

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

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A.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Little Rock, AR, Employer )

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**Docket No. 11-1975  
Issued: April 4, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 25, 2011 appellant filed a timely appeal from a June 15, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish that his left biceps tendon tear was causally related to the October 19, 2010 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence following the June 15, 2011 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

## **FACTUAL HISTORY**

On December 13, 2010 appellant, then a 62-year-old sales and services clerk, filed a traumatic injury claim alleging that on October 19, 2010 he strained his left lower arm when he moved a heavy manual ramp out of the way in order to move mail across the dock.

In a November 18, 2010 report, Dr. Jason McConnell, an orthopedic surgeon, noted appellant's complaints of left arm and shoulder pain. He related that he began to experience pain and some swelling in the left elbow about four to five weeks ago when he moved some metal along a ramp. Dr. McConnell observed full range of motion of appellant's elbow but some swelling in the antecubital fossa. Flexion and extension of appellant's wrist and feet were not painful. Examination of the left shoulder revealed some pain and positive impingement signs. X-rays of the left shoulder and cervical spine did not show any signs of arthritis, fractures or dislocations. Dr. McConnell diagnosed left biceps strain with impingement to the left shoulder. He recommended a magnetic resonance imaging (MRI) scan examination because he suspected a partial biceps tendon tear.

In a December 2, 2010 report, Dr. McConnell noted appellant's complaints of left elbow and shoulder pain. He first examined appellant on November 18, 2010 for shoulder pain and noted resisted supination down in the elbow consistent with a partial biceps tendon rupture. Examination of the upper extremity revealed significant pain with resisted supination. Dr. McConnell diagnosed left biceps strain with impingement of the left shoulder.

In a December 3, 2010 MRI scan report, Dr. Bryan Jennings, a Board-certified diagnostic radiologist, noted appellant's complaints of left elbow pain. He observed normal marrow signal, appropriate osseous alignment, intact radial and ulnar collateral ligaments and intact triceps tendon. No abnormal signal or joint effusion was present. Dr. Jennings noted a high-grade partial thickness tear of the biceps tendon with a slip of tendon tissue remaining attached to the radius. The remainder of tendons and surrounding muscular was maintained with some edema surrounding the biceps tendon sheath. Dr. Jennings diagnosed high-grade partial thickness tear estimated at 80 to 90 percent of the tendon thickness involving the distal aspect of the tendon.

In a December 14, 2010 report, Dr. McConnell noted appellant's complaints of left arm pain and pointed out that a recent MRI scan revealed high-grade partial thickness tear. Examination of appellant's upper extremities showed no changes. Dr. McConnell diagnosed left distal biceps rupture and recommended surgery. He also excused appellant from work until December 16, 2010 and restricted him to light duty.

On December 20, 2010 Dr. McConnell requested authorization for surgery to repair a torn biceps tendon.

On December 22, 2010 OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested additional information. It requested that he answer specific questions and submit medical evidence providing a diagnosis of any condition resulting from the October 19, 2010 incident and a physician's opinion regarding how the incident caused or aggravated his alleged conditions.

On December 27, 2010 appellant responded to OWCP's questionnaire. He explained that he waited until December 13, 2010 to file his traumatic injury claim because he thought his condition was getting better until it was reinjured due to its weakened condition. Appellant stated that he felt a snap in his forearm and experienced pain.

In a January 4, 2011 statement, appellant stated that after he injured his arm he went to Dr. William Highsmith, Board-certified in family medicine, because he experienced problems with his neck. He underwent physical therapy for five to six weeks but he noted that his arm still bothered him and felt weak when he lifted something. Appellant related that one day he was cleaning his kitchen when he lifted a cast iron skillet and felt another pull in his arm. He went back to Dr. Highsmith and was referred to Dr. McConnell, who recommended an MRI scan and suggested that appellant undergo surgery.

In a decision dated February 3, 2011, OWCP accepted that the October 19, 2010 incident occurred as alleged and that appellant sustained a left arm condition, but denied his claim finding the medical evidence insufficient to establish that his left arm condition was causally related to the accepted event.

On February 14, 2011 appellant requested a review of the written record. He stated that he included a letter from Dr. Highsmith in support of his claim. Appellant also clarified that the injury was to his forearm, not his back and that the tear was on the inside bend of his elbow area or forearm. He explained that his doctor told him that one day he would pick something up and it would finish tearing the tendon.

In a February 14, 2011 report, Dr. Highsmith stated that he examined appellant on October 19, 2010 for an injury that occurred at work and again on November 10, 2010 for the same injury.

Appellant submitted hospital outpatient records indicating that he was examined for left elbow pain as a result of a partially torn tendon.

By decision dated June 15, 2011, OWCP's hearing representative affirmed the February 3, 2011 denial decision finding insufficient medical evidence establishing that appellant's left biceps tendon tear was causally related to the October 19, 2010 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup>

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.<sup>5</sup> There are two components involved in establishing the 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.<sup>6</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.<sup>8</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.<sup>9</sup> Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the specified employment factors or incident.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>11</sup>

### ANALYSIS

OWCP has accepted that the October 19, 2010 employment incident occurred as alleged. It denied appellant’s claim finding that he failed to provide rationalized medical opinion evidence demonstrating that his left arm condition was causally related to the accepted employment incident. The Board finds that the medical evidence fails to establish that he sustained a left biceps tendon tear as a result of the October 19, 2010 employment incident.

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<sup>4</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>9</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, *supra* note 10.

Appellant submitted various medical reports by Dr. McConnell who noted appellant's complaints of left arm and shoulder pain after he moved some metal along a ramp. Examination of the left upper extremity revealed pain and positive impingement signs. Dr. McConnell recommended an MRI scan examination, which revealed high-grade partial thickness tear. He diagnosed left distal biceps rupture and recommended surgery. Dr. McConnell did not, however, offer any opinion regarding the cause of appellant's left arm condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value and is insufficient to establish appellant's claim.<sup>12</sup> The additional medical reports of Drs. Highsmith and Jennings' reports are likewise insufficient to establish appellant's claim as they do not contain any opinion on the cause of his left arm condition or an explanation on how the October 19, 2010 incident caused his left biceps tendon tear.

On appeal, appellant contends that his arm injury was because of a weakened condition from a prior injury at work and related why he did not file his claim right away. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>13</sup> As appellant has not submitted such rationalized medical opinion evidence in this case, he did not meet his burden of proof to establish his claim.

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 left biceps tendon tear was causally related to the October 19, 2010 employment incident.

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<sup>12</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>13</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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