

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD D. SIMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Ashland, MA

*Docket No. 02-623; Submitted on the Record;
Issued July 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his shoulder in the performance of duty.

On September 13, 2001 appellant, then a 57-year-old letter carrier, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that on March 12, 2001 he became aware of a "sore shoulder"; and on March 21, 2001 he realized that the pain was "due to weight in mailbag." On the reverse of the form, appellant's supervisor indicated that appellant did not stop working.

Evidence accompanying the claim consists of a medical report from Dr. David R. Fabian, a Board-certified orthopedic surgeon, dated August 27, 2001. Dr. Fabian opined that appellant has a rotator cuff tendinitis. Appellant also forwarded office medical notes dated April 12 and May 31, 2001, signed by Dr. Paul J. Wright, a Board-certified internist, who diagnosed appellant's condition as subrachial bursitis. He also noted that appellant's injury was work related. Finally, appellant submitted a physical therapy report, dated September 17, 2002, and signed by Brandon Partenza.

In a letter dated October 9, 2001, the Office of Workers' Compensation Programs advised appellant that the information submitted in his claim was insufficient to determine whether he was eligible for benefits under the Federal Employees' Compensation Act.¹ The Office advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was directed to provide a comprehensive medical report from his treating physician.

¹ 5 U.S.C. §§ 8101-8193.

In response to the Office's letter, appellant submitted a personal statement in which he answered the questions posed in the Office's October 9, 2001 letter. He also submitted copies of the previously filed medical and physical therapy reports.

Appellant also submitted a second, undated personal statement, and again forwarded copies of the previously filed medical and physical therapy reports. The Office received these documents on October 31, 2001.

By decision dated November 13, 2001, the Office denied appellant's claim. The Office found that the medical evidence was insufficient to establish that appellant's shoulder condition was caused by employment factors.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.² These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 of the disease or condition; and (3) medical evidence establishing that the employment factors identified by claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

In the instant case, appellant has attributed his shoulder condition to factors of his job as a letter carrier in the course of his federal employment; however, there is insufficient evidence to establish that his shoulder condition is due to factors of his employment. The August 27, 2001 report from Dr. Fabian diagnosed appellant's condition as rotator cuff tendinitis; however, he did not provide a medical opinion as to how appellant's condition was caused or aggravated by his work activities. Likewise, Dr. Wright diagnosed appellant's condition as subrachial bursitis. While he noted that appellant's condition was work related, he did not explain how appellant's work activities caused or aggravated appellant's condition.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Further, a physical therapist is not considered to be a physician under the provisions of the Act, and is not competent to render a medical opinion.⁴ Therefore, the physical therapist report from Brandon Partenza is of no probative medical value.

As noted above, part of the burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.

The decision of the Office of Workers' Compensation Programs dated November 13, 2001 is hereby affirmed.

Dated, Washington, DC
July 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See 20 C.F.R. § 8101(2); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).