

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

M.S., Appellant)	
)	
and)	Docket No. 18-1554
)	Issued: February 8, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Springfield, OR,)	
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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 10, 2018 appellant filed a timely appeal from an April 17, 2018 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 this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish an occupational disease in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 21, 2017 appellant, then a 65-year-old building equipment mechanic, filed an occupational disease claim (Form CA-2) for an unspecified injury or condition. He alleged that he was injured as a result of performing repetitive work including changing overhead lighting, pulling wires through conduits, and climbing ladders and steps while carrying heavy equipment in the performance of duty. Appellant noted that he first became aware of his condition on March 1, 2017 and realized its relation to his federal employment on March 8, 2017. He did not stop work.

An accident report form prepared by R.E., manager of maintenance, dated September 18, 2017, noted that appellant was hired on November 8, 1997. R.E. advised that, due to several years of replacing light ballasts, pulling wires through conduits, and other tasks in the performance of his maintenance job, appellant developed repetitive motion injuries to both shoulder, both knees, and his left ring finger.

In a statement dated September 20, 2017, appellant reported working for the employing establishment for 20 years. He noted that his job required kneeling while working on sinks, drains, repairing pallet jacks, tilters, compressors, air conditioners (roof top units), climbing and descending stairs, and carrying motors and fans for 36 roof top units. As a result, appellant's knees have locked up, given out, and become weaker. He indicated that in 2004 he had right shoulder surgery and in 2017 the condition returned and was now affecting both shoulders. Appellant reported that both shoulders catch when raising his hands above his head to work on ballasts for lighting, while pulling 200 feet of water and air hoses across the roof to clean the roof top units and while pulling heavy wires and cables through conduits for new or relocated power for machines.

In a development letter dated September 29, 2017, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim, including a detailed description and factual corroboration of the identified work factors, and a report from his physician explaining how and why those tasks would cause the claimed injuries. It also requested that he respond to a questionnaire to substantiate the factual elements of his claim. OWCP afforded appellant 30 days to provide the requested information. No further information was received by OWCP.

By decision dated October 30, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury or events occurred as alleged. It noted that appellant did not respond to OWCP's development letter of September 29, 2017.

On November 29, 2017 appellant requested a review of the written record by an OWCP hearing representative. In support of his request, he submitted an October 26, 2017 statement, indicating that an ultrasound of his left shoulder revealed a tear. On October 30, 2017 appellant reported this injury to his supervisor.

Appellant also submitted a report by Dr. Brick A. Lantz, a Board-certified orthopedist, of his treatment of appellant on November 13, 2017. Dr. Lantz noted that an ultrasound of the right shoulder revealed a ruptured long head of the biceps with probable partial thickness tearing of the supraspinatus and that the ultrasound of the left shoulder revealed subluxed biceps and tearing of the subscapularis superiorly. He advised that based on the x-rays and ultrasound reports he recommended surgical intervention. Appellant reported that his past work activities were a

significant factor in developing his shoulder problems. Dr. Lantz also indicated that there was a significant component of degeneration in the tendons.

By decision dated April 17, 2018, an OWCP hearing representative affirmed the October 30, 2017 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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 that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.⁵

An injury does not have to be confirmed by an eyewitness in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁶ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she had established a *prima facie* claim for compensation. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁷

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *See B.B.*, Docket No. 12-0165 (issued July 26, 2012); *Mary Jo Coppolino*, 43 ECAB 988 (1992).

⁷ *Id.*

⁸ *See Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *Supra* note 5.

rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.¹⁰

ANALYSIS

OWCP denied appellant's claim because he failed to establish that the claimed work events occurred as alleged. The evidence of record supports that his job duties required performing repetitive overhead tasks including installing ballasts for lighting, pulling water and air hoses across the roof to clean the roof top units, pulling heavy wires and cables through conduits for new or relocated power for machines, kneeling while working on sinks, drains, repairing pallet jacks, tilters, compressors, and air conditioners (roof top units), climbing and descending stairs, and carrying motors and fans from 36 roof top units. Specifically, appellant's manager, R.E. indicated in an accident report dated September 18, 2017, that on September 13, 2017, appellant was performing the regular duties required of his position including replacing light ballasts, pulling wire through conduits, and other tasks involved in the performance of his maintenance job. He further noted that after several years of performing his job duties he developed repetitive motion injuries to both shoulder, both knees, and left ring finger. On September 29, 2017 OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of statements provided on the CA-2; however, no additional evidence was submitted. The Board finds that the evidence is undisputed that appellant was performing his work duties as a building equipment mechanic which included performing repetitive activities using both shoulders and knees.

The Board further finds, however, appellant failed to submit sufficient medical evidence sufficient to establish that his diagnosed medical conditions are causally related to specific factors of his federal employment.

Appellant submitted a November 13, 2017 report from Dr. Lantz who noted the results of an ultrasound of the right shoulder revealed a ruptured long head of the biceps with probable partial thickness tearing of the supraspinatus. Dr. Lantz noted the ultrasound of the left shoulder revealed subluxed biceps and tearing of the subscapularis superiorly. He advised that based on the x-rays and ultrasound reports he recommended surgical intervention. Appellant reported that his past work activities were a significant factor in developing his shoulder problems. Dr. Lantz indicated that there was a significant component of degeneration in the tendons. However, this report is insufficient to establish the claim as he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether his condition was work related. To the extent that he is providing his own opinion, Dr. Lantz failed to provide a rationalized opinion regarding the causal relationship between appellant's bilateral shoulder condition and accepted factors of his federal employment.¹¹ Additionally, he attributed appellant's shoulder condition to a "significant component of degeneration."

¹⁰ *Id.*

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated a medical condition involving his bilateral shoulders, the Board finds that he has not met his burden of proof.

On appeal appellant contends that he submitted sufficient medical evidence to support that he developed bilateral shoulder conditions due to performing repetitive duties at work over 20 years. As noted above, the medical evidence of record contains insufficient rationale to meet appellant's burden of proof to establish causal relationship.

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 established factors of his federal employment. However, appellant has not met his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 8, 2019
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