

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

J.H., Appellant

and

DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Albuquerque, NM,
Employer

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**Docket No. 14-97
Issued: March 25, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2013 appellant, through counsel, filed a timely appeal of the August 28, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied modification of a decision denying his claim. 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 18, 2012 appellant, then a 65-year-old forestry technician, filed a traumatic injury claim alleging that on April 19, 2012 while dismantling fire pits and lifting and removing large rocks he felt a burning pain in the right shoulder. Appellant stopped work on June 4, 2012. In a witness statement, Dorothy Carrejo reported that on April 19, 2012 she and appellant were at Valle Tio Vinces Campground assigned to a seasonal cleanup and were removing fire pits. She indicated that appellant picked up large rocks and removed a trailer load of rocks from the area and reported that his arm was hurting. Appellant's position was a temporary appointment which was terminated on October 9, 2012 due to motor vehicle misconduct.

Appellant was treated by Dr. Ronney L. Ferguson, a Board-certified orthopedist, from October 11, 2011 to June 1, 2012, for right shoulder pain. In reports dated October 11, 2011 to March 9, 2012, Dr. Ferguson noted that appellant was progressing well after undergoing arthroscopic surgery to repair a right rotator cuff tear. He diagnosed right shoulder rotator cuff tear, status post rotator cuff repair and decompression.² Dr. Ferguson noted that on January 17, 2012 appellant reported increased pain in his shoulder after lifting a heavy object from his pickup truck but improved after physical therapy. On April 23, 2012 appellant was treated by Dr. Ferguson for right shoulder pain. He noted reinjuring his right shoulder after the repair of his right rotator cuff and now experienced weakness and pain. Dr. Ferguson noted findings upon physical examination of limited range of motion on abduction and positive Hawkins sign. He diagnosed probable rotator cuff re-tear of the right shoulder. In a June 1, 2012 report, Dr. Ferguson noted findings of positive Hawkins sign and pain with abduction. He diagnosed tear of the rotator cuff and biceps tendon of the right shoulder. In a June 1, 2012 work status report, Dr. Ferguson noted that appellant was to remain off work for six weeks. A magnetic resonance imaging (MRI) scan right shoulder arthrogram dated May 29, 2012 revealed full thickness rotator cuff tear involving the anterior half of the supraspinatus tendon, full thickness and partial width tear involving a small portion of the mid portion of the infraspinatus tendon and a complete tear of the long head of the biceps tendon. Appellant submitted a tailgate safety meeting form dated April 16 to 20, 2012 which identified procedures to reduce hazards for crew members.

By letter dated July 10, 2012, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim.

Appellant submitted a July 25, 2012 OWCP questionnaire and reported injuring his right shoulder while working at a camp ground lifting and removing large heavy rocks. He reported a strong burning sensation immediately after the lifting incident. In an undated statement, appellant noted injuring his right shoulder on April 19, 2012 while dismantling fire pits at a campsite. He reported while loading heavy rocks he experienced a sharp stabbing pain on the right shoulder. Appellant reported seeking treatment from Dr. Ferguson on April 23, 2012 and undergoing an MRI scan of the right shoulder which revealed a right rotator cuff and biceps

² The record indicates that appellant had prior injury claims, including a June 23, 2011 right shoulder injury. These other claims are not presently before the Board.

tendon tear. In a work status report dated June 15, 2012, Dr. Ferguson returned appellant to light duty with restrictions.

In a decision dated August 22, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the claimed condition was causally related to the established work events.

On August 5, 2013 appellant requested reconsideration. In an undated statement, he reiterated the factual account of his injury on April 19, 2012. Appellant submitted letters dated August 24, 2012 to January 28, 2013 to OWCP disputing the August 22, 2012 decision denying his claim for compensation. He also submitted evidence previously of record.

Appellant submitted a September 10, 2012 report from Dr. Ferguson who treated him for right shoulder pain. Dr. Ferguson noted that appellant reinjured his right and left shoulders. Appellant reported reinjuring his right shoulder several months ago when he was moving rocks at work. Dr. Ferguson noted that appellant had an MRI scan of the left shoulder which revealed a rotator cuff tear and an MRI scan of the right shoulder which showed a tear of the rotator cuff. He noted findings of positive Hawkins sign in the right shoulder with limited range of motion on abduction. Dr. Ferguson diagnosed rotator cuff tear of the right shoulder and recommended arthroscopic surgery.

In a decision dated August 28, 2013, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 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 is causally related to the employment injury. 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁴

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical

³ Gary J. Watling, 52 ECAB 357 (2001).

⁴ T.H., 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

In the instant case, it is not disputed that appellant worked as a forestry technician and that on April 19, 2012 he was dismantling fire pits and lifting and removing large rocks at a campsite. It is also not disputed that he was diagnosed with right full thickness rotator cuff tear of the supraspinatus tendon, the infraspinatus tendon and a complete tear of the biceps tendon. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed right shoulder conditions were caused or aggravated by the April 19, 2012 work incident. On July 10, 2012 OWCP advised him of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the incident caused or aggravated a diagnosed medical condition.

Appellant submitted an April 23, 2012 report from Dr. Ferguson who treated him for right shoulder pain. He reported reinjuring his right shoulder after the surgical repair of the right rotator cuff. Dr. Ferguson noted limited range of motion on abduction and positive Hawkins sign. He diagnosed probable rotator cuff re-tear of the right shoulder. Similarly, in a September 10, 2012 report, Dr. Ferguson diagnosed rotator cuff tear of the right shoulder. Appellant reported reinjuring his right shoulder several months ago when he was moving rocks while at work. Dr. Ferguson noted an MRI scan of the right shoulder which showed a tear of the rotator cuff. The Board finds that, although Dr. Ferguson supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding the causal relationship between appellant's diagnosed conditions and the employment incident.⁶ For instance, the physician failed to explain how moving rocks would cause the diagnosed right rotator cuff tear and why the condition was not attributable to a prior injury or to any other nonwork factors.

In a June 1, 2012 report, Dr. Ferguson noted findings and diagnosed tear of the rotator cuff and biceps tendon of the right shoulder. In a June 1, 2012 work status report, he noted that appellant was to remain off work for six weeks. In a June 15, 2012 work status report, Dr. Ferguson returned appellant to light duty with restrictions. However, these reports are insufficient to establish the claim as he did not specifically address whether appellant's employment activities on April 19, 2012 caused or aggravated a diagnosed medical condition.⁷ Other reports from Dr. Ferguson predated the claimed traumatic injury of April 19, 2012.

The remainder of the evidence, including an MRI scan of the right shoulder fail to provide an opinion on the causal relationship between appellant's job and his diagnosed right

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

⁷ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

shoulder condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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. Causal relationships must be established by rationalized medical opinion evidence.⁸ Appellant failed to submit such evidence, and OWCP therefore 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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

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

Issued: March 25, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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