

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, SULPHUR SPRINGS
POST OFFICE, Tampa, FL, Employer**

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**Docket No. 16-0210
Issued: July 14, 2016**

Appearances:
Lenin V. Perez, for the appellant
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 November 16, 2015 appellant, through his representative, filed a timely appeal of an October 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he developed a left shoulder condition due to factors of his federal employment.

On appeal, appellant's representative argued that the medical evidence was sufficient to meet appellant's burden of proof.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board regarding the nonmerit issue of whether OWCP properly denied appellant's reconsideration request as untimely filed and failing to demonstrate clear evidence of error.² The facts of the case are set forth below.

On October 4, 2012 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed pain in his neck, both shoulders and arms due to his employment duties. He first became aware of his condition on July 10, 2009 and first attributed this condition to his employment on September 19, 2012. Appellant described his employment duties of casing mail and parcels weighing up to 70 pounds. He noted that his route had 626 deliveries and that he performed dismounted deliveries from his postal vehicle for a portion of his route. Appellant also parked his vehicle to walk and deliver mail from a satchel weighing up to 35 pounds for 55 residential deliveries.

On September 19, 2012 Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, examined appellant due to pain in his shoulders bilaterally, worse on the left, stiffness in the left shoulder and difficulty lifting the left arm. He noted that appellant initially sought treatment from another physician and found tenderness in appellant's left shoulder with marked limitation in range of motion. Dr. Bishai reviewed a magnetic resonance imaging (MRI) scan which demonstrated subluxation of the humeral head with bone contusions and chondromalacia at the posterior glenoid. He found complex tears of the glenoid labrum and hypertrophic changes at the acromioclavicular joint and supraspinatus tendinopathy. Dr. Bishai diagnosed internal derangement of the left shoulder with chondromalacia and impingement syndrome. He opined, "within a reasonable degree of medical certainty," that appellant's left shoulder condition was the result of his employment activities. Dr. Bishai stated that lifting of mail and parcels as well as casing, delivering, and carrying of the satchel combined together, over a period of time, caused appellant's left shoulder condition. He explained that the aforementioned activities involved twisting and turning movements which resulted in the diagnosed conditions.

In a letter dated October 18, 2012, OWCP requested additional factual information from appellant. It also requested additional medical evidence and allowed appellant 30 days to respond.

By decision dated November 26, 2012, OWCP denied appellant's claim because he had failed to submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his implicated employment duties. Appellant requested an oral hearing from OWCP's Branch of Hearings and Review.

On January 12, 2012 appellant underwent an MRI scan of the left shoulder which demonstrated subluxation of the humeral head with bone contusions, chondromalacia, complex tears of the posterior labrum extending into the superior and inferior labrums, changes at the acromioclavicular joint, supraspinatus tendinopathy, joint effusion and possible glenohumeral instability lesions.

² Docket No. 15-0666 (issued August 14, 2015).

Appellant submitted reports from Dr. Bishai dated October 11, November 16 and December 20, 2012 repeating his earlier findings and diagnoses. Beginning on November 16, 2012 Dr. Bishai stated that appellant was using his right shoulder and arm more since his left shoulder was disabled and impaired resulting in a consequential injury to the right shoulder. He also found that appellant had loss of range of motion in the right shoulder and diagnosed internal derangement of the right shoulder joint and rotator cuff syndrome right shoulder. On February 27, 2013 Dr. Bishai stated that appellant's condition was the same. On March 14, 2013 he noted that appellant reported pain in his neck with radiation down the shoulders and arms and diagnosed the additional condition of cervical disc syndrome with radiculopathy.

Appellant testified at the oral hearing on March 14, 2013 and stated that his neck and shoulders began to bother him in July 2009 and progressively worsened. He stated that he first received treatment for his left shoulder in January 2012. Appellant testified that he had injured his right shoulder in 2007 and sought treatment from a chiropractor.

OWCP's hearing representative affirmed the November 26, 2012 decision on April 30, 2013. He found that appellant had not submitted the medical evidence requested regarding his history of treatment. The hearing representative noted that appellant reported a right shoulder condition arising in 2007 and that there were no medical records regarding this injury in the record. He found that Dr. Bishai's reports were not based on an accurate history of injury and that appellant had not established that his neck, bilateral arm and shoulder conditions were related to his employment duties.

In a report dated April 24, 2013, Dr. Bishai stated that he reviewed nerve conduction studies on March 21, 2013 which suggested entrapment neuropathy at the right elbow as well as carpal tunnel syndrome. He also reviewed a cervical MRI scan and found disc bulges at C4-5, C5-6 and C7-T1. Dr. Bishai concluded that appellant's diagnoses were causally related to his duties as a letter carrier. On June 18, 2013 he disagreed with the OWCP hearing representative's findings and conclusions. Dr. Bishai repeated his previous diagnoses. He again opined that appellant's left shoulder condition was directly caused by his work activities as a letter carrier. Dr. Bishai noted that appellant's right shoulder condition was a consequential injury resulting from overuse due to the pain in appellant's left shoulder. He stated that he had reviewed appellant's prior medical treatment with an orthopedic surgeon on December 22, 2011, and February 23, 2012. Dr. Bishai stated that appellant's shoulder condition could be improved by arthroscopic surgery. He also opined that it was not necessary to review appellant's right shoulder treatment records from 2007. Dr. Bishai stated that he was aware that appellant had experienced his left shoulder condition for years, but that appellant had recently determined that medical treatment was necessary.

Dr. Claude Barosy, a family practitioner, examined appellant on August 6, 2013 and reported his complaints of left shoulder, head and neck pain. He noted a July 10, 2009 injury date. Dr. Barosy found loss of range of motion of the cervical spine and left shoulder. He diagnosed cervical disc disease with radiculopathy, cervical disc syndrome, internal derangement of the left shoulder joint, and left shoulder impingement syndrome.

Appellant's representative requested reconsideration on January 14, 2014, which was received by OWCP on January 21, 2014. Included with the reconsideration, the representative submitted a December 19, 2013 report by Dr. Bishai, who again opined that appellant's conditions were work related.

Dr. Eduardo L Gonzalez, a Board-certified practitioner, examined appellant on March 12, 2014 due to neck and bilateral shoulder pain. He opined that appellant's left shoulder symptoms were produced as part of his work as a letter carrier.

On April 4, 2014 Dr. Robert R. Reppy, an osteopath, noted a July 10, 2009 injury date and stated that appellant's right shoulder pain had mostly resolved. He stated that appellant's neck pain contributed to headaches with nausea.

In a letter dated January 14, 2015, appellant's representative stated that he had requested reconsideration on January 14, 2014 of the April 30, 2013 merit decision. Appellant's representative included a copy of the "motion to reconsider" dated January 14, 2014 which referenced the December 19, 2013 report from Dr. Bishai.

By decision dated January 23, 2015, OWCP denied appellant's request for reconsideration as it was not timely filed and did not demonstrate clear evidence of error. Appellant's representative appealed this decision to the Board.

In a decision and order dated August 14, 2015, the Board found that the most recent request for reconsideration was timely, set aside OWCP's January 23, 2015 decision and remanded the case for review of the merits.³

Dr. Bishai completed a report on March 19, 2015. He described appellant's complaints of bilateral shoulder pain worse on the left. Dr. Bishai opined that appellant's left shoulder condition was work related and that his right shoulder condition was a consequential injury as a result of the left shoulder injury.

By decision dated October 19, 2015, OWCP concluded that appellant had not met his burden of proof to establish his occupational disease claim.

LEGAL PRECEDENT

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

³ *Id.*

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

ANALYSIS

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between his diagnosed condition and his employment duties.

In support of his claim for occupational disease, appellant attributed his condition to his duties of casing and carrying mail and parcels weighing up to 70 pounds. He provided diagnoses of left shoulder conditions including internal derangement of the left shoulder with chondromalacia and impingement syndrome. Dr. Bishai concluded, “within a reasonable degree of medical certainty,” that lifting of mail and parcels as well as casing, delivery and carrying of the satchel combined together to cause appellant’s left shoulder condition. He opined, in a series of repetitive reports, that appellant’s left shoulder condition was directly caused by his work activities as a letter carrier. Dr. Bishai pointed out that the duties appellant performed involved twisting and turning thereby resulting in the diagnosed conditions. However, his opinion is couched in generalities and did not specifically describe the process or mechanism by which the specific employment duties resulted in internal derangement of the left shoulder with chondromalacia and impingement syndrome. Accordingly, his reports are of diminished probative value and fail to establish the causal relationship between employment factors and the left shoulder condition.⁵

Dr. Gonzalez also opined that appellant’s left shoulder symptoms were produced as part of his work as a letter carrier. However, he failed to provide any medical rationale explaining how the implicated work factors caused the internal derangement of his left shoulder. He offered a conclusion without explaining how and why such factors as casing and lifting would cause the claimed condition. The Board has held that conclusory medical opinions which contain no rationale or explanation are of little probative value.⁶

Neither Dr. Reppy nor Dr. Barosy addressed the issue of causal relationship between appellant’s claimed left shoulder condition and the factors of his federal employment, which is the threshold issue. Medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.⁷

Dr. Bishai also suggested that appellant developed a right shoulder condition as a consequence of his impaired left shoulder. A claimant bears the burden of proof to establish a claim for a consequential injury.⁸ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁹ The Board notes that the basic rule is that a subsequent injury, whether an

⁵ See *D.I.*, 59 ECAB 158 (2007).

⁶ *F.T.*, Docket No. 09-919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant’s burden of proof). Thus, this report is insufficient to establish appellant’s claim.

⁷ *L.M.*, Docket No. 16-0188 (issued March 24, 2016); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ See *K.S.*, Docket No. 16-0404 (issued April 11, 2016).

⁹ *Id.*

aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁰ However, as the Board has found that appellant has not met his burden of proof to establish a causal relationship between his claimed left shoulder injury and the implicated factors of his federal employment, the claimed right shoulder condition is not employment related.

Due to the deficiency in the medical evidence, appellant has failed to meet his burden of proof to establish his occupational left shoulder condition.

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 provided the necessary rationalized medical opinion evidence to establish a causal relationship between his left shoulder condition and his implicated employment duties.

ORDER

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

Issued: July 14, 2016
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

¹⁰ See *id.*; see also Larson, *The Law of Workers' Compensation* § 1300.