United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Hobart, IN, Employer**	)	**Docket No. 17-1079** **Issued: June 4, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 27, 2017 appellant filed a timely appeal from a February 21, 2017 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 claim.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his diagnosed right shoulder condition was causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 31, 2015 appellant, then a 55-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a right shoulder rotator cuff tear, which he attributed to the overhead lifting and reaching required by his federal employment duties. He

[1] 5 U.S.C. § 8101 *et seq.*

indicated that he first became aware of his condition on September 10, 2012 and realized that it was employment related on September 30, 2013. Appellant did not indicate on the claim form that he had stopped work.

In a January 8, 2016 development letter, OWCP advised appellant that additional evidence was necessary to establish his claim. It requested that he submit additional factual and medical evidence, including a physician's opinion supported by a medical explanation as to whether and how his work-related exposure resulted in or contributed to the specific diagnosed conditions. OWCP afforded appellant 30 days to submit such information.

Appellant submitted a February 2, 2016 supplemental statement in which he described his duties as a part-time flexible city carrier since January 22, 2005. He also submitted a position description for a part-time flexible city carrier.

OWCP also received medical evidence from, Dr. Thomas H. Kay, a Board-certified orthopedic surgeon, who in a September 10, 2012 report indicated that appellant had right shoulder and elbow pain for several months. He noted that appellant exercised and did a lot of yardwork. Appellant also had a history of prior back surgery. An assessment of tendinitis calcifying and lateral epicondylitis was provided.

A September 13, 2012 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed moderate supraspinatus and infraspinatus tendinosis with minute partial interstitial tears, mild subacromial subdeltoid bursitis, moderate tendinosis and partial undersurface tearing of the subscapularis tendon, and partial tear of the long biceps tendon with mild medial subluxation.

In a September 17, 2012 report, Dr. Kay noted that appellant was off work because of severe right shoulder pain. He noted that the MRI scan of the right shoulder demonstrated a partial tear of the biceps tendon with mild medial subluxation. Minor fraying of the supraspinatus was also identified. Dr. Kay took appellant off work until October 5, 2012. He provided an assessment of right sprains and strains of the right shoulder and upper arms, supraspinatus (muscle) (tendon) and referred appellant to physical therapy.

In an October 5, 2012 note, Dr. Kay indicated that appellant was totally disabled from September 5 through October 5, 2012 due to right bicep tears and shoulder pain. He noted that appellant was unable to work because of his injury.

In an initial October 10, 2012 physical therapy report, Michael Schloemer, a physical therapist, noted that appellant had shoulder injuries while in the military and that he worked for the employing establishment delivering mail. He noted the mechanism of injury as increased right shoulder pain after working in the yard doing a lot of pulling, using a rototiller, and raking, *etc.* and assessed of secondary impingement syndrome due to shoulder instability.

In a November 4, 2012 report, Dr. Paul R. Miller, Board-certified in orthopedic surgery, reported that appellant was seen for a follow up of his right shoulder and that the shoulder was improving with physical therapy. He indicated that the MRI scan showed tendinitis of the supraspinatus, infraspinatus biceps and provided an impression of right shoulder impingement and probable cubital tunnel syndrome. In a November 5, 2012 order, Dr. Miller provided diagnoses

of lesion of ulnar nerve and disorders of bursae and tendons in shoulder region, unspecified. He indicated that cubital tunnel needed to be ruled out.

A November 13, 2012 electromyogram/nerve conduction velocity (EMG/NCV) study contained evidence of a mild right ulnar mononeuropathy at the elbow without ongoing motor denervation. There was no electrodiagnostic evidence of a right cervical radiculopathy, brachial plexopathy, or other right upper limb mononeuropathy.

In a December 7, 2012 report, Dr. Joaquin Sanchez-Sotelo, a Board-certified orthopedic surgeon, indicated that appellant worked for the employing establishment and that his right shoulder symptoms started in August 2012 without a clear-cut injury. Appellant recalled a very remote injury playing football in high school. Dr. Sanchez-Sotelo noted appellant's examination findings. He also indicated that appellant's x-rays showed a very thick acromion as well as sclerosis on the greater tuberosity and marked acromial joint osteoarthritis. Those findings were confirmed on MRI scan, which also showed a very high-grade, partial-thickness tear of the supraspinatus tendon on the articular side with some biceps tenosynovitis. Dr. Sanchez-Sotelo diagnosed right shoulder symptomatic AC joint osteoarthritis, right shoulder chronic subacromial impingement, right shoulder partial thickness tear of the supraspinatus tendon, and associated biceps tenosynovitis. He indicated that surgery was scheduled.

In a December 10, 2012 report, Dr. C.J. Owens, a Board-certified orthopedic surgeon, performed a surgical consultation. He noted that appellant has had right shoulder pain since August, when he was doing some strenuous yard work. Dr. Owens indicated that appellant had undergone physical therapy and had a cortisone injection with partial relief. Physical examination findings were provided and diagnostic testing discussed. Dr. Owens diagnosed right shoulder rotator cuff tear and AC joint arthritis. A December 27, 2012 work status note indicated that appellant would be off eight weeks from January 9 to March 11, 2013 after his surgery.

The employing establishment indicated in a January 6, 2013 note that appellant had no medical limitations or restrictions when hired.

On January 9, 2013 appellant underwent surgery for right rotator cuff tear with Dr. Sanchez-Sotelo. The final diagnosis was status post right rotator cuff tear, right acromial joint resection, and right biceps tenodesis. In a February 7, 2013 letter, Dr. Sanchez-Sotelo indicated that appellant made satisfactory progress status post right shoulder rotator cuff repair with resection of the distal end of the clavicle and biceps tendon.

In a February 7, 2013 radiologist report, Dr. Jeffry R. Bond, a Board-certified radiologist, indicated that appellant had right clavicle resection and probable rotator cuff repair since December 7, 2012. He noted that degenerative arthritis in the glenohumeral joint was unchanged.

In a February 25, 2013 report, Dr. Sanchez-Sotelo provided an impression of satisfactory progress status post right rotator cuff repair with resection of the distal end of the clavicle and biceps tenodesis. Dr. Sanchez-Sotelo noted that appellant was eight weeks postoperative on his right shoulder and made great progress. He noted that appellant was to return to work next Monday with the restriction of no use of right upper extremity for repetitive lifting for a total of three and a half months after date of surgery.

In an April 1, 2013 report, Dr. Sanchez-Sotelo indicated that appellant was eight weeks postoperative status on his right shoulder and had made great progress. Dr. Sanchez-Sotelo noted that appellant was to return to work the following Monday with no use of his right upper extremity for repetitive lifting for a total of three and a half months after the date of surgery. In an April 1, 2013 telephone conversation and work status report, he clarified that appellant was allowed to go back to work on March 11, 2013 with limited use of the right upper extremity and full duty with no restrictions on June 1, 2013.

By a September 19, 2013 telephone report, Dr. M.C. Kergosien, a Board-certified orthopedic surgeon, noted that appellant requested clarification regarding the cause of his shoulder problems. He noted that he reinforced to appellant the points made in Dr. Sanchez-Sotelo's letter that there was no good evidence or way for them to link his shoulder condition with being a mail carrier.

In a September 30, 2013 report, Dr. Kay noted appellant's request for a letter reflecting his opinion about any contribution his work activities may have had on his shoulder. Examination findings were presented.

In a January 31, 2016 letter, Dr. Kay indicated that appellant originally presented to his office on September 10, 2012 with complaints of pain in the right shoulder and elbow, which he had been experiencing for several months. He denied any trauma or specific injury, but reported that he exercised and did a lot of yard work. Dr. Kay summarized appellant's visits as well as the results of the diagnostic studies. He indicated that on September 30, 2013 appellant requested a letter which reflected his opinion regarding any possible contribution his work activities may have made to his shoulder status. Dr. Kay noted that appellant had undergone surgery in January 2013 and that the operative report reflected that he underwent an open distal claviculectomy, acromioplasty, biceps tenodesis, and repair of the supraspinatus tendon, and that he was back at work. Dr. Kay noted that, at that time, appellant was status post repair of a rotator cuff tear. He indicated that he advised appellant that his condition was largely degenerative in nature. However, it was quite likely that work activity involving overhead lifting and reaching had contributed to his condition. Dr. Kay concluded that appellant's rotator cuff injury was more likely than not related to years of lifting and overhead activity in his role as a mail carrier. He also noted that appellant was seen for complaints of left knee pain on August 22, 2014 and that he eventually underwent arthroscopic partial medial meniscectomy on September 4, 2014.

By decision dated April 4, 2016, OWCP denied the claim as the medical evidence submitted did not establish that appellant's diagnosed right shoulder condition was causally related to the accepted work duties.

On November 23, 2016 appellant requested reconsideration. In a November 23, 2016 statement, he indicated that a decision had been reached with his appeal of the Department of Veterans Affairs denial of his right shoulder claim. In an October 31, 2016 letter, the Department of Veterans Affairs awarded a service-connected disability of 100 percent for right shoulder status post rotator cuff repair, AC joint resection, and biceps tendinosis.

By decision dated February 21, 2017, OWCP denied modification of its April 4, 2016 decision. It found that appellant had not met his burden of proof to establish that his right shoulder conditions were causally related to factors of his federal employment.

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 filed within the applicable time limitation, 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 the employment injury.[2] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.[4]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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.[5]

ANALYSIS

The Board finds that appellant failed to provide sufficiently-rationalized medical opinion evidence which established that his diagnosed right shoulder condition was causally related to the accepted work activities.

Appellant alleged that his right shoulder condition was caused or aggravated by his work duties as a part-time flexible city carrier since January 2005. OWCP denied his claim as the medical evidence of record was insufficient to establish that his diagnosed right shoulder conditions and surgery were causally related to his accepted employment activities. Dr. Kay started treating appellant in September 2012. While Dr. Kay provided several progress reports in 2012, which diagnosed right shoulder conditions, he did not provide a medical opinion as to whether the established employment factors in this claim caused or aggravated appellant's right shoulder conditions. The Board has held that medical evidence that does not offer any opinion

[2] *Gary J. Watling,* 52 ECAB 278 (2001); *Elaine Pendleton,* 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith,* 50 ECAB 313 (1999).

[4] *See Roy L. Humphrey,* 57 ECAB 238, 241 (2005); *Ruby I. Fish,* 46 ECAB 276, 279 (1994).

[5] *Solomon Polen*, 51 ECAB 341 (2000).

regarding the cause of an employee's condition is of limited probative value.[6] Thus, Dr. Kay's progress reports are of limited probative value in establishing appellant's claim.

In his January 31, 2016 letter, Dr. Kay summarized appellant's treatment. He indicated that after appellant's January 2013 rotator cuff tear surgery, he had advised appellant that his condition was largely degenerative in nature, but it was likely that work activity involving overhead lifting and reaching had contributed to his condition. Dr. Kay concluded that appellant's rotator cuff injury was more likely than not related to years of lifting and overhead activity in his role as a mail carrier. He did not, however, explain how appellant's work activity caused or contributed to his shoulder condition or was competent to cause an injury. Additionally, Dr. Kay's opinion that appellant's rotator cuff injury was likely related to his years of work lifting and overhead activity is speculative in nature and thus insufficient to meet appellant's burden of proof.[7] The need for rationale is particularly important as the evidence indicates that appellant has a preexisting degenerative condition.[8] Thus, Dr. Kay's letter is insufficient to establish appellant's claim.

The medical reports from Drs. Miller, Sanchez-Sotelo, Owens, and Bond, while diagnosing right shoulder conditions, are of limited probative value as they did not specifically address causation.[9] Dr. Sanchez-Sotelo did note appellant's history of remote injury while playing football in high school, while Dr. Owens noted that appellant had experienced right shoulder pain since performing yard work. None of these physicians, however, offered an opinion that the accepted factors of appellant's federal employment caused or aggravated his diagnosed right shoulder conditions.[10]

The remaining medical evidence of record is also insufficient to establish appellant's claim. The diagnostic testing of record only interpreted diagnostic/imaging studies and provided no opinion on the cause of appellant's injury.[11]

Dr. Kergosien specifically indicated in his September 19, 2013 telephone report that there was no good evidence or way for them to link appellant's shoulder condition to his job as a mail carrier.

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[6] *C.B.,* Docket No. 09-2027 (issued May 12, 2010); *J.F.,* Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[7] *Rickey S. Storms,* 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[8] *See R.R.,* Docket No. 16-1118 (issued November 7, 2016) (where the Board held that the need for rationale is particularly important where the evidence indicated that appellant had a preexisting condition).

[9] *See A.D., supra* note 6.

[10] *Supra* note 4.

[11] *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

The October 31, 2016 letter from the Department of Veterans Affairs indicated that appellant's right shoulder condition was service connected.

Appellant's belief that factors of employment caused or aggravated his condition is insufficient, by itself, to establish causal relationship.[12] The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right shoulder condition was caused or aggravated by the accepted employment factors. Appellant, therefore, did not meet his burden of proof.

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 did not meet his burden of proof to establish that his diagnosed right shoulder condition was causally related to the accepted factors of his federal employment.

[12] 20 C.F.R. § 10.115(e); *Phillip L. Barnes,* 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2018
Washington, DC

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

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

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