United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
	)	
and	)	**Docket No. 20-1426**
	)	**Issued: March 8, 2021**
U.S. POSTAL SERVICE, VEHICLE MAINTENANCE FACILITY, Canton, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 13, 2020 appellant filed a timely appeal from a January 29, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 January 29, 2020 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.

ISSUE

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

FACTUAL HISTORY

On August 7, 2018 appellant, then a 55-year-old automotive technician, filed an occupational disease claim (Form CA-2) alleging that he sustained an "occupational stress" injury due to factors of his federal employment, including setting up trucks on racks and working in front of and above head 95 percent of the workday. He further indicated that he performed stretching, pulling, and pushing motions while repairing postal trucks and used his arms, hands, and tools to remove worn out components of the trucks. Appellant noted that he first became aware of his condition on February 14, 2018 and first realized it was caused or aggravated by his employment on July 17, 2018. He did not stop work.

By development letter dated August 29, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of his claimed injury and requested a narrative medical report from his treating physician, which contained a detailed description of findings and diagnoses, explaining how his work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a September 18, 2018 authorization for examination and/or treatment (Form CA-16) completed by the employing establishment.

In a September 18, 2018 attending physician's report (Form CA-20), Dr. Brian Blake, a Board-certified orthopedic surgeon, diagnosed a supraspinatus tear in the right shoulder with impingement syndrome. He checked a box marked "Yes" to indicate its opinion that appellant's condition was caused or aggravated by his federal employment and noted that his condition "could be aggravated by employment."

In response to OWCP's development questionnaire, appellant submitted an undated statement in which he indicated that he had worked in his job for the past 10 years for anywhere from 40 to 56 hours per week. He explained that, due to the age of the tools he worked with and the majority of the fleet of vehicles he performed maintenance on, he was required to push and pull with his arms and shoulders. Appellant asserted that a lot of the equipment was rusted, which caused them to become extremely difficult to remove. The tools slipped due to age, which would cause a sudden shock to his arms. Appellant further noted that he removed and installed components that would weigh up to 100 pounds or more. He alleged that repetitive activities such as reaching, stretching, pulling, pushing, and twisting all contributed to his injury.

By decision dated November 5, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted factors of his federal employment.

On January 2, 2019 appellant requested reconsideration of OWCP's November 5, 2018 decision.

Appellant submitted additional medical evidence. In a November 30, 2018 medical report, Dr. Blake diagnosed a strain of the muscles and tendons of the rotator cuff of the right shoulder. He noted appellant's employment duties and opined that it was likely that his rotator cuff tear developed from his repetitive work activities. Dr. Blake recommended that appellant undergo a rotator cuff repair and subacromial decompression to treat his condition.

In a December 3, 2018 Form CA-20, Dr. Blake diagnosed a supraspinatus tear of the right shoulder with impingement syndrome and checked a box marked "Yes" to indicate his opinion that appellant's condition was caused by the repetitive activities involved in his federal employment.

By decision dated February 5, 2019, OWCP denied modification of its November 5, 2018 decision.

By letter dated May 7, 2019, appellant requested reconsideration of OWCP's February 5, 2019 decision.

In a July 6, 2018 medical report, Dr. Blake observed that appellant underwent an x-ray scan of his right shoulder that revealed acromioclavicular joint arthritis. He diagnosed impingement syndrome of the right shoulder and referred appellant for a magnetic resonance imaging (MRI) scan for further evaluation.

On July 17, 2018 Dr. Blake evaluated appellant for continuing right shoulder pain. On review of a July 12, 2018 right shoulder MRI scan he diagnosed impingement syndrome of the right shoulder and a strain of the muscles and tendons of the right rotator cuff. Dr. Blake commented that the July 12, 2018 MRI scan revealed severe acromioclavicular joint arthritis as well as a full-thickness tear of the anterior supraspinatus tendon. He opined that there may be partial thickness tearing of the upper subscapularis tendon.

Appellant also submitted additional pages of Dr. Blake's November 30, 2018 medical report where he was evaluated for right shoulder pain. Dr. Blake indicated that appellant underwent an MRI scan on July 12, 2018, which revealed a full-thickness tear of the distal supraspinatus tendon and likely a high-grade partial tearing of the upper subscapularis tendon. He also noted impingement and acromioclavicular degenerative changes.

By decision dated July 24, 2019, OWCP denied modification of its February 5, 2019 decision.

On November 1, 2019 appellant requested reconsideration of OWCP's February 5, 2019 decision.

Appellant submitted additional medical evidence. In a September 10, 2019 medical report, Dr. Mark Shepard, a Board-certified orthopedic surgeon, evaluated appellant for his right shoulder injury and reviewed his prior diagnostic reports concerning his right shoulder injury. He diagnosed a sprain of the right rotator cuff capsule, a superior glenoid labrum lesion of the right shoulder and

impingement syndrome of the right shoulder. Dr. Shepard explained that appellant's job required repetitive overhead activities including wrenching and lifting. He opined that the repetitive reaching and overhead lifting caused appellant's rotator cuff tear.

By decision dated January 29, 2020, OWCP denied modification of its July 24, 2019 decision.

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,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[9]

---

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

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

[5] *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).

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *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).

[7] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[9] *Id*.; *Victor J. Woodhams*, *supra* note 6.

ANALYSIS

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

In a September 10, 2019 medical report, Dr. Shepard, a Board-certified orthopedic surgeon, evaluated appellant for his right shoulder injury and reviewed his prior diagnostic reports concerning his right shoulder injury. He diagnosed a sprain of the right rotator cuff capsule, a superior glenoid labrum lesion of the right shoulder and impingement syndrome of the right shoulder. Dr. Shepard explained that appellant's job required repetitive overhead activities including wrenching and lifting. He opined that the repetitive reaching and overhead lifting caused appellant's rotator cuff tear.

Dr. Shepard is a Board-certified physician who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship who explained that the mechanism of appellant's injury supports the diagnoses he had made following review of the medical record. Although his opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require that OWCP further develop the medical evidence in the claim.[10]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation and OWCP shares responsibility in the development of the evidence to see that justice is done.[11]

The case shall, therefore, be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that articulated by Dr. Shepard. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.[12]

CONCLUSION

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

---

[10] *See E.G.*, Docket No. 19-1296 (issued December 19, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[12] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2020 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: March 8, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board