

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

L.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
St. Louis, MO, Employer)

**Docket No. 15-1544
Issued: November 3, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2015 appellant filed a timely appeal from a February 23, 2015 merit decision and a June 15, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee's Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 31, 2014 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral tendinitis and arthritis in both rotator cuffs in the performance of duty. He attributed his conditions to repetitive movement and handling of mail. Appellant advised that he became aware of his condition on January 13, 2011. He stopped work on April 2, 2014 to undergo surgery.

By letter dated May 14, 2014, OWCP advised appellant of the type of evidence needed to establish his claim.

In an April 2, 2014 operative report, Dr. Richard Lehman, Board-certified in orthopedic surgery and sports medicine, diagnosed torn rotator cuff and torn labrum. He advised that he performed a left shoulder arthroscopy, acromioplasty, rotator cuff repair, glenoid labrum repair, extensive debridement of the glenohumeral joint and glenoid, microfracture of humeral head, and debridement of the humeral head and anterior rotator cuff interval.

In a May 16, 2014 diagnostic report, Dr. Michael Penney, Board-certified in diagnostic radiology, advised that a cervical spine x-ray revealed no acute abnormalities and moderate degenerative changes at C5-6 and C6-7.

In a May 27, 2014 statement, appellant advised that he has worked for the employing establishment since 1992. He attributed his conditions to repetitive movement, casing mail, and handling mail and packages for delivery five to six days a week. Appellant also noted that he played recreational softball for 1 hour to 1 hour and 15 minutes once a week from April to July 2013.

In a May 30, 2014 attending physician's report (Form CA-20), Dr. Lehman assessed impingement syndrome, torn labrum, and torn rotator cuff. He attributed appellant's condition to repetitive use at work and checked the box marked "yes" to indicate that his condition was caused or aggravated by employment. Dr. Lehman advised that appellant would be able to return to work on August 1, 2014.

By decision dated July 3, 2014, OWCP denied appellant's claim because medical evidence was insufficient to establish that his condition was caused or aggravated by factors of his federal employment.

On July 12, 2014 appellant requested review of the written record before an OWCP hearing representative. A compact disc of diagnostic tests was submitted on July 7, 2014. In a January 14, 2011 report, Dr. Albert Hammerman, a Board-certified diagnostic radiologist, advised that a magnetic resonance imaging (MRI) scan of the left shoulder, revealed supraspinatus tendinopathy without a discrete tear, mild hypertrophic degenerative changes at the acromioclavicular (AC) joint, and a grossly intact glenoid labrum. In a March 2, 2011 report, he advised that an MRI scan of the right shoulder revealed supraspinatus tendinopathy, mild hypertrophic change at the AC joint, and a small amount of fluid within the subacromial-subdeltoid bursa.

On March 13, 2014 Dr. David Wu, a Board-certified diagnostic radiologist, advised that a left shoulder MRI scan revealed distal supraspinatus and infraspinatus insertional tendinosis without discrete tear and no discrete labral tear.

Dr. Lehman, in a May 5, 2014 report, advised that he began treating appellant on January 13, 2011 for left shoulder pain that began about one year earlier. He detailed appellant's work duties including: use of his extremities in a repetitive manner, casing mail, carting boxes, opening mailboxes, reaching for packages, and performing overhead activities. Dr. Lehman further noted that a March 3, 2011 MRI scan revealed supraspinatus tendinopathy which was treated conservatively with an injection. He advised that appellant experienced relief, but later returned on March 11, 2014 after developing significant shoulder pain with work and overhead activity. Dr. Lehman noted that he performed surgery on appellant's left shoulder on April 2, 2014. He opined that appellant's impingement syndrome "could definitely be exacerbated by the fact that he has type 2 acromion and that he has to perform a lot of overhead and repetitive high work with his shoulders causing him to reach, which could over time cause injury to his rotator cuff in the manner that was seen under arthroscopy." Dr. Lehman further opined that appellant's rotator cuff tear, impingement syndrome, and labral tear occurred as a result of his mail carrying duties.

In a July 17, 2014 report, Dr. Lehman reiterated that appellant's shoulder surgery was needed due to the repetitive nature of appellant's position as a mail carrier. He explained that serious injuries are often due to repetitive arm and hand movement and constant lifting and bending. Dr. Lehman advised that these activities can lead to repetitive stress in various joints and muscles. He noted that appellant cased mail which required elevation of the arms and reaching above the shoulder 8 to 10 hours a day for five to six days a week. Dr. Lehman noted that appellant has performed these activities for over 20 years and opined that gradually these activities aggravated his shoulder which initially was treated with cortisone injections and strengthening. He attributed appellant's diagnosed conditions to his mail carrying duties.

In a July 17, 2014 attending physician's report, Dr. Lehman diagnosed left rotator cuff tear, impingement, and labral tear. He checked the box marked "yes" to indicate that appellant's condition was caused or aggravated by his employment and attributed his condition to 20 years of casing mail, lifting overhead, and delivering mail.

By decision dated February 23, 2015, an OWCP hearing representative affirmed the denial of appellant's claim because medical evidence was insufficient to establish that his diagnosed conditions were caused by factors of his employment. She found that Dr. Lehman's opinion was speculative and that he did not address appellant's history of recreational softball.

Appellant, in a March 3, 2013 letter, requested reconsideration. He disagreed with the hearing representative's insinuation that his injury could have been due to playing softball noting that he only participated in softball once a week for six weeks in 2013. Appellant argued that Dr. Lehman did not discuss the recreational softball play because he did not believe it to be the cause of his conditions.

By decision dated June 15, 2015, OWCP denied appellant's request for reconsideration without a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (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 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 evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained bilateral tendinitis and arthritis in his rotator cuffs in the performance of duty. It is not disputed that his job entails casing mail, lifting overhead, and delivering mail. However, the Board finds that the medical evidence is insufficient to establish that these duties caused or exacerbated appellant's rotator cuff tear, impingement syndrome, and labral tear.

In his May 5, 2014 report, Dr. Lehman detailed appellant's work duties and opined that his rotator cuff tear, impingement syndrome, and labral tear occurred as a result of his mail

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

⁵ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

⁶ *James Mack*, 43 ECAB 321 (1991).

carrying duties. He opined that appellant's impingement syndrome "could definitely be exacerbated" by overhead and repetitive work with his shoulders, which caused him to reach and "could" over time cause injury to his rotator cuff. Dr. Lehman also opined that appellant's overhead and repetitive work with his shoulders "could have" caused injury to his rotator cuffs over time. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.⁷ In his July 17, 2014 narrative report, Dr. Lehman explained that serious injuries are often due to repetitive arm and hand movement and constant lifting and bending. He advised that these activities can lead to repetitive stress in various joints and muscles. Dr. Lehman noted that for the past 20 years appellant has cased mail, elevated his arms, and reached above the shoulder 8 to 10 hours a day for five to six days a week. He opined that gradually these activities aggravated his shoulder. Although Dr. Lehman attributes appellant's diagnosed conditions to work duties he failed to provide medical rationale to explain how these particular duties caused the diagnosed conditions. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.⁸

In May 30 and July 17, 2014 attending physician's reports, Dr. Lehman checked the box marked "yes" to indicate that appellant's conditions were caused or aggravated by his employment and attributed his condition to repetitive use at work, casing mail, lifting overhead, and delivering mail. The Board has held that an opinion on causal relationship that consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value.⁹ While, Dr. Lehman had a correct history of the claimant's condition, he did not provide medical rationale to explain how particular duties caused or contributed to the diagnosed conditions.

Other medical evidence, such as diagnostic reports, is of limited probative value as it does not specifically address whether work factors caused or aggravated a diagnosed medical condition. The Board has held that medical evidence which does not state an opinion on causal relationship is of little probative value.¹⁰

Consequently, appellant has submitted insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹¹ The physician must accurately describe appellant's work

⁷ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

⁸ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁹ *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ See *supra* note 5.

duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must either: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹³ Where the request from reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without opening the case for a review of the merits.¹⁴

ANALYSIS -- ISSUE 2

In a February 23, 2015 merit decision, an OWCP hearing representative affirmed the denial of appellant's claim finding that the medical evidence did not establish that the diagnosed conditions were caused or aggravated by factors of his employment. Appellant submitted a timely request for reconsideration which was denied without a merit review on June 15, 2015.

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review. In his March 3, 2015 statement, appellant disagreed with the hearing representative's insinuation that his injury could have been due to playing softball noting that he only participated in softball once a week for six weeks in 2013. He also argued that Dr. Lehman did not discuss him playing recreational softball because he did not believe it to be the cause of his diagnosed conditions. The Board has held that appellant's belief that the medical evidence supported causal relationship and his disagreement with OWCP's findings on the probative value of the medical evidence does not constitute a new and relevant legal argument sufficient to warrant merit review of the claim.¹⁵ Consequently, this assertion does not show that OWCP erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered.

Furthermore, appellant did not submit relevant evidence not previously considered by OWCP. OWCP explained in its February 23, 2015 merit decision that additional medical

¹² *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

¹³ *E.K.*, Docket No. 09-1827 (issued April 27, 2010). *See* 20 C.F.R. § 10.606(b)(2).

¹⁴ *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.606(b).

¹⁵ *P.J.*, Docket No. 13-376 (issued May 10, 2013).

evidence was needed to establish the claim. However, appellant did not submit any new medical evidence in response. While he offered his argument for why he believed his claim should be accepted, the underlying point at issue in the claim, causal relationship, is medical in nature. Because appellant failed to meet any of the three regulatory criteria for reopening a claim, he was not entitled to further merit review of his claim.

CONCLUSION

The Board finds that appellant did not meet his burden to establish that he sustained an occupational disease caused by factors of his employment. The Board further finds that OWCP properly denied his request for reconsideration without further merit review of the claim.

ORDER

IT IS HEREBY ORDERED THAT the June 15 and February 23, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 3, 2015
Washington, DC

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

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

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