United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 12-155**
	)	**Issued: May 8, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Middletown, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 31, 2011 appellant filed a timely appeal from an October 7, 2011 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on August 27, 2011.

FACTUAL HISTORY

On August 27, 2011 appellant, then a 50-year-old mail processing clerk, filed a Form CA-1 for traumatic injury, alleging that he dislocated his right shoulder that day after he tossed a bundle of advertising mail into a hamper. An August 27, 2011 emergency department note

[1] 5 U.S.C. § 8101 *et seq.*

diagnosed right shoulder sprain and recommended limited duty.[2] Appellant was placed on modified assignment effective September 15, 2011.

OWCP informed appellant in a September 7, 2011 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a medical report from a qualified physician explaining how the August 27, 2011 employment incident caused or contributed to a diagnosed condition.

Appellant specified in a September 16, 2011 statement that he experienced right shoulder pain and momentary numbness after he tossed a 15-pound bundle of advertising mail approximately 10 feet into a hamper on August 27, 2011.

In an August 31, 2011 report, Dr. Anthony J. Checroun, a Board-certified orthopedic surgeon, remarked that appellant was throwing 10-pound bundles at work on August 27, 2011 when he experienced right shoulder symptoms. On examination, he observed greater tuberosity tenderness and pain elicited during range of motion (ROM) maneuvers. Prior x-rays exhibited two metal anchors in the right proximal humerus related to biceps tenodesis and arthroscopic subacromial decompression in 2005. Dr. Checroun diagnosed right shoulder strain and possible rotator cuff tear and proscribed lifting, pushing, pulling and any overhead motion on the job.[3]

In a September 14, 2011 follow-up report, Dr. Checroun reexamined appellant's right shoulder and found greater tuberosity tenderness, pain elicited during ROM maneuvers and supraspinatus weakness. He diagnosed right shoulder strain and possible rotator cuff tear.[4]

By decision dated October 7, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that his right shoulder strain resulted from the accepted August 27, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative, and substantial evidence,[5] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[6] The employee must also establish that he sustained an

[2] The physician's signature was illegible.

[3] Other treatment notes from Dr. Checroun dated August 31, 2011 restated this diagnosis and referred appellant for physical therapy. The case record indicates that appellant attended sessions for the period September 13 to 29, 2011.

[4] Dr. Checroun advised appellant in September 14, 2011 duty status and attending physician's return-to-work forms to refrain from lifting, pushing, pulling and overhead activities with his right arm for three weeks.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[6] *R.C.*, 59 ECAB 427 (2008).

injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the evidence generally 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 a 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.[9]

ANALYSIS

While the case record supports that appellant tossed a bundle of advertising mail into a hamper on August 27, 2011, the Board finds that he did not establish his traumatic injury claim because the medical evidence did not sufficiently demonstrate that this accepted employment incident was causally related to a right shoulder strain.

Dr. Checroun related in an August 31, 2011 report that appellant was throwing 10-pound mail bundles at work on August 27, 2011 when he experienced right shoulder symptoms. Following a physical examination, he diagnosed right shoulder strain and possible rotator cuff tear. Dr. Checroun reiterated his findings in additional August 31, 2011 and September 14, 2011 medical records. Nonetheless, he failed to provide medical rationale explaining how tossing a bundle of advertising mail into a hamper on August 27, 2011 pathophysiologically caused or contributed to a strained right shoulder.[10] Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.[11] Here, the need for such medical rationale was particularly important because the case record indicates that appellant underwent right biceps tenodesis and arthroscopic subacromial decompression in 2005.

[7] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *T.H.*, 59 ECAB 388 (2008).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[11] *William C. Thomas*, 45 ECAB 591 (1994).

The remaining evidence lacked evidentiary weight. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[12] The August 27, 2011 emergency department note cannot constitute competent medical evidence because one cannot determine whether the illegible signature belonged to a qualified physician.[13] Finally, since a physical therapist is not a "physician" as defined under FECA, physical therapy records for the period September 13 to 29, 2011 lacked probative value.[14] In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

The Board notes that appellant submitted new evidence after the issuance of the October 7, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[15] However, appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained a traumatic injury in the performance of duty on August 27, 2011.

[12] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[13] *R.M.*, 59 ECAB 690, 693 (2008).

[14] 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[15] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 8, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board