United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 16-1452**
	)	**Issued: May 10, 2017**
U.S. POSTAL SERVICE, MANAGER SIOUX FALLS PROCESSING & DISTRIBUTION CENTER, Sioux Falls, SD, Employer	)	

Appearances:
Appellant, pro se
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 6, 2016 appellant filed a timely appeal from a June 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a bilateral shoulder condition causally related to the February 10, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of OWCP's June 6, 2016 decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that the evidence submitted is sufficient to establish a work-related injury.

FACTUAL HISTORY

On April 19, 2016 appellant, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 10, 2016 he sustained a bilateral shoulder injury while lifting a package at work. In an accompanying narrative statement dated March 31, 2016, he described the February 10, 2016 incident. Appellant related that he felt a sharp pain in both shoulders when he lifted a package into a container. He thought it was arthritis due to his advanced age. Appellant noted that he had lifted heavy packages every day while working at the employing establishment for 28 years. At home, he continued to experience problems with his shoulders. Appellant sought medical evaluation by a physician who diagnosed shoulder tendinitis and opined that the condition was work related. He received physical therapy which he stated was not helpful.

In a February 11, 2016 medical report from Sanford Clinic Family Medicine, Rebecca Moan, a certified nurse practitioner, noted that appellant had shoulder pain. She diagnosed bilateral shoulder pain of unspecified chronicity and shoulder tendinitis.

In an April 5, 2016 letter, Dr. Paul W. DeJong, a Board-certified family practitioner, certified that appellant was seen in his clinic, Sanford Clinic Family Medicine, for the first time on February 11, 2016 regarding shoulder pain.

The employing establishment controverted appellant's claim in an April 21, 2016 letter. It contended that the statements of appellant and his physician failed to identify a specific date of injury. The employing establishment stated that appellant should have reported an occupational disease injury.

In a March 31, 2016 statement, a coworker noted that appellant told him that he was off work for three days due to bursitis. He related that appellant never mentioned that his injury was work related. The coworker also related that appellant did not mention a specific date of injury or that he wished to file an accident report. He noted that appellant told him that his condition was due to working as a mail handler for 28 years.

By letter dated April 22, 2016, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence.

In an April 29, 2016 report, Dr. DeJong noted that appellant continued to have shoulder pain related to his job. He provided physical examination findings and provided an impression of chronic pain of both shoulders. Dr. DeJong advised that history, clinical course, and physical examination were consistent with bilateral rotator cuff tendinitis. He opined that this condition was related to appellant's work at the employing establishment which involved moving heavy packages and boxes. Dr. DeJong noted that repetitive motions were the usual cause of tendinitis. He concluded that appellant's condition would likely flare up as long as he continued to work in the same vocation.

On May 12, 2016 appellant provided the dates of his examinations and medical treatment.

In a June 6, 2016 decision, OWCP denied appellant's traumatic injury claim as the medical evidence of record did not contain a medical diagnosis in connection with the accepted February 10, 2016 employment-related incident. It noted that the medical evidence of record only contained a diagnosis of pain which was a symptom and not a diagnosis of a medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] 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 the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury caused or aggravated by the accepted February 10, 2016 employment incident. Appellant

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

failed to submit sufficient medical evidence to establish a bilateral shoulder condition causally related to the accepted employment incident.

Appellant submitted an April 5, 2016 report from Dr. DeJong who noted that he first treated appellant on February 11, 2016 for shoulder pain. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[10] The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[11] Because Dr. DeJong failed to provide a medical diagnosis, his opinion is of diminished probative value. In an August 29, 2016 report, he noted that appellant continued to have shoulder pain related to his job. Dr. DeJong reported examination findings and diagnosed bilateral rotator cuff tendinitis. He opined that, based on appellant's history, clinical course, and physical examination, appellant's work duties of moving heavy packages and boxes caused the diagnosed condition. Dr. DeJong failed, however, to discuss the specific lifting incident on February 10, 2016. A physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rational.[12] The Board finds that Dr. DeJong failed to provide a supported medical opinion.

Appellant also submitted a February 11, 2016 note from a certified nurse practitioner who diagnosed bilateral shoulder pain of unspecified chronicity and shoulder tendinitis. However, the Board has held that a nurse practitioner is not considered a physician as defined under FECA.[13] Thus, her medical findings are of no probative value for purposes of establishing entitlement to FECA benefits.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish a bilateral shoulder injury causally related to the February 10, 2016 employment incident. Appellant therefore did not meet his burden of proof.

To the extent that appellant's statements and the medical evidence indicate that his bilateral shoulder condition could have been caused by employment factors over one day, he could file an occupational disease claim.[14]

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.

[10] *See A.C.*, Docket No. 16-1587 (issued December 27, 2016).

[11] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[12] *See John W. Montoya*, 54 ECAB 306 (2003).

[13] *See C.P.*, Docket No. 17-0042 (issued December 27, 2016); *L.D.*, 59 ECAB 648 (2008). 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *See Paul Foster*, 56 ECAB 208 (2004).

[14] 20 C.F.R. §§ 10.5(q); 10.101; 10.116. *See P.M.*, Docket No. 15-1902 (issued January 28, 2016).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish a bilateral shoulder condition causally related to the February 10, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2017
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