

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

_____)	
J.A., Appellant)	
)	
and)	Docket No. 18-1681
)	Issued: February 26, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Milwaukee, WI, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 4, 2018 appellant, through counsel, filed a timely appeal from an August 8, 2018 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 has met his burden of proof to establish a left shoulder condition causally related to the accepted 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

On December 10, 2016 appellant, then a 54-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he began experiencing left shoulder pain in April 2016. He indicated that he noticed the pain while casing and loading parcels and trays of mail into the mail trucks. Appellant maintained that his pain was caused by a rotator cuff tear of the left shoulder and that he first realized his condition was caused or aggravated by his federal employment on May 20, 2016. He did not stop work.

By development letter dated December 22, 2016, OWCP advised appellant that additional evidence was needed to establish his occupational disease claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a December 29, 2016 narrative statement, appellant replied that he had worked as a rural carrier for 14 years and 11 months and experienced pain in his left shoulder on a few occasions. He specified that he was involved in a work-related accident on September 15, 2015, which caused a tear in his left rotator cuff.³ Appellant related that he carried a mailbag on his left shoulder to deliver mail to a group of apartments along his assigned route. He believed the weight from the mail, especially the *Shop Now* newspapers, were a factor in the cause of his shoulder pain. Appellant further indicated that he continued to work until April 20, 2016, when his pain became unbearable. He noted that his first cortisone shot was scheduled for May 2016.

In an undated narrative statement, appellant reiterated that he was involved in a work-related accident on September 15, 2015 in which he was struck on his left side and believed that this accident caused the left rotator cuff tear. He related that he received a cortisone injection on May 20, 2016 and continued to work until July 2016. Appellant was also treated with physical therapy on three occasions in August and September 2016 and also had one additional cortisone injection on September 26, 2016. He subsequently underwent surgery on December 20, 2016, performed by Dr. William Pennington, a Board-certified orthopedic surgeon, after a magnetic resonance imaging scan of his left shoulder revealed a complete tear of his left rotator cuff.

In a progress note dated November 14, 2016, Dr. Pennington noted that appellant was seen for evaluation of his left shoulder pain, which had been present for over one year. He related that appellant was in a work-related accident while delivering mail for the employing establishment on “September 15, 2016” when he was sideswiped by a cement truck while driving. Dr. Pennington further noted that appellant reported that he previously had problems with his left shoulder, but it was doing fine until the “September 15, 2016” accident.

In a December 15, 2016 report, Dr. Paul Robey, a Board-certified family practitioner, indicated that appellant had been under his care since September 17, 2015 for injuries sustained in a motor vehicle accident (MVA) on September 15, 2015. He diagnosed multiple contusions, a strain of the right upper arm, a left elbow contusion, a laceration of a finger on the right hand, a

³ Under File No. xxxxxx161, OWCP accepted the following conditions as causally related to the September 15, 2015 employment injury: strain of other muscles, fascia, and tendons at shoulder and upper arm level, right arm; unspecified multiple lacerations; contusion of the left elbow; open wound of the right hand; and lumbar sprain.

lumbar strain, rotator cuff syndrome of the left shoulder, and a complete tear of the left rotator cuff.⁴

By decision dated March 16, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed left rotator cuff tear and the accepted factors of his federal employment.

On April 13, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. He also submitted a June 9, 2017 report from Dr. Pennington, who had released him to work that day.

During the hearing held on August 10, 2017, appellant provided testimony and, at the conclusion of the hearing, the hearing representative indicated that she would hold the case record open for 60 days for the submission of additional evidence.

In response, appellant submitted a September 19, 2017 report from Dr. Robey who certified that appellant was under his care for a work-related MVA while driving a postal truck. Dr. Robey diagnosed left rotator cuff syndrome due to appellant's September 15, 2015 employment injury.

By decision dated October 25, 2017, OWCP's hearing representative affirmed the March 16, 2017 decision.⁵

Appellant subsequently submitted a February 19, 2018 report from Dr. Pennington, in which he opined that appellant had two percent permanent impairment of the left shoulder.

On May 15, 2018 appellant, through counsel, requested reconsideration of OWCP's October 25, 2017 decision and submitted a report from Dr. Pennington dated February 22, 2018 where he reiterated the two percent impairment rating of appellant's left shoulder. In an addendum report dated February 19, 2018, Dr. Pennington indicated that regarding appellant's first visit there was an error in his office visit dictation. He clarified that appellant was first seen in his office on November 14, 2016 and the date of the original injury was September 15, 2015, which was dictated incorrectly.

By decision dated August 8, 2018, OWCP denied modification of its prior decision. It found that the evidence of record was insufficient to modify the October 25, 2017 decision as it failed to list the specific work duties that caused or aggravated the diagnosed left rotator cuff tear. OWCP noted that Dr. Pennington had indicated that the left shoulder condition was caused by a MVA on September 15, 2015, but that injury had already been assigned to File No. xxxxxx161. Moreover, Dr. Pennington had not described appellant's specific work duties that caused or aggravated his left shoulder rotator cuff tear.

⁴ Although the report contained the words "continued on other side," the remainder of the report is not found in the record as transmitted to the Board on appeal.

⁵ On January 10, 2018 counsel filed a timely appeal from the October 25, 2017 decision. On March 20, 2018 appellant requested that the appeal be dismissed. In an April 19, 2018 order, the Board granted appellant's request for dismissal of his appeal. *Order Dismissing Appeal*, Docket No. 18-0498 (issued April 19, 2018).

LEGAL PRECEDENT

A claimant 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, 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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 evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be 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 claimant.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

In their reports, Drs. Pennington and Robey provided medical diagnoses, but failed to provide an opinion causally relating those diagnoses to the accepted factors of his federal employment. Both Dr. Pennington and Dr. Robey referenced appellant's claim for a September 15, 2015 employment injury that OWCP had been previously assigned File No. xxxxxx161. However, but they both failed to provide an opinion as to how the accepted employment factors of casing mail, loading parcels and trays of mail into mail trucks, and carrying a mailbag on the left shoulder had caused or aggravated the diagnosed conditions of left rotator cuff tear and left rotator cuff syndrome. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ To the extent that these reports can be read to contain an opinion on the issue of causal relationship, they are still deficient as they contain no rationale as to how the accepted factors of federal employment caused the diagnosed condition. The Board has held that

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

⁷ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ See *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *I.J.*, 59 ECAB 408 (2008).

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁰ These reports, therefore, are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence from a physician to support his claim that he developed a left shoulder condition causally related to the accepted employment factors, he has not met his burden of proof to establish.

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 causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).