

FACTUAL HISTORY

On January 13, 2011 appellant, then a 69-year-old air conditioning equipment mechanic, filed a traumatic injury claim alleging that on November 16, 2010 he strained muscles and tendons in his neck and left upper arm and shoulder when he strained to open a roll-up door. The employing establishment controverted his claim, contending that his medical diagnosis was not related to the claimed injury. It also contended that appellant's medical diagnosis of pain was not compensable.

By letter dated January 19, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a rationalized medical opinion from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on why the diagnosed condition was caused or aggravated by the November 16, 2010 incident.

In a January 28, 2011 letter, appellant stated that, following his claimed injury, he sought medical treatment from an employing establishment physician at the end of his work shift. He was subsequently evaluated by Dr. Jewell B. Duncan, an attending Board-certified orthopedic surgeon.

In a January 12, 2011 progress note, Dr. Duncan listed appellant's complaint of numbness and pain in his left shoulder and a history of his right shoulder surgery. She reviewed the results of a left shoulder magnetic resonance imaging (MRI) scan which showed bursitic and acromioclavicular (AC) joint arthritic changes. There were some changes in the rotator cuff but, there was no significant retraction. Dr. Duncan noted that extensive conservative treatment measures had failed. Appellant was a candidate for surgical decompression, an AC joint resection and rotator cuff repair. On January 12, 2011 Dr. Duncan referred him for physical therapy to treat his left shoulder conditions which included rotator cuff and supraspinatus syndromes not otherwise specified and AC degenerative joint disease.

Medical records dated November 17, 2010 from the employing establishment health unit provided a history obtained by Deidres Higgins, a physician's assistant, that appellant experienced pain in his left shoulder that radiated down to the right side of his neck across the collarbone to the mid-upper arm as a result of helping someone open a stuck door at work. Appellant was diagnosed as having left shoulder pain and degenerative joint disease and hypertension. He was released to return to work with one-week physical restrictions.

In a February 25, 2011 decision, OWCP denied appellant's claim, finding that the November 16, 2010 incident occurred as alleged, but the medical evidence was insufficient to establish a shoulder injury causally related to the accepted employment incident.

On March 14, 2011 appellant requested reconsideration.

In a January 7, 2011 report, Dr. Richard J. Kelly, a Board-certified radiologist, advised that an MRI scan of appellant's left shoulder showed hypertrophy of the AC joint with supraspinatus impingement and hypertrophic tendinopathy-tendinosis with partial thickness and

undersurface tearing. The outer fibers remained intact. The remaining rotator cuff tendons were intact. There was evidence of probable internal impingement, degenerative arthritic changes of the glenohumeral articulation with probable chondromalacia and an anterior loose body in the subcoracoid recess and degenerative changes of the labrum. The biceps tendon and anchor were intact.

An undated and unsigned request and informed consent form indicated that arthroscopic surgery, possible rotator cuff repair and AC joint resection of the left shoulder were required to treat appellant's left shoulder bursitis with possible rotator cuff tear. The likely success of the proposed surgery was good. Appellant would continue to experience problems if he did not undergo the proposed surgery.

In an undated report, Dr. Duncan reiterated her prior diagnosis of left shoulder bursitis and AC joint arthritis.

In an April 14, 2011 decision, OWCP denied modification of the February 25, 2011 decision. It found insufficient medical opinion addressing the causal relationship between the diagnosed conditions and the accepted November 16, 2010 employment incident.

On April 20, 2011 appellant requested reconsideration.

In an April 19, 2011 report, Dr. Duncan opined that appellant's left shoulder injury was a direct result of the November 16, 2010 employment incident as he had no problems prior to the claimed injury.

In a June 8, 2011 decision, OWCP denied modification of the April 14, 2011 decision. It found that appellant failed to submit rationalized medical evidence establishing that he sustained a left shoulder injury causally related to the accepted November 16, 2010 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

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 or exposure, which is alleged to have occurred.⁵ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁹

ANALYSIS -- ISSUE

OWCP accepted that appellant lifted a roll-up door on November 16, 2010 while working as an air conditioning equipment mechanic. The Board finds that the medical evidence of record is insufficient to establish that his left shoulder condition was caused or aggravated by the November 16, 2010 employment incident.

Dr. Duncan's April 19, 2011 report found that appellant sustained a left shoulder injury due to the accepted employment incident. She stated that he had no problems prior to the injury. The fact that appellant had no problems prior to the employment incident, without more by way of rationale, is insufficient to establish his claim. The Board finds that Dr. Duncan's report is of diminished probative value because she failed to provide sufficient medical rationale explaining how lifting a roll-up door caused the injury.¹⁰ None of Dr. Duncan's other reports provided a medical opinion addressing the causal relationship between appellant's left shoulder condition and the accepted employment incident. She merely listed appellant's diagnoses of AC joint arthritis and bursitis, and rotator cuff and supraspinatus syndromes of the left shoulder and addressed his physical restrictions. Medical evidence which does not offer any opinion

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Charles E. Evans*, 48 ECAB 692 (1997).

¹⁰ *John F. Glynn*, 53 ECAB 562 (2002) (an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship).

regarding the cause of an employee's condition is of limited probative value.¹¹ For the stated reasons, the Board finds that Dr. Duncan's reports are insufficient to establish appellant's claim.

The employing establishment health unit medical records do not constitute competent medical evidence as they were completed by a physician's assistant who is not a physician as defined in FECA.¹²

The diagnostic test results of Dr. Kelly did not provide a medical opinion on the causal relationship between the diagnosed left shoulder conditions and accepted employment incident. The Board finds, therefore, that his reports are insufficient to establish appellant's claim

The undated and unsigned request and informed consent form has no probative value, as it is not established that the author is a physician.¹³

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left shoulder injury causally related to the accepted November 16, 2010 employment incident. Appellant did not meet his burden of proof.

On appeal, appellant contended that the medical evidence of record established that he sustained a left shoulder injury on November 16, 2010 while in the performance of duty. As stated, this evidence does not provide a rationalized medical opinion addressing the causal relationship between his diagnosed left shoulder conditions and the accepted November 16, 2010 employment incident.

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 failed to establish that he sustained a left shoulder injury in the performance of duty on November 16, 2010, as alleged.

¹¹ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *See* 5 U.S.C. § 8101(2).

¹³ *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the June 8, April 14 and February 25, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 12, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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