

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Corydon, IN, Employer)

**Docket No. 16-0416
Issued: May 11, 2016**

Appearances:

*Thomas S. Harkins, Esq., 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 January 4, 2016 appellant, through counsel, filed a timely appeal of a December 2, 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.

ISSUE

The issue is whether appellant sustained a left arm, shoulder, or neck condition due to factors of his federal employment.

FACTUAL HISTORY

Appellant, then a 54-year-old rural mail carrier, filed an occupational disease claim, Form CA-2, alleging that he became aware of tightness and pain in his left arm, shoulder, and neck on June 15, 2014 and that he realized his condition was caused by factors of his employment on June 25, 2014. He stopped work on June 24, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP received a June 24, 2014 work restriction form from Dr. John M. Conner, a Board-certified orthopedic surgeon, which noted that appellant had been placed on light duty from June 24 to July 25, 2014, with lifting restrictions of the left arm.

By letter dated July 17, 2014, OWCP advised appellant that the evidence received was insufficient to establish his claim. Appellant was advised that he should submit medical evidence from his treating physician which provided a diagnosis of his condition, and a rationalized medical opinion as to how the diagnosed condition was causally related to factors of his federal employment. He was afforded 30 days to submit this evidence.

In a form report dated July 17, 2014, Dr. Rodrigo Moreno, a specialist in hand surgery, noted appellant's diagnosis as cervical radiculopathy. He related that appellant could return to work on that day, but with no use of the left arm.

On August 15, 2014 OWCP received a supplemental statement from appellant in which he explained his claim. Appellant related that on the morning of June 20, 2014 he experienced stiffness in the middle of his left arm, near his elbow, while performing preparatory duties. After he began moving tubs of mail into his vehicle the pain grew stronger, while bending down to pick up one of the tubs and turning while holding a tub, he heard a pop between his bicep and elbow in his left arm, and his pain increased. After finishing his route, appellant stated that he informed his supervisor who asked if he had experienced similar issues. He replied that he had experienced stiffness in his neck on June 15, 2014.

By decision dated September 17, 2014, OWCP denied appellant's claim, finding that he did not sustain an arm, shoulder, or neck condition in the performance of duty. It found that he did not establish fact of injury as he had not submitted medical evidence that a condition had been diagnosed in connection resulting from his employment duties.

In a December 11, 2014 report, received by OWCP on January 6, 2015, Dr. Michael J. Doyle, Board-certified in neurosurgery, noted that appellant had neck pain, left shoulder pain and left arm pain. He related that appellant was lifting at work when he began to experience discomfort in his left trapezius, which began to radiate down his arm with numbness and tingling. Dr. Doyle reported that appellant also developed weakness in his arm, with ongoing tightness in his trapezius area and shoulder over the past few months. He advised that appellant underwent an electromyogram (EMG) which indicated mild carpal tunnel and possible musculocutaneous mononeuropathy. Dr. Doyle reported that he had persistent pain and expressed concern that appellant might have a cervical disc herniation with C6 radiculopathy; he opined that his clinical presentation was more consistent with this diagnosis. He recommended that appellant undergo a cervical magnetic resonance imaging (MRI) scan and prescribed a course of physical therapy.

In a March 3, 2015 report, Dr. Reggie Lyell, Board-certified in family practice, asserted that appellant still had numbness and weakness in his left arm, with intermittent pain in his neck. He advised that he had atrophy in his biceps and numbness in his thumb and index finger in a C6 distribution, with diminished sensation in his C4 dermatome on the left. Dr. Lyell reported that appellant underwent an MRI scan which showed severe diffuse degenerative disease, severe stenosis involving the left foramen at C4-6, and broad-based disc protrusion at C6-7. Dr. Lyell opined, however, that appellant was not really having symptoms of a C7 radiculopathy and advised that he had full strength in his triceps. He advised that appellant was a complex patient;

and the pathology in his cervical spine was probably responsible for a lot of his symptomatology. Dr. Lyell recommended that appellant should consider surgical intervention in light of his ongoing symptoms and his fairly severe neurologic deficit. In a December 14, 2014 report, Dr. Doyle essentially reiterated his previous findings and conclusions.

In a January 16, 2015 report, received by OWCP on September 3, 2015, Dr. Doyle noted that he found no evidence of preexisting conditions or injuries predating the injury described by appellant. He reported that appellant had significant neck, right shoulder, and left arm pain. Dr. Doyle opined that appellant was not capable of performing his regular duties as a rural mail carrier and would only be able to work in a sedentary occupation at this time. Appellant submitted numerous other medical reports which constituted new evidence to support his claim that he had sustained left arm, right shoulder, and neck conditions causally related to employment factors.

In a February 24, 2015 report, received by OWCP on September 3, 2015, Dr. Moreno advised that he examined appellant on July 17, 2014 for complaints of weakness in his left upper extremity. Appellant reported that he was lifting heavy boxes at work on June 20, 2014 and felt a pop in his left elbow region, and experienced weakness and discomfort afterwards. He further reported pain in the lateral side of his left arm with weakness in the elbow and wrist, as well as numbness and tingling in the left thumb, index, and long fingers. Dr. Moreno advised that on examination appellant's left upper extremity had full neck range of motion with discomfort around the shoulder region. He reported that radiographs showed diminished cervical disc space at the C4-5 and C5-6 levels, which indicated disc degenerative disease at these levels. Dr. Moreno diagnosed left upper extremity motor weakness and cervical radiculopathy and recommended that appellant undergo cervical spine MRI scan.

On August 28, 2015 appellant requested reconsideration.

By decision dated December 2, 2015, OWCP found that appellant had established fact of injury. However, it now denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained left arm, right shoulder, or neck conditions causally related to his accepted employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

² *Id.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 usually rationalized medical 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

The Board affirms OWCP's finding that appellant has not established a left arm, shoulder, or neck conditions causally related to the accepted employment duties.

Appellant submitted reports from Drs. Conner, Doyle, Lyell, and Moreno. Dr. Conner initially placed appellant on light duty on June 24, 2014. He did not provide a diagnosis of any medical condition and he did not provide any explanation as to why light duty was necessary. Dr. Doyle noted in his December 11, 2014 report that appellant was experiencing neck pain, left shoulder pain, and left arm pain and that he also developed weakness in his arm, with ongoing tightness in his trapezius area and shoulder over the past few months. He advised that appellant had discomfort in his left trapezius, which began to radiate down his arm with numbness and tingling.

Dr. Doyle related that appellant had persistent pain and expressed concern that he might have a cervical disc herniation with C6 radiculopathy. He opined that appellant's clinical presentation was more consistent with a herniated disc in the cervical spine. Dr. Doyle submitted a January 16, 2015 report, in which he found no evidence of preexisting conditions or injuries predating the injury described by appellant. He reported that appellant had significant neck, left shoulder, and arm pain and advised that appellant was not capable of performing his regular duties as a rural mail canter; he was limited to doing sedentary work.

⁵ *Id.*

⁶ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

In his March 3, 2015 report, Dr. Lyell advised that appellant still had numbness and weakness in his left arm, with intermittent pain in his neck. He reported that he had atrophy in his biceps and numbness in his thumb and index finger in a C6 distribution. Dr. Lyell advised that the results of a cervical spine MRI scan demonstrated severe, diffuse degenerative disease. He further noted that appellant had severe stenosis involving the left foramen at C4-6 and broad-based disc protrusion at C6-7, but observed, however, that appellant did not really have C7 radiculopathy symptoms and had full strength in his triceps. Dr. Lyell advised that the pathology in his cervical spine was probably responsible for much of his symptomatology and recommended that appellant consider surgical intervention to ameliorate his ongoing symptoms and his fairly severe neurologic deficit.

In his February 24, 2015 report, Dr. Moreno advised that appellant had complaints of weakness and discomfort in his left upper extremity which he attributed to a June 20, 2014 incident in which he was lifting heavy boxes and felt a pop in his left elbow region. He noted that appellant felt pain in the lateral side of his left arm with weakness in the elbow and wrist, in addition to numbness and tingling in the left thumb, index and long fingers. Dr. Moreno noted that on examination his left upper extremity had full neck range of motion with discomfort around the shoulder region. He noted that the results of radiographic testing showed diminished cervical disc space at the C4-5 and C5-6 levels, which demonstrated disc degenerative disease at these levels. Dr. Moreno diagnosed left upper extremity motor weakness and cervical radiculopathy and recommended that appellant undergo an additional MRI scan of the cervical spine.

The reports from Drs. Conner, Doyle, Lyell, and Moreno do not provide a probative, rationalized medical opinion that appellant had a condition or disability causally related to employment factors. Their opinions on causal relationship are of limited probative value as they do not contain any medical rationale explaining how appellant's diagnosed left arm, shoulder, or neck conditions were caused by factors of appellant's employment.⁷

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ The physicians of record did not sufficiently describe appellant's job duties and explain the medical process through which such duties would have been competent to cause the claimed left arm, shoulder, or neck conditions. Their opinions are of limited probative value as they do not contain any medical rationale explaining how appellant's job duties physiologically caused the diagnosed conditions. The medical reports of record thus did not constitute adequate medical evidence to establish that appellant's claimed medical conditions were causally related to his employment.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim. Appellant failed to submit such evidence and therefore he has not met his burden of proof to establish that his claimed left arm, shoulder, or neck conditions were causally related to his employment.

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 established that his left arm, shoulder, and neck conditions are causally related to his accepted employment duties.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2015 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 11, 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

⁹ *Id.*