

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

M.H., Appellant

and

**DEPARTMENT OF THE ARMY, U.S. ARMY
MATERIAL COMMAND, Texarkana, TX,
Employer**

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**Docket No. 11-1491
Issued: February 16, 2012**

Appearances:
William D. Fenaughty, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2011 appellant filed an appeal of a May 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his 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 has met his burden of proof to establish that he sustained an injury in the performance of duty on January 22, 2011, as alleged.

FACTUAL HISTORY

On February 22, 2011 appellant, then a 60-year-old heavy mobile equipment mechanic inspector, filed a traumatic injury claim alleging that he injured his right shoulder on January 22, 2011 while in the performance of duty. He explained that, while inspecting a vehicle, he crawled

¹ 5 U.S.C §§ 8101-8193.

down inside but the hydraulic seat did not work so he pulled himself out of the vehicle and injured his right shoulder. Appellant did not stop work at that time.

The employing establishment submitted February 24 and March 7, 2011 letters controverting the claim. In a March 10, 2011 letter, appellant's supervisor, Larry Welch, noted that, on January 24, 2011, appellant reported having a hard time looking at the Armored Security Vehicles (ASV) because of his neck surgery. He indicated that appellant asked to go to the clinic on February 7, 2011 because he had hurt his shoulder getting out of an ASV on January 22, 2011. Mr. Welch also noted that appellant had worked 12 hours of overtime on January 22, 2011.

Also submitted were copies of diagnostic tests dated February 17 and 18, 2011 and medical reports from Dr. Darius F. Mitchell, III, a Board-certified orthopedic surgeon. In a February 18, 2011 report, Dr. Mitchell reported that appellant stated that he injured his shoulder at work while working at night. He indicated that they had no documentation to show that this was a work-related injury, outside a piece of paper which showed appellant had gone to a clinic complaining of this injury as well. Dr. Mitchell noted examination findings and provided an impression of right shoulder rotator cuff tear. In a March 7, 2011 report, he indicated that appellant's magnetic resonance imaging scan showed a glenohumeral tear of the supraspinatus, tenosynovitis and arthritis. Dr. Mitchell discussed examination findings and noted that appellant wanted to proceed with rotator cuff surgery.

In an April 1, 2011 letter, OWCP requested that appellant provide additional factual and medical evidence supportive of his claim, including medical evidence diagnosing a condition in connection with the claimed injury and a medical explanation as to how the reported work incident caused or aggravated a medical condition.

Appellant submitted an April 11, 2011 statement, numerous e-mails from himself and Mr. Welch, dated January 24 to April 11, 2011 discussing his shoulder injury, a February 7, 2011 record of injury report, a picture of an M1117 ASV hull, employee timesheets; and a February 7, 2011 report and treatment record from Robert Houser, an employing establishment physician's assistant, who noted that appellant reported injuring his right shoulder about two weeks earlier while lifting himself out of an ASV hatch.

By decision dated May 9, 2011, OWCP denied appellant's claim. It found that, while the work-related incident, he pulled himself out of an ASV hull was established, the medical evidence did not establish that a medical condition related to the January 22, 2011 incident.

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 injury² was sustained in the performance of duty, as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴ An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 compensable employment factors. 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.⁶

ANALYSIS

OWCP accepted and the record supports, that appellant climbed out of an ASV hull on January 22, 2011. Thereafter, a right rotator cuff tear was diagnosed in connection. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that the medical evidence is insufficient to establish that the employment incident caused or aggravated a right shoulder condition.

On February 18, 2011 Dr. Mitchell stated that appellant had a right shoulder rotator cuff tear and that he reported that he hurt the shoulder at work. While he advised that appellant "says

² OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

³ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ In clear-cut traumatic injury claims where fact of injury is established and competent to cause the condition described, such as a fall from a scaffold resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(2) (June 1995). In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required. *Id.* at Chapter 2.805.3d(3).

⁵ *Id.* *Shirley A. Temple*, 48 ECAB 404 (1997); see *John J. Carlone*, 41 ECAB 354 (1989).

⁶ See *Gary J. Watling*, 52 ECAB 278 (2001).

it is a work-related injury,” he stated that he had “no documentation outside of this piece of paper” showing that appellant presented to a clinic complaining of an injury. Dr. Mitchell did not provide a clear opinion that appellant’s injury was employment related and he offered no explanation as to how the January 22, 2011 accepted employment incident caused or aggravated the diagnosed condition.⁷ In his March 7, 2011 report, Dr. Mitchell did not specifically address the cause of appellant’s right shoulder condition. Thus, his reports of February 18 and March 7, 2011 are not sufficient to meet appellant’s burden of proof.

Reports of diagnostic testing are also insufficient to establish the claim as they fail to address the medical issue of causal relationship.⁸ Also submitted were medical records from Mr. Houser, a physician’s assistant. However, these reports are of limited probative value as a physician’s assistant is not a “physician” as defined by section 8101(2) of FECA.⁹

Appellant has not submitted sufficient rationalized medical evidence to support his claim that he sustained an injury causally related to the January 22, 2011 employment incident. He has failed to meet his burden of proof. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁰ An award of compensation may not be based on surmise, conjecture, speculation or on the employee’s own belief of causal relation.¹¹ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and OWCP properly denied his claim for compensation.

On appeal, appellant expressed his frustration regarding the processing of his claim and argues that the evidence supports that his injury is work related. For the reasons set forth, his claim was properly denied because the medical evidence is insufficient to establish causal relationship between the right shoulder condition and the January 22, 2011 work incident. While appellant’s representative also submitted a December 19, 2011 letter requesting that the case be remanded for appellant to pursue other review options, for the reasons set forth, there is no basis for a remand by the Board as OWCP properly denied his claim. Appellant, however, 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.

⁷ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

⁸ *Id.*

⁹ *J.M.*, 58 ECAB 303 (2007). See 5 U.S.C. § 8101(2). This subsection defines the term “physician.” See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹⁰ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹¹ *D.D.*, 57 ECAB 734 (2006).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury on January 22, 2011, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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