

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

D.C., Appellant

and

**DEPARTMENT OF THE ARMY, GARRISON,
Fort Hunter Liggett, CA, Employer**

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**Docket No. 14-243
Issued: June 2, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 15, 2013 appellant filed a timely appeal from the September 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on October 18, 2012.

On appeal, appellant contends that he injured his right shoulder at work and that his goal was to get his shoulder repaired so that he could return to work without restrictions.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 24, 2012 appellant, then a 62-year-old maintenance mechanic, filed a traumatic injury claim alleging that on October 18, 2012 his right shoulder popped, while he was standing up to install a hood vent on a stove in the shop. He listed the nature of his injury as right shoulder strain/sprain.

In a November 5, 2012 report, Dr. William F. Sima, a Board-certified diagnostic radiologist, listed the date of injury as October 18, 2012 and noted that appellant's pain began suddenly after a misstep on that date. Appellant stepped off a ladder to grab a tool and his right shoulder popped. Dr. Sima noted that appellant's pain initially began on September 12, 2012 when he was injured while using a handrail climbing stairs and caught his right hand and had instant shoulder pain. He listed a preliminary impression as impingement/rotator cuff tendinitis and right rotator cuff tear. Dr. Sima noted that this was a very common condition especially with advancing age that could result in significant difficulties with use of the arm. Appellant had a history of a prior rotator cuff repair on October 3, 2004. Dr. Sima advised that appellant could return to work with restrictions of no over-the-shoulder reaching or lifting on the right side beginning October 18, 2012. He requested a magnetic resonance imaging (MRI) scan.

In a December 7, 2012 report, Dr. D. Young Shin, a Board-certified radiologist, obtained an MRI scan that showed: (1) infraspinatus tendon is completely torn and retracted to muscle tendinous junction; (2) small full-thickness tears of the distal supraspinatus tendon and small partial thickness tears of the distal supraspinatus tendon and small partial-thickness tear of the articular side distal subscapularis tendon; (3) large inferior osteophytic spurring of distal clavicle; (4) SLAP tear and possible posterior labrum tear; (5) glenoid chondrosis; and (6) prior rotator cuff repair.

In a December 12, 2012 report, Dr. Sima noted that appellant's overall condition was somewhat better. Appellant had pain that radiated to the lateral aspect of the upper arm and shoulder and weakness with lifting overhead. Dr. Sima noted that paresthesias was present. He listed an impression as impingement/rotator cuff tendinitis and recurrent retracted large right rotator cuff tear. Dr. Sima noted that appellant elected to proceed with right shoulder arthroscopy rotator cuff repair.²

In a decision dated February 8, 2013, OWCP denied appellant's claim. It accepted the October 18, 2012 incident but found that the medical evidence did not establish that his right shoulder condition was causally related to the incident.³

On March 5, 2013 appellant requested an oral hearing before an OWCP hearing representative.

² In a February 26, 2013 note, Dr. Sima indicated that he prescribed Vicodin for management of pain and inflammation.

³ OWCP noted that a September 12, 2012 incident had not been accepted as employment related.

In a statement dated February 27, 2013, appellant indicated that on September 12, 2012 while working in the boiler room circulating pumps, he carried tools up the stairs that became caught in the right side handrail. He felt a pull in his right shoulder and a slight pain. After a couple of days, it still bothered appellant, so he saw Dr. Sima, who gave him a Cortisone injection and he returned to work. On October 18, 2012, while he was cutting a sleeve through a wall for a kitchen hood, he reached suddenly for a part that slipped from his hands and heard a loud pop and experienced pain.

At the July 11, 2013 hearing, appellant explained how he injured himself. The hearing representative explained to appellant that medical evidence was required to establish that the accepted incident resulted in an injury. The hearing representative held the record open for an additional 30 days. Appellant did not submit any new medical evidence.

In a September 17, 2013 decision, the hearing representative affirmed the denial of appellant's claim. She noted that appellant had a nonwork-related rotator cuff tear in 2004. The hearing representative found that the medical evidence did not adequately describe how the incident of October 18, 2013 caused the diagnosed medical condition.⁴

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 timely filed within the applicable time limitation period 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 are 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.⁵

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the

⁴ The hearing representative noted that appellant did not file a claim for a September 12, 2012 work incident.

⁵ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁸

ANALYSIS

OWCP accepted that appellant sustained an employment-related incident on October 18, 2012. The record also establishes that he has a preexisting nonwork-related right shoulder rotator cuff tear for which he underwent surgery in 2004. Appellant was diagnosed in 2012 with impingement/rotator cuff tendinitis and recurrent retracted large right rotator cuff tear. OWCP determined that appellant did not submit medical evidence addressing how the October 18, 2012 employment incident caused or aggravated his right shoulder condition.

The Board finds that appellant failed to submit medical evidence sufficient to establish a causal relationship between the claimed injuries and the October 18, 2012 employment incident. Dr. Shin interpreted appellant's December 7, 2012 MRI scan but did not address his employment. Dr. Sima noted appellant's employment injury of October 18, 2012 and the onset of pain that day. He also diagnosed appellant with impingement/rotator cuff tendinitis and right rotator cuff tear. However, Dr. Sima did not provide a rationalized medical opinion addressing how this condition was causally related to the accepted October 18, 2012 employment incident. He noted a prior history of injury in 2004 and a September 12, 2012 incident that was not the basis for appellant's claim. Therefore, Dr. Sima's opinion on causal relation is of reduced probative value.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.⁹ Appellant did not establish that his medical condition was causally related to the October 18, 2012 incident. He failed to meet his burden of proof.

Appellant may submit 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 to establish that he sustained an injury in the performance of duty on October 18, 2012.

⁸ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁹ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 17, 2013 is affirmed.

Issued: June 2, 2014
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