

September 27, 2009 when he hurt his left shoulder and neck. He did not incur any time loss from work. The employing establishment controverted the claim, asserting that the alleged injury occurred off duty and was otherwise not promptly reported.²

OWCP informed appellant in a June 11, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement describing the September 27, 2009 work incident and a physician's report offering a reasoned opinion explaining how the incident caused an injury. Appellant subsequently provided a May 24, 2010 work release note releasing him to full duty from Dr. James W. Snead, a Board-certified orthopedic surgeon, and May 25, 2010 employing establishment health unit records from a nurse practitioner.

By decision dated July 14, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that he experienced the September 27, 2009 incident as alleged.

Appellant requested reconsideration on July 20, 2010. In an August 20, 2010 statement, he detailed that he was on a surveillance assignment from September 25 to 27, 2009. On September 27, 2009 appellant was removing camera equipment from his vehicle with his right arm while simultaneously leaning on his left arm, akin to an inclined pushup position, when his left shoulder buckled. Thereafter, he experienced severe pain in his left arm, neck and back. Appellant notified a supervisor about the incident on September 28, 2009.³

An October 1, 2009 report from Dr. Glenn A. Tucker, a Board-certified internist, related that appellant leaned forward on his left arm and "felt a snap," causing shoulder pain and an inability to raise the arm. Dr. Tucker observed limited range of motion (ROM) secondary to pain on examination. An October 1, 2009 left shoulder x-ray report from Dr. Lawrence E. Steinbach, a Board-certified diagnostic radiologist, revealed a bone island in the humeral head and degenerative glenohumeral joint changes with joint space narrowing and mild osteophytosis.

In an October 5, 2009 report, Dr. Snead noted that appellant twisted and popped his left shoulder from a pushup position on September 25, 2009. He referred to the October 1, 2009 x-ray findings and added that appellant exhibited subdeltoid and biceps tendon tenderness, supraspinatus muscle weakness, limited ROM, and positive impingement and O'Brien signs. An October 9, 2009 follow-up report from Dr. Snead pointed out that a magnetic resonance imaging (MRI) scan of the left shoulder demonstrated a partial rotator cuff tear and a complex superior labral tear with extension into the biceps tendon.⁴ He diagnosed left superior labral tear from anterior to posterior with extension into the biceps tendon and impingement syndrome. Appellant underwent arthroscopic surgery on October 22, 2009.⁵

² The employing establishment reiterated its stance in a September 2, 2010 letter.

³ A June 8, 2010 letter from appellant's former supervisor corroborated that appellant was in the performance of duty on September 27, 2009 and reported the injury the following day.

⁴ The record indicates that an MRI scan was performed on October 7, 2009.

⁵ Postoperative reports dated October 30 and December 11, 2009 and various physical therapy records from November 2009 indicated that appellant's recovery proceeded satisfactorily.

In a March 22, 2010 report from Dr. Snead, appellant complained of left acromioclavicular joint pain and tightness that arose three weeks earlier. A left shoulder x-ray showed degenerative changes of the acromioclavicular joint with questionable distal clavicle osteolysis. On examination, Dr. Snead observed acromioclavicular joint, subdeltoid and biceps tenderness, supraspinatus muscle pain and limited active ROM. Appellant continued to experience symptoms in April 2 and May 7, 2010 follow-up reports. On May 13, 2010 he underwent a second arthroscopic surgery.⁶

An August 30, 2010 note from Dr. Snead opined that appellant's September 27, 2009 injury was consistent with the findings of the October 7, 2009 MRI scan.

On October 21, 2010 OWCP modified the July 14, 2010 decision to reflect that appellant experienced the September 27, 2009 incident as alleged. It denied the claim on the grounds that the medical evidence was insufficient to establish that the accepted incident caused or contributed to his left shoulder condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,⁷ including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.⁸ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁹

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 evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical

⁶ Whereas Dr. Snead's June 9, 2010 postoperative report related that appellant reaggravated his left shoulder condition when he "recently went to show a trunk door," May 24 and July 2, 2010 reports noted that his pain during convalescence was well controlled.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁸ *R.C.*, 59 ECAB 427 (2008).

⁹ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008).

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 factors identified by the claimant.¹¹

ANALYSIS

The evidence of record supports that appellant was removing camera equipment from a vehicle with his right arm and leaning on his left arm during a September 27, 2009 surveillance assignment when his left shoulder buckled. Nevertheless, the medical evidence remains insufficient to establish that this accepted employment incident led to his injury.

Dr. Snead specified in an October 5, 2009 report that appellant twisted and popped his left shoulder from a pushup position on September 25, 2009. Based on a physical examination and radiological findings, he subsequently diagnosed left superior labral tear from anterior to posterior with extension into the biceps tendon and impingement syndrome. Dr. Snead's opinion, however, did not sufficiently establish causal relationship because he failed to explain how removing camera equipment with his right arm and leaning on his left arm pathophysiologically caused appellant's left shoulder condition.¹² In addition, he erroneously listed September 25, 2009 as the date of injury. Opinions based on an incomplete or inaccurate history are of diminished probative value.¹³ Dr. Snead's reports for the period October 9, 2009 to August 30, 2010, as well as Dr. Steinbach's October 1, 2009 x-ray report, were also of diminished probative value because they did not address whether appellant's federal employment contributed to his left shoulder injury.¹⁴

Dr. Tucker stated in an October 1, 2009 report that appellant's left shoulder symptoms resulted when he leaned forward on his left arm. He did not advise that this happened at work and his opinion did not otherwise provide medical rationale to explain how the September 27, 2009 work incident caused or aggravated a diagnosed medical condition. Dr. Tucker's report is of limited probative value on the issue of causal relationship.¹⁵

The remaining evidence, namely a series of November 2009 physical therapy notes and May 25, 2010 hospital records from a nurse practitioner, lacked evidentiary weight. A medical issue such as causal relationship can only be resolved through the submission of probative

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). The Board points out that Dr. Snead did not explicitly identify removing camera equipment at work and leaning vertically on the left arm as the incident that caused appellant's condition. See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). Moreover, he did not mention whether appellant was on duty. See *W.C.*, Docket No. 10-971 (issued January 10, 2011).

¹³ *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980).

¹⁴ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

medical evidence from a physician.¹⁶ Because neither a nurse practitioner nor a physical therapist is a “physician” as defined under FECA, these documents cannot constitute competent medical evidence.¹⁷ In the absence of a rationalized medical opinion from a physician explaining the reasons why the September 27, 2009 work incident caused or aggravated a diagnosed medical condition, appellant has not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument as part of a formal 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 establish that he sustained a traumatic injury in the performance of duty on September 27, 2009.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2010 decision of the Office of Workers’ Compensation Programs be affirmed.

Issued: November 8, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

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

¹⁶ *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

¹⁷ 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Jennifer L. Sharp*, 48 ECAB 209 (1996).