United States Department of Labor
Employees' Compensation Appeals Board

N.P., Appellant	)	
and	)	**Docket No. 18-0173**
	)	**Issued: August 21, 2019**
U.S. POSTAL SERVICE, ROBERTO CLEMENTE POST OFFICE, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 30, 2017 appellant filed a timely appeal from May 3 and August 25, 2017 merit decisions 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.

ISSUE

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

FACTUAL HISTORY

On July 27, 2015 appellant, then a 55-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral rotator cuff tears and bilateral severe

[1] 5 U.S.C. § 8101 *et seq.*

arthritis of the hands as a result of repetitive physical work duties. He first became aware of his condition on June 22, 2015 and of its relationship to factors of his federal employment on July 2, 2015. Appellant stopped work on July 23, 2015 and he did not return.

In a statement dated July 27, 2015, appellant detailed the duties of his federal employment position as a postal clerk that he alleged had caused his conditions. He stated that he worked as a morning distribution clerk to assist in unloading mail trucks. Unloading mail trucks consisted of pulling and pushing large parcels, pallets, flats, and letters. Appellant would toss parcels into a carrier's gurney, separate letters and flats, and prepare letters, flats, and parcels to be distributed. He noted that, on July 21, 2015, he was ordered to distribute tubs of flats and place them into carrier cases, which he did, and afterwards his hands were swollen and his shoulders hurt. The next day, finding that his hands were still swollen and his shoulders still hurt, appellant made an appointment with a physician.

In a note dated July 23, 2015, Dr. Daniel Newman, a Board-certified orthopedic surgeon, diagnosed bilateral rotator cuff tears and severe bilateral hand arthritis. He concluded that appellant was totally disabled as he was unable to work at that time.

In a development letter dated August 25, 2015, OWCP informed appellant that he had not submitted sufficient factual and medical documentation to establish his claim. It requested that he submit a physician's opinion as to how the employment activities he described had caused, contributed to, or aggravated his diagnosed conditions. OWCP afforded appellant 30 days to submit additional evidence.

On August 31, 2015 appellant responded to OWCP by submitting employment records of his duties and a handwritten record noting the amount of work he had performed between June 22 and July 21, 2015.

In a diagnostic report dated July 23, 2015, Dr. Newman examined the results of x-rays of appellant's hands and shoulders. He noted significant degenerative arthritis of the hands, particularly at the carpometacarpal joint of the thumbs and the third metacarpophalangeal joints. Dr. Newman further noted early degenerative changes of the shoulders with some narrowing of the glenohumeral space with early spur formation.

In a letter dated July 23, 2015, Dr. Newman noted that appellant had, at one point, been placed on permanent restrictions at work, but had subsequently returned to full duty. He indicated that most of what appellant did at work was sort mail, which was a repetitive motion using his arms in front of him, frequently at shoulder level. Dr. Newman also noted that appellant was required to lift heavy objects at work. He examined appellant and diagnosed severe arthritis in his hands and early degenerative arthritis of his shoulders. Dr. Newman recommended surgery for appellant's left shoulder and hands.

By decision dated October 7, 2015, OWCP denied appellant's claim finding that he had not submitted sufficient evidence to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

In a report dated September 17, 2015, Dr. Newman noted that appellant was awaiting approval for surgery and that there had been no change in his condition. He diagnosed bilateral

shoulder impingement syndrome, noting that an arthroscopic procedure may reveal a rotator cuff tear, which are frequently associated with impingement.

In a November 12, 2015 letter, Dr. Newman noted that appellant had been his patient for many years and was recently treated for bilateral shoulder pain. He noted that appellant had recently undergone a surgical procedure on his left shoulder to relieve symptoms of impingement and that he would likely require the same surgery on his right shoulder. Dr. Newman opined that "the impingement problems that we have been treating [are] directly related to [appellant's] work[,] which requires repetitive pushing and pulling, reaching forward, and reaching above shoulder levels when sorting mail." He noted that appellant had not sustained other injuries to the shoulders.

On November 25, 2015 appellant requested reconsideration.

By decision dated April 28, 2016, OWCP denied to modification of its October 7, 2015 decision finding that, although Dr. Newman's November 12, 2015 report contained some support for causal relationship, he appeared to be repeating the history of injury provided by appellant instead of providing his own medical reasoning to explain how the conditions of his shoulders and hands were caused or aggravated by the accepted factors of appellant's federal employment.

Dr. Newman responded to OWCP's decision, in a letter dated May 19, 2016 in which he reiterated that appellant performed repetitive motion at work, including sorting mail, which involved working above the shoulder level. He further reiterated that appellant also performed significant lifting and heavy pushing. Dr. Newman explained that as to the similarity between his account and appellant's, it was typical for physicians, when interviewing patients, to take a history including subjective complaints and the mechanism of injury. He made clear that he had not copied appellant's account, but merely reported the same information that he received from appellant as to the duties of his federal employment.

On June 6, 2016 appellant again requested reconsideration.

By decision dated August 22, 2016, OWCP denied modification of its April 28, 2016 decision finding that Dr. Newman's May 19, 2016 letter was insufficient to establish appellant's claim.

In a letter dated September 12, 2016, Dr. Newman again responded to OWCP's findings as to his medical opinion. He noted, "Repetitive motion injuries are well documented and accepted in the medical literature. It is my opinion that the repetitive motion that was involved with [appellant's] job contributed substantially to his current state of ill being."

By decision dated January 12, 2017, OWCP denied modification of its August 22, 2016 decision finding that because Dr. Newman had not specified the particular factors of employment in his letter of September 12, 2016, he had not provided a well-rationalized opinion on causal relationship. It further noted that "ill being" was not a diagnosed condition.

In a letter dated January 30, 2017, appellant enclosed pictures of the stool he sat on for hours while casing mail, pictures of equipment to be pushed off trucks and around the workroom,

cages of parcels to pull and push around the workroom and sort by throwing the parcels into carrier bins, and trays of mail to be worked by hand.

In a report dated January 24, 2017, Dr. Newman noted that he first saw appellant in July 2015 with complaints regarding his shoulders and hands. At the time, appellant had been placed in a position where he was doing more sorting of mail in front of him and above shoulder level. He was also asked to lift and push objects that were quite heavy, a task he had not done before in his employment. Dr. Newman noted that left shoulder surgery had occurred, but appellant was still awaiting permission to proceed with right shoulder surgery. He opined that "in July, because of the change and increased work requirements, [appellant] had a flare up and exacerbation of his underlying arthritic conditions." Dr. Newman further opined that appellant's current condition "is directly related to the change in activities of July 2015. He has a repetitive motion injury in both shoulders and both hands with underlying degenerative arthritis."

Appellant requested reconsideration on February 3, 2017.

By decision dated May 3, 2017, OWCP denied modification of its January 12, 2017 decision finding that Dr. Newman's January 24, 2017 report was insufficient to establish appellant's claim.

In a report dated May 23, 2017, Dr. Newman noted that it was his position that appellant was treated in June 2015 for shoulder pain and hand pain that was directly related to increased work duties that began in January of that year. He noted that appellant stopped working in July 2015 due to failure of conservative treatment and that surgery had been considered. Dr. Newman opined that he had "an aggravation and exacerbation of an underlying condition directly related to work activities that has not resolved, therefore his current condition is work related." He clarified that his opinion on appellant's condition was both that his "preexisting" condition was a result of 31 years of repetitive motion at work and also that in 2015, as a result of a change in his employment duties, he had experienced an aggravation of the underlying condition.

Appellant requested reconsideration on June 9, 2017.

By decision dated August 25, 2017, OWCP denied modification of its May 3, 2017 decision finding that Dr. Newman's May 23, 2017 report was insufficient to establish appellant's claim.

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,[2] 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

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

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 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 the 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.

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[6]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] 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 employee.[8]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

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

[4] *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).

[5] *A.P.*, Docket No. 19-0223 (issued July 9, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *R.B.*, Docket No. 18-0084 (issued June 24, 2019); *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *L.D., id*.; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

It has been accepted that appellant performed mail handling duties as a distribution clerk for over 31 years at the time he filed his occupational disease claim in this case. It is also accepted that he has bilateral shoulder and hand conditions.

In support of his claim appellant submitted numerous medical reports from Dr. Newman. In notes dated July 23 and September 17, 2015, Dr. Newman diagnosed bilateral rotator cuff tears and severe bilateral hand arthritis. He concluded that appellant was totally disabled and was unable to work at that time and would be awaiting surgery. Dr. Newman did not, however, provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] These reports, therefore, are insufficient to establish appellant's claim.

Appellant submitted a series of additional medical records from Dr. Newman dated November 12, 2015, May 19 and Sept 12, 2016, and January 24 and May 23, 2017. In each of these reports Dr. Newman provides an opinion that appellant's bilateral shoulder and hand conditions are causally related to the accepted repetitive employment duties. He did not, however, provide medical rationale to explain how or why the accepted employment duties were sufficient to have resulted in the diagnosed conditions. The Board has long held that a medical report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment factors.[11] Dr. Newman failed to explain the pathophysiologic mechanism by which the accepted employment duties caused, aggravated, or accelerated appellant's bilateral hand and shoulder conditions. Without explaining how the repetitive movements involved in appellant's employment duties caused or contributed to the diagnosed conditions, his opinion on causal relationship is of limited probative value.[12] As such, these reports lack the specificity and detail needed to establish that appellant's diagnosed conditions are the result of the accepted factors of employment.[13]

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *P.S.*, Docket No. 19-0549 (issued July 26, 2019).

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[12] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[13] *T.C.*, Docket No. 19-0227 (issued July 11, 2019).

Finally, appellant submitted diagnostic test results. However, diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[14]

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the accepted factors of employment and appellant's bilateral hand and shoulder conditions. Such rationalized evidence is especially necessary when, as here, he had preexisting hand and shoulder conditions.[15] The Board therefore finds that appellant has not met his burden of proof to establish his claim.

Appellant may submit new evidence 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 not met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

[14] *See M.S.*, Docket No. 19-0587 (issued July 22, 2019).

[15] *Supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the August 25 and May 3, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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