

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

W.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 14-235
Issued: April 23, 2014**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2013 appellant, through his attorney, filed a timely appeal from an August 28, 2013 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.

ISSUE

The issue is whether appellant sustained injuries to his right shoulder and neck in the performance of duty on July 16, 2011.

FACTUAL HISTORY

On July 21, 2011 appellant, a 52-year-old letter carrier, filed a claim alleging that he injured his neck and right shoulder while placing mail into a mailbox on July 16, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

By letter to appellant dated September 29, 2011, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from a treating physician describing his symptoms with an opinion explaining the cause of any diagnosed condition.

In a report dated September 15, 2011, Dr. Alexander M. Pendino, Board-certified in psychiatry and neurology, stated that appellant experienced neck pain and upper extremity paresthesias. He advised that the symptoms had been ongoing for a long-term period and that appellant related them to a 2004 work-related neck injury when he fell down a flight of brick steps. In 2007 appellant's symptoms progressed to involve the right arm. Dr. Pendino stated that appellant had recently experienced neck pain involving the lateral aspect and trapezius to the shoulder region; he also had numbness and tingling involving the right shoulder which extended into the forearm, hand and all digits. He noted mid-cervical pain that extended to the left scapular region and weakness of the right arm with diminished grip strength.

Dr. Pendino reviewed results of a cervical magnetic resonance imaging (MRI) scan dated July 12, 2010. It showed multilevel degenerative changes at C3-7 with disc bulging and ridging, and prominent left-sided mild cord compression without intramedullary signal alteration at C5-6 and C6-7. Dr. Pendino stated that results of an August 11, 2010 right shoulder arthrogram demonstrated a superior labral anterior-posterior (SLAP) lesion. He advised that appellant underwent right arthroscopic shoulder surgery in 2008. Dr. Pendino diagnosed multilevel cervical discogenic disease at C5-6 and C6-7 with mild left cord impingement and foraminal stenosis. He opined that this was atypical given that appellant's predominant symptoms were right sided. Dr. Pendino stated that appellant might also have a component of median neuropathy at the wrist and cervical radiculopathy. He recommended electrodiagnostic testing of the extremities.

In a September 19, 2011 report, Dr. Pendino stated that diagnostic tests showed a normal right and a slowed left ulnar sensory nerve conduction studies, with a relative low amplitude left median SLAP; slowing of both median palmar mixed nerve conduction studies; slowed right ulnar sensory nerve conduction studies with normal SLAP amplitude; normal left ulnar sensory nerve conduction studies; normal bilateral median motor nerve conduction studies, including distal motor latency and normal conduction velocity in both arm segments; absolute slowing of right ulnar motor nerve conduction across the region of the elbow, with no evidence of conduction block or temporal dispersion; low amplitude left ulnar distal SLAP with normal distal motor latency and normal conduction velocity across the elbow segment. He stated that electrodiagnostic testing demonstrated right cervical radiculopathy localized to the C7 nerve root with motor axon degeneration; bilateral median nerve dysfunction at the region of the wrist, consistent with a clinical diagnosis of carpal tunnel syndrome and mild right ulnar motor neuropathy at the region of the elbow.

Appellant was also treated by Dr. Louis Beato, a chiropractor. He received spinal manipulation, massage and heat treatment. Dr. Beato's reports did not contain findings or a diagnosis of subluxation as diagnosed by x-ray.

By decision dated November 9, 2011, OWCP denied appellant's claim. It found that he failed to submit sufficient medical evidence to establish an injury stemming from the July 16, 2011 work incident.

On December 9, 2011 appellant's attorney requested an oral hearing, which was held on March 30, 2012.

In a December 20, 2011 report, Dr. Pendino stated that appellant had clarified some of his history of injury. He reported being functional after sustaining work injuries in 2004 and 2007. Dr. Pendino noted, however, that appellant experienced significant symptomatology after being injured on July 16, 2011. Appellant was carrying a heavy mailbag on the left shoulder when he placed a large amount of mail in the right hand and pushed the mail into a mailbox slot. He developed a sharp pain involving the right side of his neck and shoulder. Dr. Pendino stated that the symptoms progressed during the workday to the point where his neck and shoulder began to feel numb, at which time he sought treatment. He reviewed handwritten notes describing the course of events on July 16, 2011, which did not include this description of events. Dr. Pendino advised that, during the September 15, 2011 initial consultation, appellant was not clear regarding the July 16, 2011 incident and did not accurately describe his neck and right shoulder symptoms. Since his last visit, appellant advised that his symptoms were relatively unchanged; positive for neck pain, shoulder pain, right arm pain/paresthesias; otherwise, all other system reviews were negative.

Dr. Pendino diagnosed cervical discogenic disease at C5-6 and C6-7 with mild left cord impingement, right C7 radiculopathy and right shoulder arthroscopic surgery. According to the additional history appellant provided, his present symptoms were related to the July 16, 2011 incident while on the job as a letter carrier.

In a December 21, 2011 report, Dr. Nirav K. Shah, Board-certified in neurosurgery, stated that appellant had complaints of low back pain and neck pain due to a work-related injury that occurred several years prior. He received treatment and his condition had improved. Appellant sustained an exacerbation earlier that year with significant neck pain radiating into both arms, particularly on the right side. Dr. Shah advised that appellant worked as a postal carrier and had difficulty carrying the mail, particularly on his right shoulder. He had numbness in both hands in addition to significant weakness and pain. Dr. Shah stated that appellant noted cervical neck pain, cervical neck strain and cervical radiculopathy.

Dr. Shah stated that appellant had symptoms related to cervical neck strain and cervical radiculopathy causally related to a 2008 work injury. He advised that appellant underwent an MRI scan which showed herniations at multiple levels which were not amenable to surgical correction. Dr. Shah advised that appellant's condition had deteriorated with regard to pain management, particularly on the right shoulder area. He noted that appellant was not a surgical candidate based on the MRI scan findings and on physical examination. Dr. Shah concluded that he had reached maximal medical improvement and would not benefit from further intervention. He opined that he could be totally disabled.

By decision dated June 15, 2012, an OWCP hearing representative affirmed the November 9, 2011 decision.

By letter dated June 7, 2013, appellant, through his attorney, requested reconsideration.

In a May 27, 2013 report, Dr. Aaron A. Sporn, a specialist in orthopedic surgery, stated that appellant sustained a work-related injury due to an accident which occurred on July 16, 2011. Appellant was working as a mail carrier and carrying a heavy bag on his left shoulder. The injury occurred when appellant was holding a large amount of mail in his right hand and was reaching and pushing mail through a slot on top of a mailbox. Appellant wrenched the right side of his neck and right shoulder and experienced the immediate onset of pain. Dr. Sporn stated that appellant had prior problems of an orthopedic and musculoskeletal nature before the July 16, 2011 accident. He noted that the July 16, 2011 accident significantly affected and compromised appellant's condition. Dr. Sporn advised that the pain stemming from the July 16, 2011 incident interfered with appellant's ability to perform routine daily activities of living, including walking, standing, sitting, bending down, lifting and twisting type maneuvers. The neck and right shoulder symptoms were also aggravated by bad weather.

Dr. Sporn initially examined appellant on August 30, 2011. At that time, he diagnosed a sprain and strain of the cervical spine and right shoulder dating back to an April 1, 2004 accident. Dr. Sporn subsequently diagnosed right shoulder bursitis, right cubital tunnel syndrome and possible right carpal tunnel syndrome. He noted that appellant had been involved in several accidents over the years; on April 1, 2004, in 2006, on February 22, 2007, October 5, 2009, February 19 and August 6, 2010 and on July 16, 2011. Notwithstanding these prior injuries, appellant was functioning at a high level and was reasonably able to perform household chores and routine daily living activities prior to July 16, 2011. He related that he was "functioning pretty well" prior to July 16, 2011; but thereafter he became totally disabled from work from July 16 to August 20, 2011. Appellant returned to work but had to leave again as of September 1, 2011 due to the injuries he sustained on July 16, 2011. Dr. Sporn stated that the July 16, 2011 accident and the resulting aggravation of appellant's neck and right shoulder conditions caused him to be disabled from September 1, 2011 to December 15, 2012.

Dr. Sporn advised that other physicians had placed a five-pound weight limit on what he could carry using his right shoulder and specified that he was unable to lift more than 40 pounds using two hands. Appellant's job typically required him to carry a weight of 35 pounds and to lift weights up to 70 pounds. On examination he experienced discomfort when he used the right upper extremity when pressing down on the armrest of a chair as he stood up. The cervical spine revealed a mild-to-moderate decrease of active motion to all six directions, including forward flexion, backward extension, rotating to the right, flexing to the right, rotating to the left and flexing to the left; appellant appeared to be uncomfortable with extremes of motion in any direction. Dr. Sporn noted no soft tissue swellings, no intra-articular effusion and no signs of instability. He advised that appellant had a moderately positive impingement sign. Appellant's remaining portion of the musculoskeletal system, with regard to the right upper extremity, did not reveal any findings that would specifically explain the reported neck and right shoulder symptoms and conditions.

Dr. Sporn diagnosed sprains and strains of the cervical spine and right shoulder on July 16, 2011 which caused significant aggravation and worsening of prior symptoms and conditions. He stated:

“Unfortunately, these injuries were superimposed on prior conditions involving these two body regions. Notwithstanding prior conditions involving the neck and right shoulder, and even the prior conditions of the right elbow and right wrist, [appellant] was functioning well and at a relatively high level prior to July 16, 2011. The injuries to the neck and right shoulder sustained on July 16, 2011 were significant. They caused a serious aggravation and worsening of preexisting pathology in the neck and right shoulder. The injuries to the neck and right shoulder sustained on July 16, 2011 have negatively impacted on and compromised the ability of this man to return to his previous level of function. In my opinion and based on my understanding of his job requirements, [appellant] is unable to return to his previous job. This is because of injuries sustained on July 16, 2011. As the result of an accident on July 16, 2011, appellant sustained sprains and strains of the cervical spine and right shoulder. These injuries significantly aggravated and worsened preexisting conditions and symptoms in these two areas. There exists a permanent disability. [Appellant] is unable to return to his prior job because of the injuries sustained on July 16, 2011.”

By decision dated August 28, 2013, OWCP denied modification of the February 8, 2012 hearing representative’s decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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 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.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

OWCP accepted that appellant placed mail into a mailbox on July 16, 2011. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the July 16, 2011 employment incident caused a personal injury and that the work accident would have been competent to cause the claimed injury.

Appellant submitted reports from Drs. Pendino, Shah and Sporn. These physicians submitted reports which stated findings on examination, diagnosed SLAP lesion of the right shoulder, right shoulder sprain and strain, multilevel cervical discogenic disease at C5-6 and C6-7 and cervical radiculopathy and generally related appellant's cervical and right shoulder conditions to the July 16, 2011 work incident. None of these physicians, however, provided a probative, rationalized opinion regarding whether the July 16, 2011 work incident caused a personal injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ With regard to appellant's right shoulder condition, appellant provided diagnoses of right shoulder sprain and strain and SLAP lesion. He, however, did not submit a report from a physician which related these diagnoses to appellant's right shoulder conditions and sufficiently address how these diagnosed conditions were causally related to the July 16, 2011 work incident. Dr. Pendino stated in his September 15, 2011 report that appellant had numbness and tingling in the right shoulder extending into the forearm, hand and all digits. He stated that results of an August 11, 2010 right shoulder arthrogram demonstrated a SLAP

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e).

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Carlone*, *supra* note 5.

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

lesion. In his December 20, 2011 report, Dr. Pendino stated that appellant had provided a more detailed description of the July 16, 2011 work injury. He indicated that appellant experienced right shoulder pain after carrying a heavy mailbag on his left shoulder, placing a large amount of mail in his right hand and pushing mail into a mailbox slot. Dr. Pendino stated that, based on this additional history appellant gave, he was now of the opinion that his present symptoms were related to the July 16, 2011 work incident. He, however, advised that his handwritten notes taken during his initial examination on September 15, 2011 which related appellant's account of events on July 16, 2011 did not include this description; he indicated that appellant was not definitively clear regarding this incident during the initial visit and did not accurately describe his neck and right shoulder symptoms. Thus, Dr. Pendino had an inaccurate history of the July 16, 2011 incident.¹¹

In his May 27, 2013 report, Dr. Sporn advised that appellant had sustained a work-related right shoulder injury on July 16, 2011 while carrying a heavy bag of mail on his left shoulder and holding a large amount of mail in his right hand; he was reaching and pushing mail through a slot on top of a mailbox when he wrenched the right side of his neck and right shoulder and had an immediate onset of pain in those two areas. He noted that appellant had sustained numerous injuries to his neck and right shoulder but had been functioning at a high level prior to the July 16, 2011 work incident. Dr. Sporn opined that the July 16, 2011 accident and the resulting aggravation of neck and right shoulder conditions caused him to be out of work from September 1, 2011 to December 15, 2012. He noted that appellant showed significant discomfort and diminished range of motion in his right shoulder and right upper extremities during his May 21, 2013 examination. Dr. Sporn diagnosed right shoulder sprain and strain as a result of the July 16, 2011 incident which caused significant aggravation and worsening of prior symptoms and conditions. He stated, however, that his general orthopedic survey of the remaining portion of the musculoskeletal system, with regard to the right upper extremity, did not reveal any findings that would specifically explain the reported neck and right shoulder symptoms and conditions.

The medical reports from Drs. Pendino and Sporn did not sufficiently explain how medically appellant would have sustained a right shoulder injury while delivering mail on July 16, 2011. There is, therefore, no rationalized evidence in the record that appellant's right shoulder injuries were work related.

As to the claimed cervical injury, Dr. Pendino indicated in his September 15, 2011 report that appellant had sustained upper extremity paresthesias and right-sided neck pain, which he attributed to a 2004 work injury when he fell down a flight of brick steps. He stated that appellant had mid cervical pain that extended to the left scapular region and weakness of the right arm with diminished grip strength. Dr. Pendino diagnosed multilevel cervical discogenic disease at C5-6 and C6-7 with mild left cord impingement and foraminal stenosis, which he deemed atypical given that appellant's predominant symptoms were right sided. In a September 19, 2011 report, he stated that appellant underwent electrodiagnostic testing which showed right cervical radiculopathy localized to the C7 nerve root with motor axon degeneration. As noted above, Dr. Pendino indicated in his December 20, 2011 report that appellant had since

¹¹ See *Geraldine H. Johnson*, 44 ECAB 745 (1993).

“clarified” his account of the alleged July 16, 2011 injury; while he had attributed his neck pain to a 2004 work injury during his initial September 15, 2011 examination and was unclear in his description of the July 16, 2011 work incident, appellant now stated that the July 16, 2011 work incident had resulted in severe pain involving the right side of his neck and shoulder. Dr. Pendino stated that in light of this additional history he now believed that appellant’s present symptoms were related to the July 16, 2011 work incident.

In his December 21, 2011 report, Dr. Shah related complaints of neck pain due to a work-related injury that occurred several years prior. On examination he stated that appellant had cervical neck pain and sustained a cervical neck strain and cervical radiculopathy. Dr. Shah advised that appellant’s cervical neck strain and cervical radiculopathy symptoms were causally related to his 2008 work injury. While a cervical MRI scan showed herniations at multiple levels, appellant was not a good surgical candidate based on the MRI scan findings and on his examination. Dr. Shah opined that he would not benefit from further intervention. He opined that he could be permanently disabled but did not attribute appellant’s cervical conditions to the July 16, 2011 work incident.

In his May 27, 2013 report, Dr. Sporn opined that appellant had sustained a work-related injury due to the July 16, 2011 work accident. He described the history of injury and stated findings on examination. Dr. Sporn stated that appellant wrenched the right side of his neck and right shoulder and experienced an immediate onset of pain in those two areas. While he stated that appellant had experienced orthopedic and musculoskeletal problems prior to the July 16, 2011 accident, he opined that the July 16, 2011 accident had significantly affected and worsened his condition. Dr. Sporn diagnosed sprains and strains of the cervical spine and right shoulder on July 16, 2011 which caused significant aggravation and worsening of prior symptoms and conditions. He stated that, notwithstanding prior conditions involving the neck and right shoulder, appellant had been functioning at a relatively high level prior to July 16, 2011. Dr. Sporn opined that appellant was unable to return to his usual job as a mail carrier due to the injuries to the neck and right shoulder sustained on July 16, 2011. He stated, however, that during his initial examination of appellant on August 30, 2011 he diagnosed a sprain and strain of the cervical spine and right shoulder dating back to an April 1, 2004 accident. Thus, as with Dr. Pendino, his opinion on causation is of diminished probative value because he relied on an accurate history of the July 16, 2011 work incident.¹² In addition, he stated that his general orthopedic view of the remaining portion of the musculoskeletal system, with regard to the right upper extremity, did not reveal any findings that would specifically explain the reported neck symptoms and conditions.

The opinions of Drs. Pendino, Shah and Sporn regarding causal relationship are of limited probative value, however, in that they did not provide adequate medical rationale in support of their conclusions.¹³ Their reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant’s July 16, 2011 work incident and his claimed cervical condition. Causal relationship must be established by rationalized medical opinion evidence. The reports from Drs. Pendino and Sporn are of limited probative value for

¹² *Id.*

¹³ *William C. Thomas*, 45 ECAB 591 (1994).

the further reason that they are generalized in nature and equivocal in that they only noted summarily that appellant's cervical condition was causally related to the July 16, 2011 incident in which appellant experienced cervical pain while placing mail into a mailbox.

Appellant's attorney argues on appeal that Dr. Sporn's May 27, 2013 report was sufficiently well rationalized to establish a causal relationship between the July 16, 2011 work incident and his claimed right shoulder and neck conditions. The Board does not accept counsel's contention. As discussed above the report from Dr. Sporn did not constitute probative, rationalized medical opinion evidence required to establish causal relationship. Accordingly, appellant failed to provide a medical report from a physician that explains how the work incident of July 16, 2011 caused or contributed to the claimed injuries to his right shoulder or neck.¹⁴ OWCP advised him of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the July 16, 2011 work accident would have caused the claimed injuries. Accordingly, he did not establish that he sustained his right shoulder and neck injuries in the performance of duty. OWCP properly denied appellant's claim for compensation.

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 failed to establish that he sustained injuries to his right shoulder and neck in the performance of duty on July 16, 2011.

¹⁴ The reports from Dr. Beato do not constitute medical evidence pursuant to section 8101(2) because he did not provide a diagnosis of subluxation based on x-ray results. See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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