

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

C.F., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Kearny, NJ, Employer

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Docket No. 15-1649
Issued: November 17, 2015

Appearances:

James D. Muirhead, Esq., for the appellant
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 30, 2015 appellant, through counsel, filed a timely appeal of a June 30, 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 in this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On October 25, 2013 appellant, then a 56-year-old clerk, filed an occupational disease claim (Form CA-2), alleging that he developed shoulder and arm pain as a result of repetitively opening and closing truck and dock bay doors while in the performance of duty. He first became

¹ 5 U.S.C. § 8101 *et seq.*

aware of his condition on October 11, 2013 and realized it was causally related to his employment on October 18, 2013. Appellant did not stop work.

In an accompanying narrative statement, appellant noted that on October 11, 2013 he felt an ache in his right shoulder and upper arm which developed into chronic arm pain. He noted that his position as an expeditor required repetitively opening and closing 100 truck and dock bay doors every day, five days a week.

By letter dated November 8, 2013, OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

In an undated statement, appellant indicated that his physical activities outside of work were minimal and he did not participate in sports or exercise. He noted experiencing right shoulder pain starting on October 11, 2013 which became chronic.

Appellant submitted an October 28, 2013 report from Dr. Kent S. Lerner, a Board-certified orthopedist, who treated him for right shoulder pain. Appellant reported that his work was physical and required motion such as abduction, pulling, and forward flexion which were painful. Dr. Lerner noted findings of positive impingement of the right shoulder and diagnosed a complete rupture and tear of the right rotator cuff. In a November 25, 2013 report, he noted a November 22, 2013 magnetic resonance imaging (MRI) scan of the right shoulder revealed a small focal full thickness tear of the anterior supraspinatus without retraction and edema of the distal clavicle without osteolysis. Dr. Lerner diagnosed complete rupture of the rotator cuff and recommended surgery. In an OWCP questionnaire, he noted treating appellant on October 28 and November 25, 2013 for right shoulder pain. Dr. Lerner diagnosed right rotator cuff tear by MRI scan report. He returned appellant to work full time with restrictions.

In a December 20, 2013 decision, OWCP denied the claim finding the medical evidence insufficient to establish that the claimed condition was causally related to his employment.²

On January 14, 2014 appellant requested reconsideration. He submitted a narrative statement dated October 25, 2013, reports from Dr. Lerner dated October 28 and November 25, 2013, and a copy of OWCP's decision dated December 23, 2013, all previously of record. Appellant submitted a January 7, 2014 report from Dr. Lerner who noted that appellant was initially treated on October 28, 2013 for problems with his right shoulder which began on October 11, 2013 while at work. He reported that he first experienced pain while performing repetitive duties including strenuous pushing, pulling, and overhead activity at work. Dr. Lerner noted that an MRI scan of appellant's right shoulder revealed a full-thickness rotator cuff tear. He opined that to a reasonable degree of medical probability appellant's right shoulder rotator cuff tear was work related.

In a decision dated April 22, 2014, OWCP denied modification of the prior decision.

On April 21, 2015 appellant again requested reconsideration. He submitted a report from Dr. Stephen G. Silver, a Board-certified orthopedist, dated April 20, 2015, who treated him for

² On December 23, 2013 OWCP reissued the December 20, 2013 decision.

chronic right shoulder pain which began in October 2013. Appellant reported working on a dock since 1998 where his job duties required opening and closing 100 bay doors, eight hours a day, five days a week. He noted progressive chronic pain and weakness. Dr. Silver noted an MRI scan revealed a focal tear of the rotator cuff tendon, edema in the distal clavicle, and fraying of the labrum consistent with a labral tear. He noted findings on examination of limited range of motion, severe pain to palpation at the right acromioclavicular joint, positive impingement signs and weakness. Dr. Silver diagnosed impingement, labral tear, frozen shoulder and rotator cuff tear. He opined that appellant's injury and shoulder problems were related to his job. On May 16, 2014 Dr. Silver performed a subacromial decompression, distal clavicle excision, and debridement of a complex circumferential labral tear, biceps tenotomy, lysis of adhesions and manipulation under anesthesia. He opined that appellant's right shoulder injuries were directly and causally related to repetitive work-related microtrauma of opening and closing heavy bay doors from 1998 to 2013.

In a decision dated June 30, 2015, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁴

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

It is not disputed that appellant's work duties as a clerk and expeditor included repetitively opening and closing truck and dock bay doors. It is also not disputed that he was diagnosed with a complete rupture of the rotator cuff of the right shoulder. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions are causally related to specific employment factors. On November 8, 2013 OWCP advised appellant of the type of medical evidence needed to establish his claim. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

Appellant submitted an October 28, 2013 report from Dr. Lerner who diagnosed a complete rupture of the rotator cuff tear of the right shoulder. Appellant reported that his work was physical and required repetitively abducting, pulling, and forward flexion. In a November 25, 2013 report, he noted that an MRI scan of the right shoulder revealed a small focal full thickness tear of the anterior supraspinatus and edema of the distal clavicle. Dr. Lerner diagnosed complete rupture of the rotator cuff. In an OWCP questionnaire, he noted treating appellant on October 28 and November 25, 2013 for right shoulder pain. Dr. Lerner diagnosed right rotator cuff tear by an MRI scan report. Similarly, in a January 7, 2014 report, he noted that appellant reported that he first experienced pain while at work when performing repetitive pushing, pulling, and overhead activity. Dr. Lerner opined that to a reasonable degree of medical probability appellant's right shoulder rotator cuff tear was work related. The Board notes that Dr. Lerner's reports support causal relationship but are insufficient to establish the claimed right shoulder condition was causally related to his employment duties. Dr. Lerner provided insufficient medical reasoning to explain how particular work factors caused or aggravated a diagnosed medical condition. Therefore, these reports are insufficient to meet appellant's burden of proof.⁵

Appellant submitted an April 20, 2015 report from Dr. Silver who noted that appellant reported working since 1998 on a dock where he was required to open and close bay doors on trucks for eight hours a day since 1998. Dr. Silver diagnosed impingement, labral tear, frozen shoulder, and rotator cuff tear. He opined that appellant's right shoulder injuries were directly and causally related to repetitive work-related microtrauma over the years that required opening and closing heavy bay doors. While these reports support causal relationship, they are insufficient to establish the claim as Dr. Silver provided insufficient medical reasoning to support his conclusion on causal relationship.⁶ In none of these reports did Dr. Silver explain the process by which particular work activities caused or aggravated a claimed condition. Therefore, these reports are insufficient to meet appellant's burden of proof.⁷

On appeal, counsel asserts that Dr. Silver's April 20, 2015 report provided a thorough explanation of how his work injury occurred and a rationalized opinion addressing how opening

⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁶ *Id.*

⁷ *Supra* note 4.

and closing bay doors could cause such an injury. Appellant has the burden of proof to establish that his claimed occupational disease is caused or aggravated by employment factors.⁸ As explained, he has not presented sufficient medical evidence regarding causal relationship to meet his burden of proof.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁸ See *supra* note 5.