

FACTUAL HISTORY

On December 16, 2003 appellant, then a 59-year-old decontamination plant production operator, filed an occupational disease claim alleging that he sustained a strained left shoulder due to performing repetitive work in his federal employment. He previously injured his right shoulder at work on September 17, 2002, assigned Office file number 162045214. When appellant resumed work on May 19, 2003, he performed his repetitive work duties with his left arm to compensate for his right arm limitations.

By letter dated December 23, 2003, the Office requested additional factual and medical information from appellant, including a detailed medical report addressing the causal relationship between any diagnosed condition and factors of his federal employment. Appellant submitted a December 9, 2003 magnetic resonance imaging (MRI) study of the left shoulder which revealed rotator cuff tendinosis or partial rotator cuff tears of the supraspinatus and infraspinatus tendons. In a report dated December 19, 2003, Dr. James W. Bryan, IV, Board-certified in family practice, noted appellant's history of right shoulder surgery on January 21, 2003 and current symptoms on the left side. He diagnosed bilateral rotator cuff syndrome with tendinosis and bursitis. Dr. Bryan opined that appellant should remain off work pending a surgical consultation.

By decision dated January 27, 2004, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained a left shoulder condition causally related to the accepted work factors.

Appellant submitted progress reports dated April 2000 to August 2004 from Dr. Ruben Tejada, an attending internist. On July 29, 2003 Dr. Tejada noted appellant's complaints of pain in the left shoulder with elevation. Appellant related that he "had surgery in the right arm and [it] seems the tendon in the left shoulder has been aggravated." Dr. Tejada diagnosed left shoulder tendinitis. On September 2, 2003 appellant complained of increased problems with both shoulders. Dr. Tejada diagnosed left greater than right shoulder tendinitis and noted that he performed light duty at work. On March 3, 2003 he discussed appellant's history of recent left shoulder surgery and diagnosed bilateral tendinitis of the shoulders with surgery.

In an initial evaluation dated January 8, 2004, Dr. W. Scott Bowen, a Board-certified orthopedic surgeon, noted appellant's complaints of chronic left shoulder pain. He stated, "[Appellant] relates this to an injury where he fell at work in June of last year. He describes landing on his right shoulder but also striking his left. Both shoulders have hurt since that time." Appellant experienced increased pain "with overhead activity that is exacerbated by work." Dr. Bowen diagnosed a partial thickness tear or tendinitis of the left supraspinatus and infraspinatus tendon by MRI scan study. He recommended arthroscopic surgery.

In a form report dated January 30, 2004, Dr. Bowen diagnosed a rotator cuff tear and checked "yes" that the condition was caused or aggravated by employment. He performed a rotator cuff repair on January 19, 2004. Dr. Bowen found that appellant was totally disabled from employment.

On February 24, 2004 appellant requested an oral hearing. He submitted an April 1, 2004 progress report from Dr. Bowen who diagnosed a possible recurrent rotator cuff tear or

adhesions of the right shoulder. Dr. Bowen stated, “Concerning the origin of [appellant’s] left shoulder pain, apparently he was working and using the left arm a lot and his job requires repetitive overhead activity. In my estimation, I think this is related to his work and causes 50 percent or more of his symptoms that required surgery in my opinion.”

In a September 8, 2004 letter to appellant’s attorney, Dr. Tejada diagnosed bilateral periarthritis of the shoulders with rotator cuff surgery in January 2003. Regarding causation, he stated, “Undoubtedly [the] accident had contributed to an extent, but [it is] unknown how much relationship the injury in 2002 has contributed to his current periarthritis.” Dr. Tejada listed work restrictions.

By decision dated February 14, 2005, a hearing representative affirmed the January 27, 2004 decision, finding that the medical evidence was insufficient to establish that appellant’s left shoulder condition was due to the claimed work factors.

On April 7, 2005 appellant requested reconsideration. In an April 14, 2005 decision, the Office denied merit review of the claim under 5 U.S.C. § 8128.

Appellant again requested reconsideration on May 18, 2005. He submitted the operative report from his January 19, 2004 left shoulder acromioplasty with debridement, distal clavicle resection and rotator cuff repair. In a January 21, 2004 discharge summary, Dr. Bowen attributed his left shoulder pain to an injury in June 2003. He experienced increased pain “with overhead activity that is exacerbated by work.” Dr. Bowen diagnosed a partial thickness tear or tendinitis of the left shoulder. He provided progress reports after appellant’s rotator cuff repair. On August 15, 2005 Dr. Bowen provided an impairment rating and released him from care.

By decision dated November 10, 2005, the Office denied modification of its February 14, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² 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.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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

² 5 U.S.C. §§ 8101-8193.

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

presence or existence of the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion 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 claimant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

Appellant attributed his left shoulder condition to performing repetitive activities at work and performing his employment duties with his left arm to compensate for his right arm restrictions. The Office accepted the occurrence of the claimed employment factor. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factor.

In a report dated December 19, 2003, Dr. Bryan diagnosed bilateral rotator cuff syndrome with tendinosis and bursitis. He opined that he should remain off work pending a surgical consultation. Dr. Bryan did not, however, address causation and thus his report is of little probative value on the issue of causal relationship.¹²

Appellant submitted progress reports from Dr. Tejada dated April 2000 to August 2004. In a progress report dated July 29, 2003, Dr. Tejada noted that he experienced pain in the left shoulder with elevation. He diagnosed left shoulder tendinitis. Appellant complained of increased shoulder problems on September 2, 2003. Dr. Tejada diagnosed left greater than right shoulder tendinitis. In a March 3, 2003 progress report, he noted that appellant had undergone

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² See *Conrad Hightower*, *supra* note 8.

left shoulder surgery. Dr. Tejada diagnosed bilateral tendinitis of the shoulders with surgery. He did not, however, address the cause of appellant's left shoulder condition in his progress reports. As discussed, the Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹³

On September 8, 2004 Dr. Tejada diagnosed bilateral peri-arthritis of the shoulders. He asserted that an accident contributed to appellant's condition but that it was "unknown how much relationship the injury in 2002 has contributed to his current peri-arthritis." Dr. Tejada does not relate the left shoulder condition of peri-arthritis to the employment factors alleged by appellant as causing his condition but instead to a 2002 injury. Further, his opinion is couched in speculative terms and thus of little probative value.¹⁴

On January 8 and 21, 2004 Dr. Bowen noted that appellant attributed his left shoulder pain to a June 2003 fall at work. He related that the pain increased when he performed overhead activity and that the pain was "exacerbated by work." Dr. Bowen diagnosed a partial thickness tear or tendinitis of the left supraspinatus and infraspinatus tendon and recommended surgery. While he discussed appellant's belief that work exacerbated his condition, he did not provide his own finding on the cause of the diagnosed condition. A physician's report is of little probative value when it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.¹⁵ Further, Dr. Bowen noted that appellant related the onset of his left shoulder pain to a fall at work rather than performing repetitive work duties. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹⁶

In a form report dated January 30, 2004, Dr. Bowen diagnosed a rotator cuff tear and checked "yes" that the condition was caused or aggravated by employment. He opined that appellant was totally disabled from employment and noted that he underwent arthroscopic surgery on January 16, 2004. Dr. Bowen did not, however, provide any rationale supporting his causation finding. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁷

In an April 1, 2004 progress report, Dr. Bowen stated, "Concerning the origin of [appellant's] left shoulder pain, apparently he was working and using the left arm a lot and his job requires repetitive overhead activity. In my estimation, I think this is related to his work and

¹³ *Id.*

¹⁴ *Rickey S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁵ *Earl David Seal*, 49 ECAB 152 (1997).

¹⁶ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

causes 50 percent or more of his symptoms that required surgery in my opinion.” Dr. Bowen’s finding that appellant sustained left arm problems “apparently” while working is speculative in nature and thus of little probative value.¹⁸ Further, he did not provide any rationale explaining why he related part of appellant’s condition to work and part of his condition to other, unidentified factors. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant’s accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant’s burden of proof.¹⁹

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.²⁰ To establish causal relationship, he must submit a physician’s report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.²¹ Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof to establish that he sustained a left shoulder condition due to factors of his federal employment.

CONCLUSION

The Board finds that appellant has not established that he sustained a left shoulder condition causally related to factors of his federal employment.

¹⁸ See *Rickey S. Storms*, *supra* note 14.

¹⁹ See *Beverly A. Spencer*, *supra* note 7.

²⁰ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

²¹ *Calvin E. King*, 51 ECAB 394 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 10, April 14 and February 14, 2005 are affirmed.

Issued: November 7, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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