

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, CA, Employer**

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**Docket No. 17-0206
Issued: May 24, 2017**

Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 8, 2016 appellant, through counsel, filed a timely appeal from a June 22, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 met his burden of proof to establish an occupational disease causally related to factors of his federal employment.

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

This case has previously been before the Board.³ The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 21, 2014 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained bulging discs in his neck and torn tendons in his right shoulder as a result of repetitive duties at work. He first became aware of his condition and realized its relation to his federal employment on March 27, 2014. Appellant noted that he was last exposed to the alleged employment factors on April 18, 2014.

Appellant provided a March 6, 2014 magnetic resonance imaging (MRI) scan report of the right shoulder, by Dr. Christian Neumann, a Board-certified diagnostic radiologist. Dr. Neumann noted that appellant had mild degenerative changes at the acromioclavicular joint and abnormal signal intensities on the articular surface of the supraspinatus tendon. He also observed partial tear articular surface of the distal supraspinatus tendon, full-thickness tear of the distal subscapularis tendon, anterior labral tear and degeneration, and partial thickness tear of the intra-articular portion with signs of tendinitis.

By letter dated May 5, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that appellant provide a detailed description of the employment-related activities he believed contributed to his condition and a medical report from a physician to establish a medical diagnosis causally related to his employment. Appellant was afforded 30 days to submit the additional evidence.

In response to OWCP's development letter, on May 30, 2014, appellant explained that his job duties of casing and carrying mail for 14 years contributed to his cervical and right shoulder conditions. He listed activities outside of employment as playing golf five or six times a year and gardening.

Appellant submitted a May 13, 2014 attending physician's report (Form CA-20) by Dr. Germaine J. Frid, a family practitioner. Dr. Frid indicated that appellant had a right shoulder tear with significant limitation. She checked a box marked "yes" that appellant's condition was caused or aggravated by his employment. Dr. Frid reported that appellant was totally disabled from March 27 to April 8, 2014. She authorized appellant to return to regular duty on April 9, 2014 and referred her for pain management treatment.

By decision dated July 21, 2014, OWCP denied appellant's occupational disease claim. It accepted that he worked as a letter carrier and was diagnosed with cervical and right shoulder conditions, but denied his claim finding insufficient medical evidence to establish that his conditions were causally related to his employment.

On August 21, 2014 OWCP received appellant's request for review of the written record by an OWCP hearing representative, which was postmarked August 19, 2014. Appellant resubmitted the March 6, 2014 right shoulder MRI scan report.

³ Docket No. 15-1732 (issued December 8, 2015).

OWCP also received additional medical evidence on August 22, 2014. A February 17, 2014 cervical MRI scan report from Dr. Neumann noted anatomical alignment of the vertebral bodies and disc space narrowing. Dr. Neumann determined that appellant had moderate bilateral foraminal narrowing at C3-4 and moderate-to-marked bilateral foraminal narrowing and slight effacement of the anterior surface at C5-6.

In an August 18, 2014 Family and Medical Leave Act (FMLA) form, Dr. Howard Baer, a Board-certified internist, indicated that appellant's condition began in February 2014 and that appellant was unable to perform his job duties due to his condition. He reported that appellant was examined at the pain clinic for complaints of pain with chronic, poorly controlled cervical neck, shoulder, and arm movement. Dr. Baer opined that appellant had chronic mild-to-low neck pain that was accompanied by radicular symptoms. He explained that, because conservative treatment and epidural injections were not helping appellant, he recommended possible cervical surgery intervention.

By decision dated February 19, 2015, OWCP's hearing representative affirmed the July 21, 2014 decision. It found that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and his federal employment.

On August 14, 2015 appellant filed an appeal to the Board. In a decision dated December 8, 2015, the Board affirmed the February 19, 2015 OWCP decision denying appellant's occupational disease claim.⁴

Appellant again requested reconsideration of the case on April 26, 2016.

In support of this request for reconsideration, OWCP received a March 8, 2016 medical report from Dr. James Bell, a Board-certified orthopedic surgeon. Dr. Bell related appellant's complaints of problems with his shoulder and neck for the past three years. He noted that appellant worked as a letter carrier for the past 16 years. Dr. Bell reviewed the medical treatment appellant had received and indicated that he still experienced pain and difficulty with use of his shoulder. Examination of appellant's right shoulder revealed tenderness in the subacromial region and some limitation with internal and external rotation on range of motion. Dr. Bell also reported some decreased strength over the deltoid and rotator cuff. Neurological examination revealed intact sensation in the right upper extremity. Dr. Bell indicated that inspection of appellant's neck revealed tenderness in the paraspinal muscles and some limitation with range of motion. He related that an MRI scan report showed a full thickness tear in the distal subscapularis tendon of appellant's right shoulder and some degenerative changes at C5-C6 of appellant's cervical spine.

Dr. Bell diagnosed rotator cuff tear arthropathy of the right shoulder and cervical spinal stenosis. He opined that it was "highly likely" that appellant's work directly contributed to his physical injuries with repetitive lifting, pushing, carrying, throwing, and lifting up to 75 pounds. Dr. Bell explained: "these were all effects of a cumulative trauma that have occurred probably within the years of his work. Chronic impingement in his shoulder can lead to the subcortical changes in the humeral head." He recommended that appellant undergo surgery.

⁴ *Id.*

By decision dated June 22, 2016, OWCP denied modification of the December 8, 2015 decision. It found that the medical evidence of record failed to establish a right shoulder condition causally related to factors of his federal employment. OWCP determined that Dr. Bell did not provide sufficient medical rationale to support his opinion on causal relationship.

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 evidence⁵ 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.⁶ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁹

ANALYSIS

Appellant alleged that he developed neck and right shoulder conditions causally related to his employment duties as a letter carrier. OWCP accepted appellant's employment duties and diagnosed cervical and right shoulder conditions, but it denied his claim due to insufficient medical evidence to establish causal relationship between appellant's employment and his diagnosed medical conditions. The Board finds that appellant has not met his burden of proof to establish cervical and right shoulder conditions causally related to factors his employment.

Following the Board's previous December 8, 2015 decision, appellant submitted a March 8, 2016 report by Dr. Bell. Dr. Bell noted that appellant worked as a letter carrier and related appellant's complaints of shoulder and neck symptoms for the past three years. He provided physical examination findings and diagnosed rotator cuff tear arthropathy of the right

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

shoulder and cervical spinal stenosis. Dr. Bell opined that it was “highly likely” that appellant’s work, specifically the duties of repetitive lifting, pushing, carrying, throwing, and lifting up to 75 pounds, had directly contributed to appellant’s physical injuries. He indicated that appellant’s symptoms were all effects of a cumulative trauma that have occurred “probably within the years of his work.” Dr. Bell explained that chronic impingement in a shoulder “can lead” to changes in the humeral head as well.

The Board finds that Dr. Bell’s opinion that it was “highly likely” that appellant’s injuries resulted from his federal employment was speculative in nature. An award of compensation, however, may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.¹⁰ Dr. Bell did not provide a definitive opinion relating appellant’s employment duties to his conditions, but merely remarked that appellant’s conditions “probably” developed from years at his work. His medical explanation remained vague when he described how chronic shoulder impingement “can lead” to humeral head changes. Dr. Bell did not conclusively explain how or why appellant’s letter carrier duties would have caused or contributed to his neck and shoulder conditions. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹¹ Dr. Bell’s opinion, therefore, is insufficient to establish appellant’s claim.¹²

On appeal counsel alleged that OWCP’s decision asked for “biomechanical causation, not medical causation,” which changed the burden of proof. The Board, however, has reviewed the evidence of record and finds that the medical evidence submitted by appellant failed to contain a reasoned medical opinion establishing a causal relationship between his employment and his medical condition. As previously noted, appellant’s burden of proof requires the submission of rationalized medical opinion evidence that is based on a complete factual and medical background, 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 employee.¹³ As appellant did not submit such rationalized medical opinion evidence in this case, OWCP properly found that appellant did not meet his burden of proof and appropriately denied his claim.

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 *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹¹ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² As the medical reports previously submitted by appellant were addressed in the Board’s December 8, 2015 decision, the Board’s findings regarding those medical reports are incorporated herein.

¹³ *Supra* note 8.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an occupational disease causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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