

)	
J.F., Appellant)	
)	
and)	Docket No. 06-1934
)	Issued: January 8, 2007
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Cheyenne, WY, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On August 17, 2006 appellant filed a timely appeal from a July 18, 2006 decision of the Office of Workers' Compensation Programs affirming the denial of his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

The issue is whether appellant has established that he sustained a right shoulder injury causally related to a November 3, 2004 fall.

On November 18, 2005 appellant, then a 49-year-old laborer, filed a traumatic injury claim (Form CA-1), asserting that he sustained a right shoulder injury on November 3, 2004 when he slipped and fell in a snowy parking lot. The employing establishment confirmed that the November 3, 2004 incident occurred in the performance of duty. Appellant explained that he

did not seek treatment until November 2005 because he thought his right shoulder symptoms would improve.

In a November 10, 2005 report, Dr. Milford E. Thieszen, an attending Board-certified family practitioner, diagnosed tendinitis and a partial rotator cuff tear of the right shoulder. Dr. Timothy C. Lindquist, an attending Board-certified orthopedic surgeon, stated in a November 17, 2005 report, that appellant injured his right shoulder approximately one year ago when he “fell in the parking lot.”

In a December 5, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. It noted that his attending physician must submit a report explaining how and why the November 3, 2004 fall would cause the claimed right shoulder injury. In response, appellant submitted nurse’s notes dated November 3 and 9, 2005 and physical therapy notes dated November 28, 2005 to January 6, 2006.

By decision dated January 13, 2006, the Office denied appellant’s claim on the grounds that causal relationship was not established. It accepted that the November 3, 2004 fall occurred at the time, place and in the manner alleged. However, appellant submitted insufficient medical evidence to establish that the incident caused his right shoulder injury or need for surgery. The Office noted that the nurse and physical therapy reports were not medical evidence as they were not signed or reviewed by a physician.

In a January 19, 2006 letter, appellant requested an oral hearing. A telephonic hearing was conducted on June 2, 2006. Appellant reiterated his account of events, emphasizing that he had no right shoulder problems before the November 3, 2004 fall. The hearing representative explained that it was important for appellant’s physician to address the November 3, 2004 fall, as well as setting forth how the fall caused the right shoulder injury. Appellant was afforded 30 days in which to submit additional evidence.

On April 13, 2006 Dr. Bruce Smith, an attending Board-certified orthopedic surgeon, performed right shoulder arthroscopy with a partial acromionectomy, distal clavicle excision and debridement of a partial rotator cuff tear.¹ In a May 24, 2006 report, he noted that appellant injured his right shoulder on “November 4, 2005” when he slipped and fell at work. Dr. Smith opined that the fall caused the AVC joint injury repaired on April 13, 2006. In a May 24, 2006 letter, Dr. Smith noted first treating appellant in April 2006 for a November 2005 right shoulder injury causing pain and functional limitations despite “conservative management in the interim.” In a June 20, 2006 chart note, Dr. Smith stated that his previous reports “should read that the date of injury for [appellant] was early November 2004, probably the third or the fourth.”²

By decision dated and finalized July 18, 2006, the Office hearing representative affirmed the denial of appellant’s claim on the grounds that he failed to establish causal relationship. She noted that the November 3, 2004 incident was accepted as factual and that appellant was later

¹ A November 6, 2005 magnetic resonance imaging (MRI) scan showed acromioclavicular (AVC) joint arthrosis and a possible rotator cuff tear.

² Appellant also submitted a May 16, 2006 physical therapy note.

treated for a right rotator cuff tear. However, appellant submitted insufficient medical evidence to establish a causal relationship between the accepted fall and the diagnosed tear. The hearing representative noted that Dr. Smith's opinion was insufficient to establish causal relationship as he used differing dates of injury and seemed unaware that appellant delayed seeking treatment for one year.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 the Act; 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.⁴ 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.⁵

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶ 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.⁷

ANALYSIS

The Office accepted that appellant fell in the performance of duty on November 3, 2004. It acknowledged that the medical evidence indicated that he sustained a right rotator cuff tear. The Office denied appellant's claim finding the medical evidence insufficient to establish that the accepted fall caused the diagnosed right shoulder injury or need for surgery.

Appellant submitted medical reports from several attending physicians. Dr. Thiesen, a Board-certified family practitioner, diagnosed right shoulder conditions on November 10, 2005, but he did not specify a mechanism of injury. Dr. Timothy C. Lindquist, an attending Board-certified orthopedic surgeon, stated in a November 17, 2005 report that appellant injured his right shoulder approximately one year prior when he "fell in the parking lot." However, he did not

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

specifically refer to the accepted November 3, 2004 fall at work. Thus, neither physician attributed the diagnosed right shoulder conditions to the accepted incident.

Dr. Smith, an attending Board-certified orthopedic surgeon, stated in a May 24, 2006 report, that appellant fell and injured his right shoulder on November 4, 2005. Yet, in a June 20, 2006 chart note, he altered his previous opinion, offering a date of injury in “early November, 2004, probably the third or the fourth.” The probative value of Dr. Smith’s opinion is diminished by the apparent confusion regarding the date of injury. Moreover, he did not express how the findings of the right shoulder and need for surgery arose from the accepted incident. Medical conclusions based on inaccurate histories are insufficient to satisfy a claimant’s burden of proof.⁸

Appellant also submitted nurse’s notes and physical therapy records which were not signed or reviewed by a physician. Therefore, these documents are not medical evidence for the purposes of this case.⁹

The Board finds that appellant did not submit sufficient medical evidence to establish his right shoulder condition or the need for surgery to the accepted November 3, 2004 fall. Therefore, he failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a right shoulder injury causally related to a November 3, 2004 fall. The medical evidence he submitted was insufficient to establish causal relationship.

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *Roy L. Humphrey*, 57 ECAB ____ (Docket No. 05-1928, issued November 23, 2005). *See also* 5 U.S.C. § 8101(2) (this subsection defines “physician” as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18 and January 13, 2006 are affirmed.

Issued: January 8, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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