United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 17-0996**
	)	**Issued: August 16, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Crestwood, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 6, 2017 appellant, through counsel, filed a timely appeal from a February 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 has established an injury causally related to an accepted November 5, 2014 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 3, 2015 appellant, then a 61-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2014 he sustained a right shoulder injury when he picked up a tray of mail and felt a pop in his shoulder. His supervisor noted on the reverse side of the claim form that appellant had not stopped work.

By letter dated February 5, 2015, an employing establishment customer service supervisor wrote that the employing establishment did not contest that an incident occurred on November 5, 2014. The supervisor indicated that appellant had continued to case mail, even though an employing establishment manager had advised him not to do any overhead casing.

In a report dated February 6, 2015, Dr. Daniel Rueff, a Board-certified orthopedic surgeon, indicated that appellant was treated for right shoulder pain.[3] He provided a history that in November appellant had lifted a box and felt an acute pop in his right shoulder. Dr. Rueff noted that appellant had a history of a left shoulder rotator cuff repair.[4] He indicated that appellant had experienced biceps pain, which had improved, but appellant still had right shoulder pain. Dr. Rueff reported that, for the right shoulder, appellant had full range of motion and strength, with x-rays showing no fracture or dislocation, and moderate acromioclavicular (AC) joint arthritis. He diagnosed right shoulder long head biceps rupture, and right shoulder rotator cuff tendinitis. Dr. Rueff wrote that appellant seemed to be having little trouble with the biceps rupture, but the rotator cuff tendinitis was a bigger issue.

In a March 16, 2015 report, Dr. Rueff related that appellant had bilateral shoulder pain. He provided examination results. Dr. Rueff wrote that, due to his shoulder problems, appellant likely needed work restrictions and therefore a functional capacity evaluation would be scheduled. In an April 27, 2015 report, Dr. Rueff provided results on examination for both shoulders. He indicated that appellant would likely need permanent work restrictions.

The record contains a magnetic resonance imaging (MRI) scan report dated January 25, 2016. Dr. John Rothpletz, a radiologist, diagnosed a right shoulder rotator cuff tear. The report also found the long head biceps tendon and the glenoid labrum were torn. By report dated January 29, 2016, Dr. Rueff indicated that appellant wanted to proceed with right shoulder surgery.[5] OWCP also received physical therapy notes.

On February 25, 2016 appellant submitted a recurrence of disability claim (Form CA-2a). On the claim form, he reported the date of recurrence as September 8, 2105, and he stopped work on September 15, 2015. Appellant wrote that his pain increased during the summer of 2015 and he could not continue working.

[3] The report indicated that Dr. Rueff was the medical provider, but the report did not contain a signature.

[4] Appellant had a prior claim for a left shoulder injury on November 1, 2013 under OWCP File No. xxxxxx874.

[5] In a May 31, 2016 report, Dr. Rueff indicated that appellant was unsure whether he wanted to proceed with surgery.

By letter dated March 7, 2016, OWCP indicated that the initial claim appeared to be a minor injury, and therefore no decision on the merits of the claim had been issued. It afforded appellant 30 days to submit additional evidence in support of his claim.

Appellant submitted a report dated March 21, 2016 from Dr. Rueff. The attending physician wrote that appellant injured his right shoulder on November 5, 2014 when he lifted a heavy tray of mail. Dr. Rueff reported that appellant had pain over his biceps as well as his shoulder. He indicated that appellant received physical therapy and a cortisone injection, but his pain persisted. The results of the January 25, 2016 MRI scan were noted. Dr. Rueff concluded, "The patient did note an acute injury at work in which his symptoms began. I do think that there is a high likelihood of probability that his rotator cuff tear was due to his work injury."

By decision dated April 11, 2016, OWCP denied appellant's claim for compensation. It accepted that the incident occurred as alleged, but found that the medical evidence was insufficient to establish the claim as he had not established causal relationship between the diagnosed condition and the accepted employment incident.

Appellant, through counsel, requested a hearing before an OWCP hearing representative on April 22, 2016. A hearing was held on December 14, 2016. Appellant related that he underwent left shoulder surgery in January 2015.

By decision dated February 3, 2017, the hearing representative affirmed the April 11, 2016 OWCP decision. The hearing representative found that the medical evidence of record was insufficient to establish the claim. As to the February 6, 2015 report from Dr. Rueff, the hearing representative considered the content of the report, but found that unsigned medical reports cannot be considered as probative medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim including the fact that 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.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or on occupational disease.[8]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee

[6] *Supra* note 2.

[7] *Joe D. Cameron*, 41 ECAB 153 (1989), *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Victor J. Woodhams*, 41 ECAB 345 (1989).

actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[10] Neither the fact that appellant's condition became apparent during a period of employment nor, her belief that the condition was caused by her employment is sufficient to establish causal relationship.[11]

ANALYSIS

Appellant filed a traumatic injury claim alleging that he was injured on November 5, 2014 when he lifted a tray of mail and felt a pop in his right shoulder. OWCP has accepted that the incident occurred as alleged. The issue is whether the medical evidence is sufficient to establish a diagnosed condition casually related to the November 5, 2014 employment incident.

The Board has reviewed the medical evidence of record and finds that it is insufficient to meet appellant's burden of proof.

In the February 6, 2015 report, Dr. Rueff diagnosed a biceps rupture and right rotator cuff tendinitis.[12] He did not discuss diagnostic testing, other than to note x-rays showing some AC joint arthritis. Dr. Rueff did not provide a rationalized medical opinion on causal relationship with the November 5, 2014 employment incident. He provided only a brief description of the incident, noting lifting of a box and feeling pain. There was no discussion of the mechanism of injury or other explanation as to the relationship between a diagnosed condition and the November 5, 2014 employment incident.[13] A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[14] Dr. Rueff referred to

[9] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[10] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[11] *R.B.*, Docket No. 16-0885 (issued November 25, 2016).

[12] Dr. Rueff treated appellant on February 6, 2015. The hearing representative noted that the report dated February 6, 2015 was not signed by Dr. Rueff, but this was not a situation of a report lacking proper identification, such as unsigned treatment notes where it is unclear whether a physician wrote or reviewed the notes. The report identified Dr. Rueff as the provider, and in his March 21, 2016 report, he confirmed that he initially treated appellant on February 6, 2015. *See G.C.*, Docket No. 17-0675 (issued June 15, 2017).

[13] *E.R.*, Docket No. 16-1634 (issued May 25, 2017); *T.H.*, 59 ECAB 388 (2008).

[14] *See T.G.*, Docket No. 14-0751 (issued October 20, 2014).

the need for permanent work restrictions in an April 27, 2015 report. However, he referred to the left shoulder as well as the right shoulder, and he did not provide an opinion on causal relationship between a right shoulder condition and the November 5, 2014 incident.

In a March 21, 2016 report, Dr. Rueff opined that there was high likelihood the rotator cuff tear was due to a work injury, but this opinion is not supported with medical rationale. The explanation noted was that appellant had an acute injury in which his symptoms began. The occurrence of symptoms at work does not in itself establish a causal relationship with employment.[15] Dr. Rueff did not provide a well-rationalized report that explained causal relationship with respect to the findings on a January 25, 2016 MRI scan and the November 5, 2014 employment incident. To be of probative value the medical opinion must be based on a complete history and must provide a rationalized explanation as to how the specific work incident contributed to a diagnosed condition.[16]

The diagnoses of right rotator cuff tear and long head biceps tear were noted in an MRI scan report by Dr. Rothpletz. Dr. Rothpletz however offered no opinion regarding the cause of the diagnosed conditions. The Board has held that diagnostic testing, is of limited probative value as it fails to provide a physician's opinion on the causal relationship between appellant's work incident and his diagnosed condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.[17]

On appeal, counsel asserts that there is sufficient evidence to establish the claim. For the reasons discussed above, the Board finds that appellant has not met 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 has not established an injury causally related to the accepted November 5, 2014 employment incident.

[15] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[16] *Supra* note 10.

[17] *See G.C.*, Docket 17-0675 (issued June 15, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2017 is affirmed.

Issued: August 16, 2017
Washington, DC

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

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

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