

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

R.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

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**Docket No. 15-1224
Issued: November 16, 2015**

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 H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 8, 2015 appellant filed a timely appeal from a May 27, 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.²

ISSUE

The issue is whether appellant met his burden of proof to establish a right shoulder condition in the performance of duty causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the May 27, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On June 5, 2014 appellant, then a 53-year-old automation clerk, filed an occupational disease claim (Form CA-2) alleging a right shoulder injury due to factors of his federal employment, including moving pie carts. He indicated that he first became aware of the condition and its relation to his federal employment on April 18, 2014. In a narrative statement, appellant indicated that he had no previous problems with his shoulder but recently underwent bilateral carpal tunnel surgery on September 12 and October 17, 2012. He stated that his hands and wrists were still weak and sore, which made it difficult for him to control and move pie carts causing a strain on his shoulders and upper body.

In a report dated May 20, 2014, Dr. Sandra Yale, an osteopathic manipulative therapy specialist, released appellant to work with the following restrictions: no lifting, pushing, or pulling greater than 20 pounds.

In a June 19, 2014 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated July 15, 2014 indicating that, on the evening of April 18, 2014, while trying to move a pie cart filled with mail, he began to feel a sharp pain in his right shoulder. He continued to experience pain and difficulty moving pie carts, sweeping mail from stackers, and finalizing machines at the end of the night. Appellant reported that he moved up to 8 to 10 pie carts alone and swept between 250 to 350 stackers a night.

By decision dated September 5, 2014, OWCP denied the claim on the basis that appellant had failed to establish fact of injury.

On September 24, 2014 appellant requested an oral hearing before an OWCP hearing representative and submitted an August 25, 2014 magnetic resonance imaging (MRI) scan of the right shoulder which revealed prominent acromioclavicular (AC) joint arthrosis with impingement and extensive tears of the infraspinatus and supraspinatus tendons with associated ganglion cyst. He also submitted reports dated October 16, 2014 and April 7, 2015 from Dr. Yale diagnosing right shoulder strain, superior labrum, anterior to posterior (SLAP) tear, and rotator cuff impingement syndrome of the right shoulder. Dr. Yale opined that appellant's right shoulder condition was causally related to factors of his federal employment and restricted him from lifting greater than 25 pounds.

Appellant submitted reports dated August 26 through December 30, 2014 from Dr. David Ratliff, a Board-certified orthopedic surgeon. On August 26, 2014 Dr. Ratliff reported that appellant had previously been followed for bilateral carpal tunnel syndrome. Appellant indicated that his hands felt "fine just weaker than normal." Dr. Ratliff noted that appellant was required to push a cart at work and on April 18, 2014 he had sudden pain and a snap at his right shoulder. Physical examination of the right shoulder revealed no gross deformity and mild tenderness to palpation at the lateral shoulder. Distal sensation was intact at the axillary, radial, median, and ulnar nerve distributions. Active forward elevation was 120 degrees. External rotation in adduction was 50 degrees with functional internal rotation. The scapular plane abduction showed 4/5 strength in both internal and external rotation. There was mild soreness with an

O'Brien's Test but not increased in internal rotation, soreness with Hawkin's and Speed's testing, and a negative crossarm. Dr. Ratliff diagnosed rotator cuff tendinopathy and partial tearing with intra substance tearing noted with a ganglion cyst at the musculotendinous junction at the supraspinatus. In an October 16, 2014 report, he stated that appellant's federal job duties included: pushing and pulling wheeled letter trays that may weigh up to 500 pounds; loading mail on transport units for induction into distribution system; loading mail onto feeder modules; removing mail from stacker bins; and rubber-banding or tying mail as necessary and placing in proper trays. Dr. Ratliff opined "that pushing and pulling activities at work may have caused or contributed to the injury of [appellant's] right shoulder." He explained that despite letter trays or pie carts of mail being on wheels, the "initial force to move these bins may have caused or contributed to shoulder pain." Dr. Ratliff further indicated that elevating the arm for pushing was a common cause for rotator cuff problems as well as a possible SLAP tear. He noted that appellant had no hobbies or activities outside of work which could have contributed to his right shoulder condition. On November 4, 2014 Dr. Ratliff diagnosed right shoulder partial rotator cuff tear and noted that appellant was working full duty and reported opening doors and lifting at work, which caused some soreness. He advised that appellant was capable of performing his usual job and released him to regular duty without restrictions.

A telephone hearing was held before an OWCP hearing representative on April 8, 2015.

By decision dated May 27, 2015, the hearing representative affirmed, as modified, the prior decision on the basis that fact of injury had been established, but found that the medical evidence was insufficient to establish a causal relationship between appellant's right shoulder condition and factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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

³ *Supra* note 1.

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

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

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that factors of his federal employment caused or aggravated his right shoulder condition. Appellant submitted a statement in which he identified the factors of employment that he believed caused the condition, including pushing and pulling carts, loading, removing, and rubber-banding or tying mail, which OWCP accepted as factual. However, to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical condition was caused or aggravated by the implicated employment factors.⁸

In the October 16, 2014 report, Dr. Ratliff noted that appellant's federal job duties included: pushing and pulling wheeled letter trays that may weigh up to 500 pounds; loading mail on transport units for induction into distribution system; loading mail onto feeder modules; removing mail from stacker bins; and rubber-banding or tying mail as necessary and placing in proper trays. He opined "that pushing and pulling activities at work may have caused or contributed to the injury of [appellant's] right shoulder." Dr. Ratliff explained that despite letter trays or pie carts of mail being on wheels, the "initial force to move these bins may have caused or contributed to shoulder pain." He further indicated that elevating the arm for pushing was a common cause for rotator cuff problems as well as a possible SLAP tear. Dr. Ratliff noted that appellant had no hobbies or activities outside of work which could have contributed to his right shoulder condition. He advised that appellant was capable of performing his usual job and released him to regular duty without restrictions.

Dr. Ratliff failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as pushing and pulling carts, loading, removing, and rubber-banding or tying mail, caused or aggravated his right shoulder condition. He noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the

⁶ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *O.W.*, *supra* note 5.

⁸ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

diagnosed conditions.⁹ The Board finds that Dr. Ratliff's opinion that factors of appellant's federal employment "may have caused or contributed to" his right shoulder condition is speculative and equivocal in nature.¹⁰ Lacking thorough medical rationale on the issue of causal relationship, the Board finds that his reports are insufficient to establish that appellant sustained an employment-related injury.

In her reports, Dr. Yale diagnosed right shoulder strain, SLAP tear, and rotator cuff impingement syndrome of the right shoulder. She opined that appellant's right shoulder condition was causally related to factors of his federal employment and released him to work with lifting restrictions. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.¹¹ Dr. Yale failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as pushing and pulling carts, loading, removing, and rubber-banding or tying mail, caused or aggravated his right shoulder condition. Thus, the Board finds that her reports are insufficiently rationalized to establish that appellant's condition was caused or aggravated by factors of his federal employment.

In support of his claim, appellant submitted an August 25, 2014 MRI scan of the right shoulder. This document does not constitute competent medical evidence as to the issue of causation as it does not contain rationale by a physician relating appellant's disability to his employment.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the accepted employment factors, he failed to meet his burden of proof to establish a claim.

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 a right shoulder condition in the performance of duty causally related to factors of his federal employment.

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹¹ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board