

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

_____)
B.H., Appellant)
)
and)
) **Docket No. 18-1693**
) **Issued: July 20, 2020**
U.S. POSTAL SERVICE, DALLAS NETWORK)
DISTRIBUTION CENTER, Dallas, TX,)
Employer)
_____)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 7, 2018 appellant filed a timely appeal from an August 9, 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the August 9, 2018 decision, OWCP received additional evidence. 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.*

ISSUE

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

FACTUAL HISTORY

On January 13, 2017 appellant then a 64-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed a bilateral shoulder condition due to factors of his federal employment, including repetitively lifting non-machinable objects (NMO). He first became aware of his condition on May 9, 1990 and realized that it was causally related to his federal employment on December 18, 2016. Appellant retired on January 27, 2017.

In an undated statement, appellant noted that he had worked as a mail handler for 31 years lifting NMO's that weighed between 70 and 110 pounds for 8 to 10 hours a day, up to 6 days a week. In approximately 1990, he had begun experiencing difficulties with his left shoulder and underwent six weeks of physical therapy. Appellant indicated that OWCP has assigned the claim OWCP File No. xxxxxx870.³ On or about December 1, 2016, he had begun experiencing bilateral shoulder numbness. Appellant noted, "I believe the lifting of all these packages has caused the reagravation of my left shoulder and the injury and numbness to my right shoulder.

In a development letter dated February 22, 2017, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical information, including a report from a physician explaining how employment activities either caused or aggravated a diagnosed medical condition. OWCP also requested that appellant respond to a questionnaire to substantiate the factual elements of his claim. It afforded him 30 days to submit the necessary evidence.

Subsequently, OWCP received a February 17, 2017 magnetic resonance imaging (MRI) scan of the right shoulder, which revealed moderate acromioclavicular (AC) arthrosis, a possible underlying partial tear without tendon retraction, strain and tendinosis of the infraspinatus, scapularis tendinosis, and subacromial subdeltoid fluid due to possible underlying bursitis. A February 17, 2017 MRI scan of the left shoulder revealed moderate AC arthrosis, a possible full-thickness tear of the supraspinatus tendon, infraspinatus and subscapularis tendinosis, and possible underlying superior labral tear. An x-ray of the left shoulder also dated February 17, 2017 revealed moderate AC osteoarthritis and an x-ray of the right shoulder of even date revealed moderate AC joint space narrowing.

By decision dated April 27, 2017, OWCP denied appellant's occupational disease claim. It accepted that the employment factors identified as causing his condition had occurred as alleged. OWCP found, however, that appellant had not submitted medical evidence containing a diagnosis causally related to the accepted employment factors, and thus the requirements had not been met to establish an injury as defined by FECA.

³ In an internal memorandum dated February 17, 2017, OWCP indicated that it found no other case files for appellant.

Thereafter, appellant submitted a December 19, 2016 report from Dr. Rory Allen, an osteopath specializing in family medicine. Dr. Allen evaluated him for a bilateral shoulder condition. He obtained a history of appellant injuring one or both shoulders in May 1990 and noted the condition had resolved until a few months ago, when he had “aggravated both shoulders” resulting in pain, loss of motion, and reduced strength. Dr. Allen described appellant’s work duties, noting that his job required constant lifting of NMOs weighing between 70 and 115 pounds, 8 to 10 hours a day, up to 6 days a week. He diagnosed bilateral shoulder internal derangement.

On April 18, 2017 Dr. Christopher Chun, a Board-certified anesthesiologist, evaluated appellant for bilateral shoulder pain. He noted that appellant had experienced an employment injury on May 9, 1990. On examination Dr. Chun found pain on palpation of the bilateral shoulders, limited range of motion, and intact sensation and strength in the upper and lower extremities. He diagnosed other specific joint derangement of both shoulders and recommended a right shoulder joint block and arthrogram.

On July 6, 2017 appellant requested reconsideration.

With his request, appellant submitted a December 1, 2016 unsigned report from a rehabilitation facility which indicated that he had sustained injuries on May 9, 1990 and December 1, 2016 and had developed an occupational disease due to factors of his employment as a mail handler.

By decision dated August 4, 2017, OWCP denied modification of its April 27, 2017 decision.

OWCP thereafter received progress reports from Dr. Allen dated March 1 to September 21, 2017. Dr. Allen provided findings on examination and diagnosed bilateral shoulder internal derangement.

On May 31, 2017 Dr. Chun treated appellant for bilateral shoulder pain and noted appellant’s prior shoulder claim. He found pain on palpation of the bilateral shoulders and limited bilateral shoulder motion due to pain. Dr. Chun diagnosed other specific joint derangement of the left and right shoulders.

On September 25, 2017 appellant, through his representative, requested reconsideration.

By decision dated December 20, 2017, OWCP denied modification of its August 4, 2017 decision.

OWCP received February 1 through September 21, 2017 progress reports from Dr. Allen, who diagnosed bilateral shoulder internal derangement. On December 21, 2017 and February 22, 2018 Dr. Allen advised that OWCP had previously accepted that appellant sustained bilateral shoulder pathology. He noted that, as a result of his prior condition, repetitive job duties, and altered shoulder mechanics, he had developed bilateral shoulder internal derangement, left shoulder rotator cuff tear, bilateral shoulder impingement syndrome, and bilateral tendinosis directly associated with his approved shoulder claim. Dr. Allen opined that appellant’s accepted internal derangement of the bilateral shoulders had worsened with time and was “directly attributed

to his previously work requirements...” He requested that OWCP expand acceptance of the claim to include bilateral shoulder derangement.

In his reports, Dr. Allen incorporated a report dated May 4, 2017 from Dr. Chun. Dr. Allen noted that he had consulted with Dr. Chun and concluded that appellant had “bilateral shoulder internal derangement directly associated with his approved shoulder claim that was closed. Due to repetitive work demands his condition has worsened over time...”

In progress reports dated January 18 to May 17, 2018, Dr. Allen provided examination findings of tenderness to palpation around the AC joint bilaterally and a positive Hawkins’ test bilaterally. He diagnosed bilateral shoulder internal derangement.

On May 9, 2018 Dr. Allen discussed appellant’s history of performing heavy and repetitive lifting as a mail handler for 31 years. He noted that he had not experienced shoulder problems prior to his employment. Dr. Allen advised that OWCP had accepted a May 1990 claim for bilateral shoulder pathology. Appellant’s symptoms had resolved until December 2016, when he sustained an aggravation of his condition due to altered shoulder mechanics and repetitive work duties. Dr. Allen diagnosed bilateral shoulder internal derangement, left shoulder rotator cuff tear, bilateral shoulder impingement syndrome, and bilateral shoulder tendinosis. He opined that appellant had bilateral shoulder internal derangement “directly from his accepted claim that has worsened over time.”

On May 11, 2018 appellant requested reconsideration. He submitted an amended notice of occupational disease claim (Form CA-2) dated May 7, 2018, noting that he first became aware of his illness on December 1, 2016 and realized it was caused or aggravated by factors of his federal employment on December 19, 2016.

By decision dated August 9, 2018, OWCP denied modification of the December 20, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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 period of FECA,⁵ 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

⁴ *Id.*

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁶ 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.⁷

In an occupational disease claim, appellant's burden requires submission of 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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹⁰

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

The record reveals that appellant had previously filed a claim for a right shoulder condition in 1990, to which OWCP assigned File No. xxxxxx870. The medical evidence submitted by appellant in support of his present bilateral shoulder injury claim made several references to the prior 1990 claim.

In this regard, on December 19, 2016 Dr. Allen advised that appellant had a prior history of injuring one or both shoulders in May 1990 which had resolved until a few months earlier when he had aggravated his shoulders bilaterally. He noted that appellant lifted packages at work

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹¹ *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

weighing 70 to 115 pounds every day and up to six days a week. Dr. Allen diagnosed internal derangement of the bilateral shoulders.

On December 21, 2017 and February 22, 2018 Dr. Allen again indicated that OWCP had previously accepted that appellant had a bilateral shoulder condition. He diagnosed bilateral shoulder internal derangement, a left shoulder rotator cuff tear, bilateral shoulder impingement syndrome, and bilateral tendinosis causally related to his prior condition, repetitive work duties, and altered shoulder mechanics. Dr. Allen opined that appellant's accepted internal derangement of the bilateral shoulders had worsened with time due to the requirements of his employment and requested that OWCP expand acceptance of the claim to include bilateral shoulder derangement. He advised that in consultation with Dr. Chun, they both found bilateral shoulder derangement due to an accepted employment injury that had worsened with time due to appellant's repetitive employment duties.

In a report dated May 9, 2018, Dr. Allen again noted that OWCP had accepted appellant's claim for a bilateral shoulder condition in 1990, and that his symptoms had resolved until December 2016, when he had sustained an aggravation of his condition due to altered shoulder mechanics and repetitive work duties. He diagnosed bilateral shoulder internal derangement, left shoulder rotator cuff tear, bilateral shoulder impingement syndrome, and bilateral shoulder tendinosis.

In an April 18, 2017 report, Dr. Chun diagnosed other specific joint derangement of the bilateral shoulders. He noted that appellant had a history of a May 9, 1990 employment injury. On May 31, 2017 Dr. Chun again diagnosed other specific joint derangement of the bilateral shoulders and indicated that appellant had a prior accepted claim.

OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.¹² Its procedures further provide for combining case files where correct adjudication depends on cross-referencing between files.¹³ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.¹⁴

It is apparent that appellant had a prior claim for shoulder injury with OWCP under File No. xxxxxx870. However, as was noted above, following an internal search OWCP determined that there were no prior claims for appellant. The Board concludes that, as appellant has provided OWCP's file number, coupled with the reports by his attending physicians who referenced a prior OWCP shoulder claim with the corresponding claim number, the claim existed and was either closed and/or deleted by OWCP. As such it has not been administratively combined with the present file. The Board finds, therefore, that it is unable to review all of the factual and medical

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management-Doubling Case Files*, Chapter 2.400.8(c) (February 2000). See *M.M.*; Docket No. 17-1150 (issued January 26, 2018); *D.C.*, Docket No. 17-0538 (issued June 27, 2017).

¹³ *Id.*

¹⁴ *Id.* at Chapter 2.400.8(c)(1); see also *M.M.*, *supra* note 12.

evidence under OWCP File No. xxxxxx870, which relates to a similar condition and the same bodily member that is contested in the present claim.

For a full and fair adjudication, the case must be remanded to OWCP to either administratively combine the current claim file, OWCP File No. xxxxxx853, with the closed/deleted file, OWCP File No. xxxxxx870,¹⁵ or to properly assemble and reconstruct OWCP File No. xxxxxx853 to include the factual and medical evidence from OWCP File No. xxxxxx870. Following this and other such further development as it may deem necessary, OWCP shall issue a *de novo* decision on the issue of whether appellant has established a bilateral shoulder condition causally related to the accepted factors of his federal employment or that his previously accepted claim should be expanded to accept the additional diagnosed shoulder conditions.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 20, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *W.L.*, Docket No. 19-0396 (issued May 18, 2020); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).