United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 18-0215**
	)	**Issued: June 13, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Millbrae, CA, Employer	)	

Appearances:
Appellant, pro se
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 7, 2017 appellant filed a timely appeal from an October 2, 2017 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral shoulder conditions causally related to the accepted factors of his federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 3, 2016 appellant, then a 53-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a left shoulder tear and tendinitis due to the duties of his federal employment. He stopped work on November 1, 2016.

In a statement dated December 2, 2016, appellant related that his federal employment duties included driving, carrying packages, and walking long hours at times while carrying a satchel on his shoulder weighing from 15 to 30 pounds. He contended that carrying this heavy weight caused pain in both shoulders. Appellant also noted that most of the houses he delivered to had more than 25 steps to the mailbox and that he had tripped multiple times on slippery surfaces and uneven sidewalks.

In an x-ray report dated April 1, 2016, Dr. David S. Marcus, a radiologist, diagnosed bilateral acromioclavicular joint greater than glenohumeral joint degenerative arthritis.

Appellant was treated by Dr. Alberto Bolanos, a Board-certified orthopedic surgeon. In an April 21, 2016 initial report, Dr. Bolanos noted that appellant had bilateral shoulder pain. He also discussed appellant's other medical conditions, including issues with his bilateral knees, left hip arthritis, and lumbar spondylosis.

In a May 7, 2016 magnetic resonance imaging (MRI) scan of appellant's left shoulder, Dr. Avanti Ambekar, a Board-certified radiologist found: (1) acromioclavicular joint arthritis and distal clavicle/acromion marrow edema with marked capsular hypertrophy; (2) moderate supraspinatus tendon thinning and partial articular-sided insertional tearing less than 50 percent thickness, small subacromial bursitis, greater tuberosity degenerative changes and subcortical edema; and (3) small tubular fluid extending into the subscapularis recess possibly through a sublabral sulcus, no definite tear.

In reports dated May 11 to November 9, 2016, Dr. Bolanos noted severe acromioclavicular joint arthrosis in appellant's left shoulder with moderate supraspinatus tendon thinning and partial articular-sided insertional tearing less than 50 percent thickness. He further noted small bursitis, greater tuberosity degenerative changes. Regarding the right shoulder he noted severe acromioclavicular joint arthrosis and severe distal supraspinatus tendon thinning with sit like full-thickness tendon tearing.

On November 14, 2016 Dr. Bolanos performed a left shoulder arthroscopic decompression and mini open rotator cuff repair, glenohumeral synovectomy, labral debridement, and distal clavicle resection. In a report following the surgery, he noted that a left shoulder arthroscopic subacromial decompression was performed, that intra-op findings showed a full-thickness rotator cuff tear, and that a mini open rotator cuff repair was performed.

By development letter dated December 15, 2016, OWCP informed appellant that further evidence was necessary to establish his claim, including a physician's opinion supported by a medical explanation as to how appellant's work activities caused, contributed to, or aggravated his medical condition. Appellant was afforded 30 days to submit the requested evidence.

In a December 23, 2016 report, Dr. Bolanos related that appellant had provided a very clear temporal correlation between his symptoms and employment activities. He opined that the occupational requirements created repetitive stress on the shoulder in question and were clear and strong indicators of the causation of his pathology.

By decision dated February 9, 2017, OWCP denied appellant's claim. It determined that the medical evidence of record did not demonstrate that the claimed medical condition was related to the established employment events.

On February 22, 2017 appellant requested an oral hearing before an OWCP hearing representative.

In a March 1, 2017 report, Dr. Bolanos indicated that appellant's symptoms were clearly related to his carrying a 25-pound satchel 10 to 12 hours a day, sometimes on stairs. He noted that appellant developed pain during that job activity, and that therefore causation had been established.

At the hearing held on August 29, 2017, an OWCP hearing representative noted that appellant was wearing a sling. Appellant testified that he had surgery on November 14, 2016, that he had not worked since that date, and that he was going to undergo another surgery. He stated that during his federal employment, he carried satchels weighing 30 to 35 pounds. Appellant noted that he fell many times delivering mail. The hearing representative explained to appellant that his physician had to submit a rationalized medical opinion establishing causal relationship.

After the hearing appellant resubmitted the December 23, 2016 report from Dr. Bolanos. Attached to this report was an Internet article on arthritis of the shoulder and a note from Dr. Bolanos' physician assistant.

By decision dated October 2, 2017, OWCP's hearing representative affirmed the February 9, 2017 decision denying appellant's claim. She determined that the medical evidence of record was insufficient to establish that appellant's employment duties caused or contributed to his bilateral shoulder arthritis and left rotator cuff tear.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, including the fact that the individual is an employee of the United States within the meaning of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

[2] *Id.*

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.[4] 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.[5]

Whether an employee sustained an injury requires the submission of rationalized medical opinion evidence.[6] 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 evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish his occupational disease claim as the medical evidence of record does not establish a causal relationship between the accepted employment factors and appellant's diagnosed medical conditions.

Appellant established the duties of his federal employment and also submitted evidence of medical diagnoses. However, he has failed to submit a rationalized medical opinion establishing that a medical diagnosis was causally related to the accepted duties of his federal employment.[9]

The reports of appellant's treating surgeon, Dr. Bolanos, do not meet appellant's burden of proof. Dr. Bolanos did not discuss appellant's employment factors or causal relationship until his December 23, 2016 report. In the December 23, 2016 report, he opined that there was a very clear temporal correlation between appellant's symptoms and his work-related activities. Dr. Bolanos noted that appellant's occupational requirements caused repetitive stress on appellant's shoulder. In a March 1, 2017 report, he noted that appellant's symptoms were clearly related to appellant carrying satchels weighing 25 pounds a day, sometimes on stairs. Dr. Bolanos explained that

[4] 20 C.F.R. § 10.5(q).

[5] *T.C.*, Docket No. 17-0872 (issued October 5, 2017).

[6] *See J.Z.*, 58 ECAB 388 (2008); *see also M.H.*, Docket No. 15-0849 (issued July 22, 2016).

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

[8] *James Mack*, 43 ECAB 321 (1991).

[9] *See S.M.*, Docket No. 17-1756 (issued February 20, 2018).

appellant's pain developed during the job-related activity, and that therefore causation was established. The conclusions of Dr. Bolanos regarding causal relationship were primarily conclusions that appellant developed his shoulder pain during the course of his federal employment. However, pain and/or discomfort is only considered a symptom, not a medical diagnosis.[10]

Moreover, Dr. Bolanos did not provide adequate medical rationale on causal relationship. His statement on causation failed to provide a sufficient explanation as to the mechanism(s) of injury pertaining to this occupational disease claim as alleged by appellant. Namely, Dr. Bolanos did not medically explain that appellant's city carrier duties caused or aggravated his bilateral shoulder conditions.[11] Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to his diagnosed condition, Dr. Bolanos' opinion on causal relationship is equivocal in nature and of limited probative value.[12] The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[13] Thus, Dr. Bolanos' report is insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is of limited probative value. The x-ray report of Dr. Marcus and the MRI scan report of Dr. Ambekar fail to offer a medical opinion with regard to how the factors of appellant's federal employment caused a medical condition.[14] Diagnostic reports which offer no opinion regarding causal relationship are of limited probative value.[15]

Finally, the Board notes that appellant submitted an Internet article with a handwritten note from a physician assistant for Dr. Bolanos. The Board has held that such articles lack evidentiary value as they are of general application and are not determinative of whether specific conditions are causally related to the particular employment factors of a claim.[16] The Board has held that reports by a physician assistant are not considered medical evidence as physician assistants are not considered physicians under FECA.[17]

[10] *See B.W.*, Docket No. 17-0005 (issued April 25, 2018).

[11] *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

[12] *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[13] 20 C.F.R. § 10.115(e). *See also L.R.*., Docket No. 16-1673 (issued February 20, 2018); *S.D.*, Docket No. 17-1873 (issued February 2, 2018).

[14] *E.C.*, Docket No. 17-1640 (issued January 25, 2018).

[15] *See G.H.*, Docket No. 17-1387 (issued October 24, 2017).

[16] *S.G.*, Docket No. 13-1263 (issued September 20, 2013).

[17] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8102(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice a defined by state law).

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[18] As appellant did not establish that his medical condition was causally related to the accepted factors of his federal employment, he did not meet his burden of proof.[19]

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 failed to meet his burden of proof to establish bilateral shoulder conditions causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 2, 2017 is affirmed.

Issued: June 13, 2018
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

[18] *D.D.*, 57 ECAB 734 (2006); *see also R.H.*, Docket No. 17-1141 (issued September 21, 2017).

[19] *F.P.*, Docket No. 15-1826 (issued December 16, 2015).