

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

A.C., Appellant)

and)

DEPARTMENT OF THE NAVY, U.S. MARINE)
CORPS, Camp Pendleton, CA, Employer)

**Docket No. 11-2023
Issued: April 20, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 12, 2011 appellant filed a timely appeal from a June 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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 sustained an injury in the performance of duty on February 19, 2011.

FACTUAL HISTORY

On February 20, 2011 appellant, then a 55-year-old firefighter, filed a traumatic injury claim alleging that on February 19, 2011 he sustained an injury to his left shoulder when he tried

¹ 5 U.S.C. § 8101 *et seq.*

to cut the security chain on a gate in response to a call for medical aid.² A witness stated that appellant helped him cut a thick lock and complained of shoulder pain.

On May 26, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested factual evidence demonstrating that the employment incident occurred as alleged and medical evidence establishing that he sustained a diagnosed condition causally related to the employment incident.

Appellant stated that at the time of the incident he felt an immediate throbbing pain in his left shoulder but he continued to work. He reported the incident in the logbook the next morning. Appellant noted that he was first examined on April 14, 2011 by Dr. James Helgager, a Board-certified orthopedic surgeon. He did not submit any further medical evidence.

By decision dated June 29, 2011, OWCP denied appellant's claim finding insufficient medical evidence to establish that he sustained a diagnosed medical condition as a result of the February 19, 2011 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence⁴ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁵

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.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ 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.⁸ An employee may establish that the

² The record reflects that on March 3, 2006 OWCP previously awarded appellant a schedule award for two percent impairment of the right upper extremity.

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.⁹

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.¹⁰ 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.¹¹ 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.¹² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹³

ANALYSIS

Appellant alleged that on February 19, 2011 he sustained a left shoulder injury when he tried to cut the security chain on a fence. By decision dated June 29, 2011, OWCP accepted that the February 19, 2011 incident occurred as alleged but denied the claim finding insufficient medical evidence to establish that he sustained a diagnosed condition as a result of the accepted incident. The Board finds that appellant did not meet his burden of proof to establish that he sustained a left shoulder injury in the performance of duty.

Appellant did not submit any medical evidence to support his claim.¹⁴ On May 26, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested medical evidence, but no medical evidence was received. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁵ As appellant did not submit any medical evidence in this case, the Board finds that he did not meet his burden of proof to establish his claim.

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

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

¹² *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ *See Donald W. Wenzel*, 56 ECAB 390 (2005). The failure to submit medical evidence does not support a *prima facie* claim for compensation.

¹⁵ *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).

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 establish that he sustained a left shoulder injury on February 19, 2011 in the performance of duty.¹⁶

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2012
Washington, DC

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

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

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

¹⁶ The Board notes that appellant submitted additional evidence following the June 29, 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.