

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

---

**B.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Ozark, AL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 18-1394  
Issued: January 10, 2019**

*Appearances:*  
*Appellant, pro se*  
*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 July 9, 2018 appellant filed a timely appeal from a June 11, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty, as alleged.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 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 April 6, 2018 appellant, then a 64-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging an employment-related injury due to performing his work duties over a period of time. Regarding the relationship of the claimed injury to his employment, he asserted that he constantly used his right arm and shoulder to case mail and that reaching his right arm out to mailboxes had steadily become more painful over the last couple of months. Appellant alleged that his symptoms only flared up when he performed his job “over and over” for long periods of time. He expressed his belief that his right shoulder pain was connected to a problem with his right rotator cuff. Appellant indicated that he first became aware of his claimed condition on February 17, 2018 and first realized on March 23, 2018 that it was caused or aggravated by his federal employment. He did not stop work.

On the reverse side of the Form CA-2 appellant’s immediate supervisor indicated that appellant first reported his claimed condition to him on April 6, 2018. He noted that appellant had issues with right shoulder pain and had been taking some leave from work to undergo therapy.<sup>3</sup> The supervisor further advised that appellant had not experienced any changes to his normal duties as a rural carrier and that he had cased and carried mail on a regular basis without “missing any time directly.”

In an April 20, 2018 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician’s opinion supported by a medical explanation as to how the reported employment-related exposures contributed to his claimed condition. It requested that he complete and return an attached questionnaire, which posed various questions regarding the employment-related exposures, which he believed contributed to his claimed condition. OWCP afforded appellant 30 days to submit a response.

Appellant submitted an April 26, 2018 report from Dr. Rifat Parwaiz, an attending Board-certified family practitioner, who noted that appellant was a “workman comp[ensation] patient” presenting for a clearance physical examination in connection with upcoming right shoulder surgery. Dr. Parwaiz noted that appellant had sustained a right shoulder tear and listed appellant’s date of injury as February 17, 2018. He reported the findings of his April 26, 2018 physical examination, indicating that appellant had a positive finding of right shoulder pain with no arthritis, joint deformity, or swelling noted.<sup>4</sup> Dr. Parwaiz diagnosed encounter for other procedural examination (primary), encounter for preprocedural respiratory examination, and other pulmonary collapse.

In a postal form entitled, “Accident Report,” which was received by the employing establishment’s injury compensation office on April 23, 2018, appellant’s immediate supervisor indicated that appellant reported that he had been experiencing some discomfort and pain in his right shoulder while casing mail and, at times, while delivering mail into curbside boxes on his

---

<sup>3</sup> The supervisor indicated that appellant’s pain had not subsided and that appellant recently underwent a magnetic resonance imaging scan to determine the cause of the pain.

<sup>4</sup> Dr. Parwaiz noted that appellant had a history of right lung collapse and he reported the findings of the respiratory examination he conducted.

mail delivery route. Appellant also reported that engaging in repeated motions at work had created a “cumulative effect on his right shoulder and possible rotator cuff problem.”<sup>5</sup>

By decision dated June 11, 2018, OWCP denied appellant’s claim for an employment-related occupational condition. It determined that appellant’s claim was denied because the evidence of record was insufficient to establish that the claimed employment injury or events occurred as described. OWCP noted that appellant had not responded to the April 20, 2018 development letter.<sup>6</sup>

### **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 timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>7</sup> To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.<sup>8</sup> An employee must also establish that such event, incident, or exposure caused an injury.<sup>9</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>10</sup>

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.<sup>11</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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

---

<sup>5</sup> The form identified the cause of the injury as “repetitive motions” and listed a date of injury of March 29, 2018.

<sup>6</sup> OWCP further noted that, even if appellant had established the factual aspect of his claim, Dr. Parwaiz’ April 26, 2018 report would not establish the medical aspect of his claim because Dr. Parwaiz did not relate the denoted right shoulder tear to appellant’s work activities.

<sup>7</sup> 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

<sup>9</sup> *Id.*

<sup>10</sup> *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>11</sup> 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>12</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.<sup>13</sup> 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 established employment factors.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the alleged employment factors occurred as alleged. However, the Board further finds that appellant has not established an injury causally related to the accepted factors of his federal employment.

On April 6, 2018 appellant filed an occupational disease claim alleging an employment-related injury due to performing his duties as a rural carrier over a period of time. He asserted that he constantly used his right arm and shoulder to case mail and that reaching his right arm out to mailboxes had steadily become more painful over the last couple of months. Appellant indicated that he first became aware of his claimed condition on February 17, 2018 and first realized on March 23, 2018 that it was caused or aggravated by his employment. By decision dated June 11, 2018, OWCP denied appellant's claim because he failed to establish the factual component of fact of injury.

The Board first finds that appellant did, in fact, establish employment factors, in the form of casing and delivering mail, in connection with his claim for an employment-related right shoulder injury. Appellant consistently implicated his rural carrier duties of casing mail with his right arm and reaching out with his right arm to place mail into mailboxes on his mail delivery route. He discussed these work duties in the April 6, 2018 Form CA-2 effectuating his occupational disease claim and also implicated these same work duties in communications with his immediate supervisor as evidenced in an accident report from April 2018.<sup>15</sup> Appellant's claim of sustaining a right shoulder injury due to casing and delivering mail is consistent with the content of the April 26, 2018 report of Dr. Parwaiz, an attending physician. Although Dr. Parwaiz did not list specific work duties implicated by appellant, he did indicate that appellant's treatment was

---

<sup>12</sup> *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>14</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>15</sup> In this document, appellant's immediate supervisor indicated that appellant reported that he had been experiencing some discomfort and pain in his right shoulder while casing mail and, at times, while delivering mail into curbside boxes on his mail delivery route. The document mentions a date of injury of March 29, 2018, but reading the document in its entirety reveals that appellant had reported right shoulder symptoms which he related to performing his work duties over a period of time. Moreover, on the reverse of appellant's Form CA-2, the supervisor acknowledged that appellant cased and carried mail on a regular basis and that he had reported having right shoulder problems.

related to a workers' compensation claim and involved the right shoulder. For these reasons, the Board finds that appellant's statements regarding his claimed employment factors are consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>16</sup> There are no inconsistencies in the evidence of record which would be sufficient to cast serious doubt upon the validity of appellant's claim.<sup>17</sup>

The Board further finds that appellant's claim is denied because he failed to submit medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the established employment factors, *i.e.*, casing and delivering mail over a period of time.<sup>18</sup> The only medical report of record is Dr. Parwaiz' April 26, 2018 report. However, this report is of no probative value in establishing appellant's claim for an employment-related occupational condition because Dr. Parwaiz did not provide an opinion that appellant sustained a medical condition due to the now-accepted employment factors of casing and delivering mail. Dr. Parwaiz mentioned a right shoulder tear, but he did not identify the cause of the condition. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>19</sup>

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 an injury causally related to the accepted factors of his federal employment.

---

<sup>16</sup> *M.J.*, Docket No. 17-1810 (issued August 3, 2018) (finding that, in order to establish the fact that an employee sustained an injury in the performance of duty, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action).

<sup>17</sup> *D.B.*, Docket No. 17-2009 (issued March 22, 2018) (finding that an employee's burden of proof to establish the occurrence of an injury is not met when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim).

<sup>18</sup> *See supra* notes 12 through 14.

<sup>19</sup> *See T.H.*, Docket No. 18-0704 (issued September 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 10, 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