it related to repetitive actions of lifting, pulling, pushing, and the demands of his upper extremities. Dr. Cox explained that it was impossible that someone with elbow pain and dysfunction could carry out the regular duties of his occupation without making necessary adjustments in shoulder positioning and function. He opined that, with the frequency and duration of the adjustments required by appellant, he would "correlate his shoulder pain directly to the adjustments required to perform his duties without concurrent elbow dysfunction." Dr. Cox concluded that appellant's issues in his shoulders were directly related to the known workers' compensation injuries to his elbows.

By decision dated February 2, 2015, OWCP denied modification of the April 8, 2014 denial decision.

LEGAL PRECEDENT

The Board has held that if a member weakened by an employment injury contributes to a later injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, so long as it is clear that the real operative factor is the progression of the compensable injury.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] 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.[8]

[5] Docket No. 14-198 (issued April 8, 2014).

[6] *S.M.*, 58 ECAB 166 (2006); *Raymond A. Nester*, 50 ECAB 173, 175 (1998).

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

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

ANALYSIS

Appellant alleges that he sustained a consequential bilateral shoulder condition as a result of his employment duties as a letter carrier. He explained that because of his accepted bilateral upper extremity conditions he put extra strain on both of his shoulders. OWCP denied appellant's claim finding insufficient medical evidence to establish that he sustained a bilateral shoulder condition causally related to factors of his employment.

The Board finds that this case is not in posture for decision.

In a July 19, 2013 report, Dr. Zimmerman, an OWCP medical adviser, reviewed medical reports from March 3, 2010 to August 8, 2012 and stated that he needed additional medical information on how appellant's bilateral shoulder conditions were related to the accepted injury before he could reach a diagnosis.

Appellant thereafter submitted an August 8, 2014 report from Dr. Cox. Dr. Cox noted that he treated appellant for several years for bilateral elbow tendinitis and bilateral shoulder impingement and tendinitis. In this report, he attempted to correct the deficiencies noted by OWCP when it denied appellant's claim. Dr. Cox explained that he reviewed appellant's job description as it related to the repetitive actions of lifting, pushing, pulling, and the demands on the upper extremities. He stated that it was impossible for someone with appellant's elbow pain and dysfunction to carry out these duties without making adjustments in his shoulder position and function. Dr. Cox concluded that appellant's shoulder problems were directly related to his accepted elbow conditions.

In *B.H.*,[9] the Board remanded the case for further development because the OWCP medical adviser had offered an opinion without review of all of the medical evidence of record. Similarly in this case, the medical adviser stated in his July 19, 2013 report that further evidence was necessary in this case to determine whether the diagnosed shoulder conditions were caused by the accepted injury. The August 8, 2014 report was received from Dr. Cox but was not forwarded to the medical adviser for further review.

Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[10] Because OWCP began development of the medical evidence, regarding whether appellant's bilateral shoulder conditions were work related, it had the obligation to assure that a proper evaluation was done.[11] The report from Dr. Cox dated August 8, 2014 should be referred to an OWCP medical adviser for review.

After this and such further development as OWCP deems necessary, it should issue a new decision.

[9] Docket No. 15-350 (issued April 15, 2015).

[10] *Phillip L. Barnes*, 55 ECAB 426, 441 (2004).

[11] *See Robert Kirby*, 51 ECAB 474 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

CONCLUSION

The Board finds the case is not in posture for decision and will be remanded to OWCP for further development consistent with this opinion.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 9, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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