

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

R.T., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS & BORDER PATROL,
Eagle Pass, TX, Employer**

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**Docket No. 11-1575
Issued: February 1, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated May 27, 2011 which denied 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left shoulder injury in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 19, 2010 appellant, then a 42-year-old customs border patrol officer, filed a traumatic injury claim, alleging that on August 16, 2010, while inspecting a container on the roof of a truck, he fell and injured his left shoulder. He did not stop work.

By letter dated December 21, 2010, OWCP advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit such evidence, particularly a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant was treated by Dr. Paul D. Lifland, an orthopedic surgeon, on January 13, 2011. In a prescription for a magnetic resonance imaging (MRI) scan of the left shoulder, he listed possible rotator cuff tear or impingement syndrome. In a January 13, 2011 state workers' compensation work status report, Dr. Lifland noted that appellant injured his left shoulder on August 16, 2010. He diagnosed tear of the rotator cuff and advised that appellant could return to work without restrictions on January 13, 2011.

In a February 16, 2011 decision, OWCP denied appellant's claim on the grounds that he failed to establish fact of injury noting that the medical evidence failed to contain a medical diagnoses in connection with the injury or events.

On February 25 and March 25, 2011 appellant requested reconsideration and submitted a January 13, 2011 prescription note previously of record. In a February 11, 2011 report, Dr. Lifland noted that appellant presented with signs of impingement of the left shoulder. He diagnosed possible impingement syndrome or rotator cuff lesion and recommended an MRI scan.

In a decision dated March 15, 2011, OWCP denied modification of the February 16, 2011 decision.

In an undated appeal request form, appellant sought reconsideration and submitted the February 11, 2011 report of Dr. Lifland, previously of record. In a January 13, 2011 status report, Dr. Lifland treated appellant for a left shoulder injury. Appellant reported being a customs inspector who on August 16, 2010, while inspecting a luggage rack, fell injuring his left shoulder. Dr. Lifland noted findings upon physical examination of full range of motion with positive outlet impingement signs. He diagnosed rotator cuff tear/tendinosis versus impingement.

In a decision dated April 12, 2011, OWCP denied appellant's claim finding that the medical evidence did not establish that the diagnosed conditions were caused by work factors.

On April 20, 2011 appellant requested reconsideration. He submitted a report from Dr. Lifland dated January 13, 2011 and a state workers' compensation form previously of record. Appellant also submitted a position description for a customs and border protection officer.

On May 27, 2011 OWCP denied modification of the April 12, 2011 decision.

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 filed within the applicable time limitation 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 is 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.²

In order to determine whether an employee actually sustained an 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 to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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. 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.⁵ The weight of 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 Dr. Lifland opinion.⁶

ANALYSIS

Appellant alleged that he sustained a left shoulder injury after falling from a truck while inspecting a luggage rack on August 16, 2010. The Board notes that the evidence supports that the incident occurred on August 16, 2010 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a left rotator cuff tear, tendinitis or

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

impingement syndrome causally related to the August 16, 2010 work incident. On December 21, 2010 OWCP advised him of the narrative medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from Dr. Lifland, an attending physician, that adequately explains how the August 16, 2010 work incident caused or aggravated his claimed conditions.

On January 13, 2011 Dr. Lifland treated appellant for a left shoulder injury. Appellant reported being a customs inspector who on August 16, 2010, while inspecting a luggage rack, fell injuring his left shoulder. Dr. Lifland made a provisional diagnosis of rotator cuff tear/tendinitis versus impingement. He did not provide any narrative opinion regarding whether appellant's condition was work related. Dr. Lifland failed to provide a rationalized opinion regarding the causal relationship between any left shoulder injury and the factors of employment believed to have caused or contributed to such condition.⁷ He did not explain the reasons why the August 16, 2010 fall at work caused or contributed to the left shoulder condition. Moreover, Dr. Lifland did not make a firm medical diagnosis. Therefore, this report is insufficient to meet appellant's burden of proof.

The other reports from Dr. Lifland are also insufficient to establish appellant's claim. He did not explain how appellant had a diagnosed shoulder condition causally related to the August 16, 2010 work incident.⁸ In the January 13, 2011 state workers' compensation work status report, Dr. Lifland merely noted that appellant injured his left shoulder on August 16, 2010 and offered a diagnosis. He did not explain how appellant's employment activities had caused or aggravated any left shoulder condition. Therefore, these reports are insufficient to establish appellant's claim.

Consequently, the medical evidence is insufficient to establish that the August 16, 2010 incident caused or aggravated a diagnosed medical condition.

On appeal, appellant asserts that his condition is employment related and that reports from Dr. Lifland support his left shoulder injury was work related. He questioned why his requested MRI scan had not been authorized. As explained, appellant failed to submit sufficient medical evidence addressing how the August 16, 2010 incident caused an injury. None of the medical reports of record explain the reasons why the August 16, 2010 work incident caused or contributed to this left shoulder condition. Since the claim has not been accepted, OWCP is not obligated to provide for medical treatment.⁹

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.

⁷ *Id.*

⁸ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition. *Kennett O. Collins, Jr.*, 55 ECAB 649, 654 (2004).

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a left shoulder injury causally related to his August 16, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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