

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

_____)	
L.B., Appellant)	
)	
and)	Docket No. 18-0411
)	Issued: September 12, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Lawton, OK, 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 December 18, 2017 appellant filed a timely appeal from a July 19, 2017 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 the claim.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² The record on appeal includes evidence received after OWCP issued its July 19, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing evidence not before OWCP at the time of the July 19, 2017 decision for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 11, 2017 appellant, then a 59-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a left shoulder condition as a result of his federal employment duties. He first became aware of his condition on October 3, 2016 and that it was caused or aggravated by factors of his federal employment on March 27, 2017. Appellant noted that he had experienced left shoulder discomfort from time to time, but the shoulder pain was different after he returned to full-time work in October 2016 following knee surgery.

In an April 12, 2017 report, Dr. J. Arden Blough, a family practitioner, reported that appellant had worked for the employing establishment as a clerk for 13 years and as a letter carrier for the past 8 years. He listed appellant's employment duties and that such duties were performed approximately five to six hours per day, five days per week over the length of his career. Dr. Blough stated that appellant had developed severe pain in his left shoulder over time by the excess strain placed on his upper extremities by the repeated heavy lifting, carrying of mail, overhead work, and carrying a mailbag while delivering mail. He indicated that appellant initially presented to his primary care physician at Reynolds Army Community Hospital, Dr. Paul D. Maltino, an osteopath and Board-certified joint reconstructive specialist, on March 6, 2017. Dr. Blough noted that the x-rays of the left shoulder revealed degenerative joint disease of the left acromioclavicular joint and left glenohumeral joint. He also noted that a March 27, 2017 magnetic resonance imaging (MRI) scan of the left shoulder revealed a partial thickness articular surface tear of the distal supraspinatus tendon, moderate supraspinatus and infraspinatus tendinosis, moderate acromioclavicular (AC) arthrosis, and mild biceps long head tenosynovitis. Dr. Blough noted examination findings and obtained x-rays of the left shoulder. He diagnosed cumulative trauma to the left shoulder resulting in AC arthrosis, cumulative trauma to the left shoulder resulting in impingement syndrome, cumulative trauma to the left shoulder resulting in partial thickness tear of the supraspinatus tendon, cumulative trauma to the left shoulder resulting in supraspinatus and infraspinatus tendinosis, cumulative trauma to the left shoulder resulting in biceps long head tenosynovitis, and cumulative trauma to the left shoulder resulting in glenohumeral degenerative joint disease. Dr. Blough opined that appellant's conditions were both caused and accelerated by the continued performance of appellant's employment duties.

By development letter dated April 27, 2017, OWCP informed appellant that the evidence of record was insufficient to support his claim for a left shoulder condition. It advised appellant of the medical and factual evidence needed to establish his claim. OWCP provided a development questionnaire for appellant's completion and requested that he submit a response in order to substantiate the factual basis of his claim. OWCP asked appellant to provide detailed information concerning the job activities he believed contributed to his shoulder condition and to describe all activities outside his federal employment. It also asked him to be as precise as possible in quantifying the amount of time spent engaging in both employment-related and personal activities. OWCP afforded appellant 30 days to submit the requested evidence. No response was received.

In a separate letter of even date, OWCP requested that the employing establishment provide further information pertaining to appellant's occupational disease claim. It afforded appellant and the employing establishment 30 days for response.

On May 17, 2017 OWCP received the employing establishment's response to its questions. The employing establishment stated that appellant was required to lift trays ranging between 10 to 12 pounds, push a hamper with varying weight depending on the amount of parcels his route received for that day, and carry a mailbag which could weigh up to 70 pounds in addition to the amount of mail carried in his arm and hand. It added that appellant was also required to lift up to 40 pounds intermittently, twist up to two hours a day, push and pull approximately one hour a day, reach above shoulder for one hour a day, and drive a motor vehicle up to seven hours a day.

OWCP also received a duplicate copy of Dr. Blough's April 12, 2017 report, a copy of Dr. Blough's April 12, 2017 handwritten notes, and progress notes dated April 21 and June 21, 2017 from Kory Reed, PA-C, a certified physician assistant.

On June 13, 2017 Dr. Maltino reported that appellant had left shoulder pain daily for the last two or three years, but over time it had increased in severity and intensity. He provided examination findings and diagnosed a partial-thickness rotator cuff tear, moderate supraspinatus and infraspinatus tendinosis, moderate AC arthrosis, mild biceps tendinitis, and impingement. Dr. Maltino performed a steroid injection into the subacromial space and indicated, in a June 13, 2017 work status report, that appellant could return to work that day with no restrictions.

In a June 22, 2017 report, Dr. Maltino noted examination findings and diagnosed left shoulder impingement syndrome, partial rotator cuff tear, and improved biceps tendinitis status post steroid injections.

By decision dated July 19, 2017, OWCP denied appellant's claim as the evidence of record failed to establish that the occupational exposure occurred. It noted that appellant did not respond to the questionnaire provided in its April 27, 2017 development letter, which requested that he describe in detail the employment-related activities which he believed contributed to his condition. Therefore, the factual component of fact of injury has not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while 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 These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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 actually experienced the

³ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁴ Michael E. Smith, 50 ECAB 313 (1999).

employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition in the performance of duty.

The Board finds that appellant has not established the factual component of his claim as he failed to describe the job activities he believed contributed to his shoulder condition and the duration of such activities. It is appellant's burden of proof to establish the essential elements of his claim.⁷ To establish a claim for compensation in an occupational disease claim, an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition.⁸ Appellant has not provided sufficient detail to establish that an occupational exposure occurred as alleged. He did not adequately describe the circumstances of his injury, the duties he was performing which caused his injury, or the mechanism of injury.⁹

In a development letter dated April 27, 2017, OWCP requested that appellant respond to its questionnaire and provide detailed information concerning the job activities he believed contributed to his shoulder condition. While the employing establishment reported appellant's employment duties, there is no statement from appellant describing the specific employment-related activities, which he believed contributed to his condition and the amount of time he spent engaging in such activities.¹⁰ Absent this evidence, it cannot be determined whether the history of injury provided in the medical evidence of record corresponds with appellant's claimed injury.

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *Supra* note 3.

⁸ *D.M.*, Docket No. 18-0335 (issued June 18, 2018).

⁹ *Id.*

¹⁰ *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

The Board finds that the record lacks sufficient factual evidence to establish the specific details of how the claimed injury occurred. As appellant has not established the factual aspect of his claim, the medical evidence regarding causal relationship need not be addressed.¹¹

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 met his burden of proof to establish a left shoulder condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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

¹¹ See *V.F.*, 58 ECAB 321, 327 (2007).