

FACTUAL HISTORY

On April 18, 2011 appellant, then a 69-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2011 he injured his left shoulder and right hand when he was pushing and pulling a heavy door to get in and out of work. He notified his supervisor on March 28, 2011. The employing establishment controverted the claim stating that appellant had been using these doors for years.

In a March 28, 2011 narrative statement, appellant reported that the doors in the parking lot and workroom were hard to open. He used his right hand to pull the door which caused his hand pain. Appellant then used his left shoulder to back into the door which also caused him pain.

In an April 10, 2011 narrative statement, appellant reported that he had previous left shoulder and right hand injuries which had been ongoing since December 1998. He reported that beginning in April 2010, the doors to enter and exit the employing establishment were not working properly which caused him to push and pull with his right hand and left shoulder to get in and out. Appellant complained to the union steward in May 2010 that this was hurting his shoulder and wrist. On March 28, 2011 he was entering the building and because the door was so heavy, he turned his body back into the door and pushed with his shoulders to get in. Appellant stated that he immediately reported his left shoulder and right wrist injury to his supervisor on that same date.

In a March 29, 2011 emergency room report, Dr. David V. Pinto, Board-certified in emergency medicine, reported that appellant complained of left shoulder and right wrist pain due to pulling a heavy door at work with his right wrist and pushing it with his left shoulder. He recommended a shoulder sling, a right wrist splint and noted that appellant could return to work on April 3, 2011 with restrictions of no lifting over five pounds, no forceful pushing and pulling, no overhead work and limited use of both hands and arms.

In a March 29, 2011 radiology report, Dr. Pinto reported that the visualized bony structures of the right wrist were intact and that no fracture, dislocation, lytic, blastic or destructive lesion was demonstrated. The examination of the left shoulder revealed age-related degenerative changes.

In a March 29, 2011 e-mail correspondence, appellant's supervisor stated that, on March 28, 2011, appellant reported that he had injured his right hand and left shoulder when he opened the door and turned his body around against the door.

In an April 13, 2011 USPS letter of warning, the employing establishment reported that appellant stated that he hurt his right hand and shoulder on March 28, 2011 when he entered the visitor's entrance door in the parking lot. The letter from the employing establishment stated that he was in violation of discharge of duties and behavior and personal habits for incorrectly and hazardingly using his shoulder to open the door.

By letter dated April 18, 2011, Dr. Jacob Salomon, a Board-certified surgeon, reported that appellant had a history of injury to his right wrist and left shoulder in 1998 which was

treated under claim number xxxxxx666. He stated that, on March 29, 2011, appellant was walking through the doors at the employing establishment, was struck in the left shoulder causing the door to slam back on his shoulder and trap his right wrist which resulted in a reinjury of his left shoulder and right wrist. Based on the magnetic resonance imaging (MRI) scan of the left shoulder, Dr. Salomon diagnosed tendinitis impingement syndrome and a partial tear of the left rotator cuff. He further noted that the right wrist was tender to palpation and appellant had decreased strength in his right grip.

In disability certificates dated April 5 and 18, 2011, Dr. Salomon restricted appellant from working until May 18, 2011 and diagnosed left shoulder rotator cuff tear and right wrist bone disruption.

By letter dated May 12, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and he was asked to respond to the questions provided in the letter within 30 days.

In a May 25, 2011 witness statement, Jerome Johnson, a union steward, reported that, prior to the March 28, 2011 incident, he witnessed appellant inform his supervisor that the doors were too heavy to push or pull.

In a May 26, 2011 MRI scan report, Dr. Amjad Safvi, a Board-certified diagnostic radiologist, reported that appellant's left shoulder showed a partial tear of the distal tendon of the supraspinatus, mild-to-moderate degenerative changes of the acromioclavicular joint and minimal subacromial/subdeltoid bursitis. The MRI scan of the right wrist showed a tiny degenerative bone cyst/geode within the capitate, mild effusion within the distal radioulnar and radiosaphoid joints, mild effusion within the pisotriquetral recess and minimal effusion between the scaphoid and trapezoid bones.

By letter dated May 31, 2011, Dr. Salomon reported that appellant had reinjured his left shoulder and right wrist on March 28, 2011 while working at the employing establishment. Appellant stated that he was walking through an employing establishment door which had a malfunctioned hinge. He had to push very hard on the door to open it, causing the door to slam back on him, injuring his left shoulder and right wrist. Dr. Salomon diagnosed partial rotator cuff tear and impingement syndrome of the left shoulder and a fracture of the right wrist healing with edema. He opined that appellant's injuries occurred at work because his x-rays confirmed examination of his symptoms. Dr. Salomon further stated that appellant's conditions, if not caused by the accident, were definitely aggravated by it.

By decision dated June 17, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It specifically noted that the circumstances surrounding the injury on Dr. Salomon's medical reports dated April 18 and May 31, 2011 were different from what appellant indicated in his statement. OWCP also noted that appellant failed to establish that he sustained an injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 period of FECA⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, whether the claim is predicated upon a traumatic injury or occupational disease.⁶

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.⁷ Once an employee establishes that he sustained an injury in the performance of duty, he has the burden to establish that any subsequent medical condition or disability, for which he claims compensation is causally related to the accepted injury.⁸

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.⁹ 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. 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 the physician’s opinion.¹⁰

ANALYSIS

The Board finds that appellant failed to establish that he sustained a traumatic injury while in the performance of duty on March 28, 2011.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁷ *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant’s burden of proof in an occupational disease claim.

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. Appellant alleged that on March 28, 2011 he injured his right wrist and left shoulder when he tried to pull open a heavy door and then attempted to push it open with his left shoulder. In its June 17, 2011 decision, OWCP found that he failed to establish that the March 28, 2011 incident occurred in the manner alleged because of three different statements on how the injury occurred.

The Board finds, however, that appellant has established that the March 28, 2011 incident occurred in the manner alleged when he attempted to push and pull a heavy door with his left shoulder and right wrist. Appellant provided one basic account of the mechanism of the employment incident, reported the incident to his supervisor on March 28, 2011 and sought medical treatment the following day. Dr. Salomon's April 18, 2011 medical report stated that appellant was walking through the employing establishment doors and was struck in the left shoulder when the door slammed back on his shoulder and trapped his right wrist. His May 13, 2011 report stated that appellant had to push very hard to open the door, causing it to slam back on him and injure his left shoulder and right wrist. The Board finds that these statements do not cast such inconsistencies as to doubt that the incident occurred in the manner previously stated by appellant.

The employing establishment generally accepts as factual appellant's general description of how he injured his wrist and shoulder.

Given that appellant has established a March 28, 2011 employment incident, the question becomes whether he sustained an injury due to this incident. OWCP's June 17, 2011 decision found that he did not submit sufficient medical evidence to establish a firm medical diagnosis. Dr. Salomon's medical reports established a diagnosis of partial rotator cuff tear and impingement syndrome of the left shoulder and a fracture of the right wrist healing with edema. The Board finds that, contrary to OWCP decision, the medical evidence of record establishes a sufficient diagnosis.

While Dr. Salomon's report establishes a firm medical diagnosis, it is not rationalized as to the issue of causal relation. In his May 31, 2011 report, Dr. Salomon stated that appellant's injury occurred at work because his x-rays confirmed the examination of his symptoms. He further stated that appellant's injuries were aggravated by the accident. This medical report is not well rationalized as Dr. Salomon did not provide an adequate explanation of how the incident accepted in this case caused or contributed to appellant's left shoulder and right wrist injury. Though he concluded that causal connection exists between appellant's injuries and the March 28, 2011 employment incident, the reports provided no medical rationale for that conclusion. Further, Dr. Pinto's March 29, 2011 radiology report indicated that appellant's left shoulder injury revealed age-related degenerative changes. Without medical reasoning explaining how the March 28, 2011 incident caused his injury, Dr. Salomon's reports are insufficient to meet appellant's burden of proof.¹¹

¹¹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's left shoulder and right wrist condition and the March 28, 2011 employment incident. Dr. Pinto's March 29, 2011 report and Dr. Safvi's May 26, 2011 MRI scan reports merely diagnose appellant's condition but provide no rationale on causal relationship. The Board has held that 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.¹² Without medical reasoning explaining how the accepted employment incident caused his injuries, the reports are not sufficient to meet appellant's burden of proof.¹³

Evidence submitted by appellant after the final decision cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.¹⁴ Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant established that the incident occurred as alleged and that a medical diagnosis had been established, but did not meet his burden of proof to establish that the injury to his left shoulder and right wrist is causally related to the March 28, 2011 employment incident, as alleged.

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *Supra* note 11.

¹⁴ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: February 14, 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