

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

M.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Columbia, SC, Employer**

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**Docket No. 12-183
Issued: June 5, 2012**

Appearances:
Reynolds H. Blankenship, Jr., Esq., for the appellant
Office of 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 October 24, 2011 appellant, through his representative, filed a timely appeal from a September 12, 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 a left shoulder rotator cuff tear causally related to a December 5, 2010 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 14, 2010 appellant, then a 51-year-old custodian, filed a traumatic injury claim alleging that on December 5, 2010 he sustained a left shoulder injury when his foot caught the edge of his mailbag and he fell on his legs and shoulders. He stopped work that day.

On December 27, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish that he sustained any diagnosed condition as a result of the December 5, 2010 employment incident and requested additional evidence to support his claim.

In December 5, 2010 hospital reports, an unknown provider with an illegible signature diagnosed left shoulder pain after a fall.

In a December 5, 2010 x-ray of the left shoulder, Dr. Francis H. Neuffer, a Board-certified diagnostic radiologist, did not find any evidence of fracture or dislocation. He also observed that a faint high density material extending along the superior margin of the joint space appeared more typical for calcification possibly within the supraspinatus tendon.

In a December 6, 2010 report, Dr. Earl B. McFadden, Jr., a Board-certified orthopedic surgeon, stated that appellant suffered from myotonic dystrophy which caused him significant weakness in the upper and lower extremities that resulted in frequent falls. He noted that appellant fell yesterday and injured his left shoulder. Upon examination, Dr. McFadden observed that appellant had very poor active range of motion of the left shoulder, full passive range of motion and significant poor motor tone in all four extremities. No swelling and ecchymosis were noted. Radiographs revealed a Type III acromion and well-maintained space between the humeral head and the acromion. Dr. McFadden diagnosed probable rotator cuff tear.

In a December 9, 2010 magnetic resonance imaging (MRI) scan report, Dr. Lawrence R. Lough, a Board-certified diagnostic radiologist, noted appellant's complaints of constant left shoulder pain with controllable muscle spasms. The examination revealed two large full-thickness rotator cuff tears over the anterior third of the supraspinatus tendon and involving the posterior aspect of the distal insertion of the supraspinatus and infraspinatus tendons. Dr. Lough diagnosed two large full-thickness rotator cuff tears and degenerative arthropathy involving the acromioclavicular (AC) joint with a large joint effusion present.

In a December 13, 2010 report, Dr. McFadden stated that an MRI scan demonstrated a moderate-sized rotator cuff tear. He reported that appellant would need a left shoulder scope with acromioplasty and Mumford with rotator cuff repair.

In a December 15, 2010 duty status report, an unknown provider noted that appellant was a custodian who was injured on December 5, 2010. He was diagnosed with rotator cuff tear and myotonic dystrophy. Appellant was limited to lifting and carrying up to 10 pounds for 1 to 4 hours per day, kneeling for 15 minutes, bending and stooping less than an hour, pulling and pushing less than 2 hours, simple grasping for 1 to 3 hours, and reaching above his shoulders for less than an hour.

In a December 31, 2010 statement, appellant described that on December 5, 2010 at 7:30 a.m. he caught his foot on a mailbag and fell on his left shoulder. He went to the emergency room who recommended that he see an orthopedist. Appellant was advised to undergo surgery, which was scheduled for January 13, 2011. He noted that on January 3, 2011 Dr. McFadden cancelled his surgery because it was a workers' compensation claim and he now waited for a worker's compensation referral as to who should do his surgery.

In a January 14, 2011 letter, the employing establishment controverted appellant's claim stating that he did not report the injury when it occurred and waited until after he received medical treatment to report the injury. It provided statements from Lafayette Armstrong, Group Leader of Tour 2, and Richard D. Krueger, Supervisor of Maintenance Operations, which indicated that appellant did not report any accidents or incidents on December 5, 2010.

In a decision dated February 1, 2011, OWCP accepted that the December 5, 2010 employment incident occurred as alleged, but denied appellant's claim finding insufficient medical evidence to establish that he sustained a left shoulder rotator cuff tear causally related to the accepted employment incident.

On May 3, 2011 appellant, through counsel, submitted a request for reconsideration. He included reports from Dr. Andrew W. Piasecki, a Board-certified orthopedic surgeon, which he believed supported that appellant's fall at work caused or aggravated his left shoulder torn rotator cuff.

In reports dated February 7 and 11, 2011, Dr. Piasecki noted appellant's complaints of left shoulder pain. He related that appellant worked for the U.S. Postal Service and that on December 5, 2010 he tripped over a bag and experienced pain in his left shoulder. The pain was sharp at the anterior lateral aspect of the subacromial shoulder and was aggravated with overhead activities. Dr. Piasecki noted that appellant's past medical history was significant for myotonic dystrophy, which caused some weakness in his proximal lower extremities. Upon examination of the left shoulder, he observed that it was tender to palpation over anterior lateral shoulder and nontender over the AC joint. Hawkins' test was positive. O'Brien's test, cross body adduction, and pain and weakness tests were negative. Dr. Piasecki reported that x-rays of the left shoulder revealed normal glenohumeral relationship, Type I acromion, and minimally degenerative AC joint. An MRI scan demonstrated a signal change in the supraspinatus that was consistent with tearing of the supraspinatus anteriorly and posteriorly with some retraction. Labrum and glenohumeral ligamentous structures appeared normal. Dr. Piasecki diagnosed left shoulder rotator cuff tear with AC joint arthritis and recommended a right shoulder arthroscopy with rotator cuff repair.

On February 23, 2011 appellant underwent a left shoulder arthroscopic rotator cuff repair.

By letter dated April 12, 2011, appellant's counsel requested that Dr. Piasecki respond to several questions regarding appellant's claim. In an April 15, 2011 report, Dr. Piasecki stated that appellant's pain started after the fall at work and that his symptoms were indications of a rotator cuff tear. He opined that based on the background provided by appellant it was possible for the fall at work to tear his rotator cuff. Dr. Piasecki explained that appellant's findings were consistent with the time of the injury reported to him. He further reported that it was possible for

a person to have a torn rotator cuff that did not cause any symptoms and that appellant's fall could have aggravated a small, unnoticeable torn rotator cuff in his left shoulder. However, if appellant did not have symptoms prior to the fall, Dr. Piasecki believed the fall at work caused his present symptoms.

By decision dated September 12, 2011, OWCP denied modification of the February 1, 2011 decision denying appellant's traumatic injury claim. It stated that because appellant submitted new medical evidence he was entitled to a merit review of his claim, but determined that the medical evidence failed to establish that his left shoulder rotator cuff tear was causally related to the December 5, 2010 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence³ 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.⁴

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.⁵ 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.⁶ 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.⁷ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.⁸

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.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

employee's diagnosed condition and the specified employment factors or incident.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

OWCP accepted that on December 5, 2010 appellant tripped on his mailbag and fell on his left shoulder at work but found that the medical evidence failed to establish that his left shoulder condition was causally related to the accepted incident. The Board finds that he has failed to provide sufficient medical evidence demonstrating that he sustained a left shoulder condition as a result of the December 5, 2010 employment incident.

Appellant submitted several medical reports by Dr. Piasecki who related that appellant experienced left shoulder pain after he tripped over a bag at work on December 5, 2010. Dr. Piasecki reviewed appellant's history and conducted several examinations. He observed that appellant's left shoulder was tender to palpation over anterior lateral shoulder and nontender over the AC joint. Dr. Piasecki reported that x-rays and MRI scans of the left shoulder revealed minimally degenerative AC joint and a signal change in the supraspinatus that was consistent with tearing. He diagnosed left shoulder rotator cuff tear with AC joint arthritis. In an April 15, 2011 letter to appellant's representative, Dr. Piasecki opined that based on the background provided by appellant it was possible for the fall at work to tear his rotator cuff. He further explained that appellant's fall could have also aggravated an unnoticeable torn rotator cuff in his left shoulder. The Board finds that Dr. Piasecki's opinion that it was "possible" for appellant's fall at work to tear his rotator cuff is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character diminish the probative value of the medical opinion.¹³ Although Dr. Piasecki states that appellant's left shoulder condition may possibly be related to the December 5, 2010 incident, he also opines that appellant may have had a previous rotator cuff tear, which "could have" been aggravated by a fall. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹⁴ As Dr. Piasecki's reports do not contain a rationalized medical opinion establishing that appellant's left shoulder condition was causally related to the December 5, 2010 incident, these reports are insufficient to meet appellant's burden of proof to establish his claim.

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

¹² *James Mack*, 43 ECAB 321 (1991).

¹³ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁴ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

The additional medical evidence is insufficient to establish appellant's traumatic injury claim. Appellant submitted various diagnostic reports by Drs. Neuffer and Lough, which revealed a left shoulder rotator cuff tear. None of the physicians, however, discussed the December 5, 2010 employment incident nor offered an opinion on whether appellant's left shoulder condition was causally related to any employment incident. 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.¹⁵ Likewise, Dr. McFadden's December 6 and 13, 2010 reports do not contain any opinion on the cause of appellant's left shoulder condition and are also insufficient to establish his claim.

Appellant also submitted a duty status report and hospital records that were unsigned or bore illegible signatures. He was examined for left shoulder pain after a fall and provided with work limitations. The Board has previously held, however, that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.¹⁶

On appeal, appellant's counsel contests OWCP's finding that Dr. Piasecki's report was speculative and states that it is impossible for a treating physician who did not witness the fall to provide his opinion on causal relationship with "absolute certainty." He further alleges that OWCP ignored the parts of Dr. Piasecki's report that specifically stated that he felt the fall at work caused appellant's present symptoms. The Board notes, however, that the statement referred to followed the statement that "*if* appellant never had symptoms prior to the fall." (Emphasis added.) Thus, Dr. Piasecki's belief of causal relationship was not based on the present facts of the case, but on speculation. While "absolute certainty" is not required, the Board has held that causal relationship can only be shown by a reasoned medical opinion of reasonable medical certainty and supported by medical rationale.¹⁷ Appellant has not provided such evidence in this case. Thus, the Board finds that he did not meet his burden of proof to establish his claim.

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 has failed to establish that he sustained a left shoulder condition as a result of the December 5, 2010 employment incident.

¹⁵ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

¹⁶ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

¹⁷ *Supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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