

FACTUAL HISTORY

On September 28, 2012 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his right shoulder on September 6, 2012 during the performance of his federal duties. He stopped work on September 6, 2012 and has not returned. The record reflects that appellant had been working a limited-duty job since March 15, 2008.

With his claim, appellant submitted modified-duty descriptions dated October 1, 2008 and June 15, 2010; a proposed change in work hours dated September 6, 2012; CA-7 claims for compensation dated November 20 and 30, 2012; and statements dated November 16 and 21, 2012 from the employing establishment challenging the claim.

In an October 3, 2012 report, Dr. Reed W. Kilgore, a Board-certified orthopedic surgeon, advised that appellant was seen for follow up of his left shoulder. He noted examination findings of the left shoulder and opined that appellant could lift five pounds and drive, but he could not do any lifting away from his shoulder. Dr. Kilgore stated that appellant's restrictions were permanent and had not changed. He noted that appellant had rotator cuff surgery on the right shoulder and was having similar symptoms on that side, which limited his ability to compensate for the lacking function in the left shoulder. In an October 3, 2012 Form CA-17 duty status report, Dr. Kilgore noted left shoulder pain and provided restrictions.

In a November 1, 2012 letter, Dr. Harold B. Betton, a Board-certified family practitioner, stated that appellant has been incapacitated since September 7, 2012 due to his right shoulder and major depression. He recommended that appellant not return to work but continue treatment for those problems. Dr. Betton indicated that the right shoulder requires treatment, physical therapy and may require surgical intervention.

In an October 15, 2012 emergency room report, Dr. Khalid Rayaz, the emergency room physician, noted that appellant provided the following history regarding his right shoulder: "I hurt my rotator cuff 10 years ago, 1 month ago I lifted something and now it is worse again." An assessment of right shoulder pain possibility tendinitis was provided.

In a November 21, 2012 report, Dr. Carlo Adams, a Board-certified physiatrist, stated that appellant presented for evaluation of right shoulder pain which had been present for five weeks. Appellant reported a one-year history of progressive right shoulder pain and noted work injury in September 2012 but did not give details. He denied specific trauma and stated his belief that his work at the employing establishment lifting boxes up to 70 pounds has contributed to his right shoulder condition. Dr. Adams diagnosed right shoulder impingement, noting that there was no evidence of rotator cuff tear on imaging studies, but evidence diffuse degenerative disc disease on cervical x-rays. Appellant was referred for a course of occupational therapy.

A December 6, 2012 occupational therapy evaluation from Rhonda Hooper, an occupational therapist, was also provided.

On December 26, 2012 OWCP requested additional factual and medical evidence from appellant. It noted that appellant did not indicate what incident or employment factor he was

claiming caused his injury and the medical evidence did not substantiate that the diagnosis provided, shoulder impingement syndrome, was caused or aggravated by the work injury. OWCP afforded appellant 30 days to submit additional evidence.

In a December 29, 2012 statement, appellant stated that his right shoulder had been giving him problems for over a year. He stated that the employing establishment repeatedly worked him over his restrictions. Appellant stated that every morning he went to the general mail facility to unload trucks that brought in the express mail. He and a coworker would then pull mail off the truck to a room about 50 yards away and unload the mail onto tables. Appellant would then take the sorted mail to the four different post offices in Little Rock. He stated that he would daily load and unload his truck and sometimes the parcels would weigh more than his five-pound weight limit. Appellant indicated that he did all this work with his right arm and, over a repeated period of time, he hurt his right shoulder. He further alleged that his modified assignment duties never took place. Appellant stated that he worked outside his job restrictions for as long as he could until it got to the point he could not take it anymore. He retired on December 31, 2012. A copy of the completed questionnaire, signed by appellant on December 29, 2012, was also submitted.

Appellant submitted modified-duty descriptions dated October 3, 2007 and January 7, 2013; a September 6, 2012 notification of absence, a December 12, 2012 request for medical authorization; physical therapy notes dated October 26, December 5 and 10, 2012; an October 15, 2012 x-ray report of the right shoulder; and a January 27, 1998 operative report for rotator cuff repair of right shoulder and treatment notes from the VA medical center dated October 15, November 21 and December 5, 2012 signed by a physician, which provided an assessment of either shoulder pain or right shoulder impingement syndrome.

In a December 22, 2011 report, Dr. Kilgore discussed findings on diagnostic testing and presented treatment options for appellant's right shoulder.

In a January 16, 2013 report, Dr. Adams stated that appellant was being followed for functional needs related to bilateral shoulder impingement syndrome following rotator cuff repair and has been undergoing comprehensive outpatient physical and occupational therapy programs. He stated that appellant had been under his care since November 21, 2012. Dr. Adams indicated that he agreed with Dr. Kilgore's work restrictions of no five-pound weight lifting limit along with no frequent or repeated lifting away from body. Per history, appellant reported injuring his right shoulder on September 6, 2012 while repeatedly lifting 30- to 50-pound boxes at work, with loss of functional range of motion, shoulder weakness and progressive pain.

By decision dated February 12, 2013, OWCP denied appellant's claim. It accepted that the employment factors occurred as alleged, that a medical condition had been diagnosed and that appellant was within the performance of duty. However, OWCP found that the medical evidence was not sufficient to establish that the diagnosed right shoulder impingement syndrome was causally related to the accepted work event(s).

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 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 on 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. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁷ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸ 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 causal relationship.⁹

ANALYSIS

OWCP accepted that appellant repetitively lifted boxes predominately with his right shoulder as alleged on September 6, 2012. The issue is whether he has established a right

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁶ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *James Mack*, 43 ECAB 321, 329 (1991).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

shoulder condition as a result of the September 6, 2012 employment incident or factors of his employment. The Board finds that appellant did not meet his burden of proof to establish a right shoulder condition causally related to the September 6, 2012 employment incident or factors of his employment.

In a November 1, 2012 letter, Dr. Betton stated that appellant has been incapacitated since September 7, 2012 with his right shoulder and major depression and recommended that appellant not return to work because of those problems. He, however, did not provide a diagnosis for appellant's right shoulder condition. Thus, Dr. Betton's opinion is of little probative value in establishing appellant's claim.

In an October 15, 2012 emergency room report, Dr. Rayaz noted the history that appellant provided regarding his right shoulder and provided an assessment of right shoulder pain and possible tendinitis. However, the Board has held that pain is generally a description of a symptom and not considered a firm medical diagnosis.¹⁰ Dr. Rayaz's description of right shoulder pain is not sufficient to establish a firm medical diagnosis related to the accepted incident at work. Thus, his report is insufficient to establish appellant's claim.

Appellant submitted several reports from Dr. Kilgore. In his December 22, 2011 report, Dr. Kilgore discussed treatment options for appellant's right shoulder. However a diagnosis was not provided and there was no medical explanation as to how the work incident of September 6, 2012 caused, contributed to or aggravated appellant's right shoulder. In his October 3, 2012 report and duty status report of the same date, Dr. Kilgore discussed appellant's left shoulder restrictions, which are not relevant to the present claim. He noted in his report that appellant had rotator cuff surgery on the right shoulder and was having similar symptoms on that side, which limited his ability to compensate for the lacking function in the left shoulder. However, Dr. Kilgore did not provide any diagnoses or assessment of appellant's right shoulder condition or otherwise address how the September 6, 2012 work incident caused, contributed to or otherwise aggravated appellant's right shoulder. Thus, his reports are of little probative value in establishing appellant's claim.

Dr. Adams, in his report of November 21, 2012, provides a history of appellant's right shoulder pain and notes appellant's belief that his employment duties of lifting boxes up to 70 pounds has contributed to his right shoulder condition. He also notes there was a work incident in September 2012, but had no details regarding the incident. Dr. Adams provides no discussion as to how the incident of September 6, 2012 or appellant's work duties caused, contributed to or aggravated the diagnosed right shoulder impingement syndrome. In his January 16, 2013 report, he diagnosed bilateral shoulder impingement syndrome following rotator cuff repair surgery, but does not explain how the work incident of September 6, 2012 caused, contributed to or aggravated the diagnosed condition. While Dr. Adams indicates that appellant injured his right shoulder on September 6, 2012 while repeatedly lifting 30- to 50-pound boxes at work, and had resulting loss of functional range of motion, shoulder weakness and progressive pain, he does not attribute the diagnosis of bilateral shoulder impingement syndrome to the September 2012

¹⁰ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

incident, but rather suggests that it occurred following and as a result of the 2008 rotator cuff repair surgery.

Appellant submitted occupational and physical therapy notes. However physical therapists and occupational therapists are not physicians as defined under FECA. Therefore, these reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation.¹¹ Absent approval by a physician, the therapy notes are not probative medical evidence.

The remaining medical evidence, including treatment notes from the VA medical center, either diagnose pain, which is generally a description of a symptom and not considered a firm medical diagnosis,¹² or contain a diagnosis of right shoulder impingement syndrome without a physician's opinion supported by a medical explanation as to how the work incident of September 6, 2012 caused, contributed to or aggravated the diagnosed condition.

The Board finds that appellant did not submit sufficient medical evidence which provided a firm diagnosis or a rationalized explanation as to how the accepted incident caused or aggravated a right shoulder condition. Appellant therefore failed to establish that he has a right shoulder condition resulting from the September 6, 2012 employment incident.

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.

¹¹ See 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000).

¹² See *B.P.*, *supra* note 10.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition on September 6, 2012 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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