United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 20-1452**
	)	**Issued: February 24, 2021**
U.S. POSTAL SERVICE, MID-CAROLINAS PERFORMANCE CLUSTER, Charlotte, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 28, 2020 appellant filed a timely appeal from a February 19, 2020 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 this case.

ISSUE

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

FACTUAL HISTORY

On November 20, 2019 appellant, then a 31-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury to his right rotator cuff, as well as

[1] 5 U.S.C. § 8101 *et seq.*

limited range of motion and sharp pain when lifting his right arm, due to factors of his federal employment. He explained that he could no longer perform his work duties following the alleged injury. Appellant indicated that he first became aware of his condition on August 24, 2000[2] and first realized his condition was caused or aggravated by his federal employment on November 19, 2019. On the reverse side of the claim form, an employing establishment supervisor, D.J., noted that appellant advised her that he had a preexisting shoulder injury that was bothering him and that he had not been "struck or jerked in any way while performing his carrier duties." He stopped work on November 19, 2019 and returned to full-duty work on December 4, 2019.

In a November 21, 2019 report, Dr. Crystal Keys, a family medicine specialist, noted that appellant presented with a history of a right shoulder injury occurring on November 19, 2019. She noted that appellant recounted that on that day he was sorting and delivering mail to lock boxes and packages door to door. While in his truck preparing to travel to his next location, he felt a "sinking" sensation and loss of strength in the right shoulder and upper arm. Appellant reported that he was able to drive back to the post office, but could not recall one exact mechanism that occurred to the shoulder. He also related a history of right shoulder strains in the past with physical activity. Dr. Keys diagnosed strain of the right shoulder/upper arm due to repetitive use. She recommended physical therapy and provided restrictions of lifting, pushing and pulling up to five pounds. In a medical note of even date, Dr. Keys reiterated work restrictions of occasional lifting, pushing and pulling up to five pounds.

In a letter dated November 22, 2019, the employing establishment postmaster, S.C., related that on November 19, 2019 appellant called the office at 2:00 p.m. to report that he was unable to complete his route because he hurt his shoulder. S.C. asked him how he hurt his shoulder, and appellant responded he did not know. Appellant returned to the office and S.C. and supervisors J.R. and D.J. again inquired as to how he hurt his shoulder. He reiterated that he did not know and that he did not lift anything that would have injured his shoulder. S.C. further indicated that appellant described having a bad shoulder since he was seven years old and that he could not identify a cause of the current condition other than that it was due to repetition. He alleged that appellant had only worked 248 hours for the current year.

In a December 2, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. The questionnaire requested that appellant describe in detail the employment duties which he believed contributed to his condition and requested that he provide a physician's opinion, supported by medical rationale, as to how those duties caused or aggravated his medical condition. OWCP afforded him 30 days to submit additional evidence and to respond to its inquiries.

In a November 25, 2019 report, Dr. Keys noted that appellant reported that his right shoulder range of motion had improved, but he continued to have weakness. Appellant indicated that he had returned to work, but the employing establishment could not accommodate his restrictions. Dr. Keys performed a physical examination and noted no signs of impingement or

[2] By letter dated December 2, 2019, appellant clarified that November 19, 2019, and not August 24, 2000, was the correct date in which he first became aware of his condition.

any other abnormality. She again diagnosed strain of the right shoulder/upper arm, recommended physical therapy and continued the same work restrictions of occasional lifting, pushing and pulling up to five pounds.

Appellant received physical therapy on November 25 and 27, 2019.

In a December 2, 2019 letter, appellant indicated that his CA-2 incorrectly noted August 24, 2000 as his date of injury. He asserted that the correct date of injury was November 19, 2019 and that his injury occurred over the 11 months in which he worked as a rural carrier with the employing establishment.

In a December 7, 2019 response to OWCP's development questionnaire, appellant noted that his job duties include delivering mail and parcels on a prescribed route, as well as sorting, loading, and collecting mail and parcels that could weigh up to 35 to 100 pounds. He asserted that he was injured while driving the postal vehicle, but did not know what had caused the injury at that specific moment. Appellant indicated that he believed his condition was due to accumulated work stress and strain on his shoulder. He alleged that he had worked 1,700 hours since the start of his employment and that the daily time allotted for his route is nine hours.

By decision dated February 19, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[4] 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 to the employment injury.[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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

[3] *Supra* note 1.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is casually related to the identified employment factors.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] The opinion of the physician must be based upon 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 incident.[9]

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted factors of his federal employment.

In reports dated November 21 and 25, 2019, Dr. Keys diagnosed a strain of the right shoulder/upper arm and provided work restrictions. However, neither report contains an opinion on the cause of appellant's right shoulder condition. 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.[11] Moreover, Dr. Keys did not specifically differentiate between the effects of the work-related injury and appellant's preexisting condition and the effects of the accepted factors of his federal employment. As noted above, 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, the medical evidence must provide a rationalized opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12] Therefore, Dr. Keys' reports are insufficient to establish appellant's burden of proof.

[7] *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

[8] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[11] *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *see L.B.*, *supra* note 9.

[12] *See M.C.*, Docket No. 20-0125 (issued July 15, 2020).

The remaining medical evidence of record consist of reports from a physical therapist, which have no probative value as physical therapists are not considered physicians as defined under FECA.[13]

As appellant has not submitted rationalized medical evidence to establish a right shoulder condition causally related to the accepted factors of his federal employment, the Board finds that he has not met 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 has not met his burden of proof to establish a right shoulder condition causally related to the accepted factors of his federal employment.

[13] Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *E.W.*, Docket No. 20-0338 (issued October 9, 2020); *Jane White*, 34 ECAB 515, 518 (1983) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board