

ISSUE

The issue is whether appellant has established that his left shoulder condition is causally related to the September 5, 2009 employment incident, as alleged.

FACTUAL HISTORY

On September 28, 2009 appellant, then a 49-year-old clerk, filed an occupational disease claim alleging that on September 5, 2009 he first realized his shoulder injury was due to pulling tubs apart and throwing flats in the performance of duty.

On October 20, 2009 appellant filed a traumatic injury claim alleging that on September 5, 2009 he injured his shoulder due to pulling tubs apart and throwing flats.

By letter dated October 15, 2009, OWCP informed appellant that the evidence was insufficient to support his claim. He was advised as to the medical and factual evidence required to support his claim and given 30 days to provide the requested evidence.

By decision dated December 3, 2009, OWCP denied the claim on the grounds that fact of injury was not established.

On February 8, 2010 Peggy Towles, a certified family nurse practitioner, reported left shoulder tenderness to subacromion palpation and limited range of left shoulder range of motion.

OWCP received a magnetic resonance imaging (MRI) scan of the left shoulder and February 8, 2010 progress notes. The MRI scan revealed minor acromioclavicular joint degenerative changes. There was no evidence of either a dislocation or fracture of the left shoulder. In the February 8, 2010 progress notes, Ms. Towles provided physical findings and noted an injury date of September 5, 2009. She diagnosed left shoulder pain/arthritis.

On March 12 and 13, 2010 appellant requested reconsideration.

By decision dated May 19, 2010, OWCP found appellant's claim was for a traumatic injury and was not an occupational disease claim. It found that appellant had established the factual portion of fact of injury, but failed to establish the medical aspect. Thus, OWCP denied appellant's traumatic injury claim on the grounds that he failed to establish fact of injury.

In a September 8, 2010 progress note, Dr. Scott Ekdahl, a treating osteopath, noted an injury date of September 5, 2009 and provided physical findings.³ He diagnosed left shoulder pain/arthritis.

On September 23, 2010 appellant requested reconsideration and submitted medical evidence in support of his request. A September 16, 2010 MRI scan revealed a left shoulder glenoid labral cartilage tear, mild tendinopathy and mild bicipital tendon thickening and edema

³ The first 1½ pages are copies of the February 8, 2010 progress note from Ms. Towles.

at the superior humeral head consistent with tendinitis and possibly minimal intrasubstance tearing. It also noted a history of a lifting injury occurring on September 5, 2009.

By decision dated December 14, 2010, OWCP modified the denial of appellant's claim. It found fact of injury established as the factual aspect was established, but denied the claim on the grounds that there was no medical evidence establishing a causal relationship between the diagnosed left shoulder pain/left shoulder pain/arthritis and the September 5, 2009 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his 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; 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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.⁷ 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.⁸ 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.⁹

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.¹⁰ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹¹

⁴ *Supra* note 2.

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

¹⁰ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹¹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² 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.¹³ 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.¹⁴

ANALYSIS

Appellant alleged that he sustained a shoulder injury while pulling tubs apart and throwing flats on September 5, 2009. There is no dispute that the evidence supports that the incident occurred as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant's left shoulder condition is causally related to the September 5, 2009 work incident. Appellant did not submit a rationalized medical report from a physician explaining how the September 5, 2009 work incident caused or aggravated his left shoulder condition.

In a September 8, 2010 progress note, Dr. Ekdahl diagnosed left shoulder pain/arthritis. He provided physical findings and noted an injury date of September 5, 2009. This evidence, however, is insufficient to establish appellant's claim. Dr. Ekdahl failed to address how the diagnosed condition was caused or aggravated by the accepted September 5, 2009 employment incident.¹⁵

The remainder of the medical evidence consisting of diagnostic testing and progress notes is also insufficient to establish appellant's claim as the evidence fails to address causal relationship between appellant's diagnosed condition and the September 5, 2009 work incident. The Board also notes that appellant submitted medical records from a nurse practitioner. Section 8101(2) of FECA provides, however, that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.¹⁶ Therefore, the reports from Ms. Towles, a certified family nurse practitioner, do not constitute competent medical evidence and are insufficient to establish that appellant sustained a shoulder injury causally related to his work incident on September 5, 2009.

¹² *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹³ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁵ *A.F.*, 59 ECAB 714 (2008); *A.D.*, *supra* note 12; *Ellen L. Noble*, 55 ECAB 530 (2004) (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).

¹⁶ 5 U.S.C. § 8101(2).

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion that sufficiently described or explained how the September 5, 2009 employment incident caused an injury. He has failed to submit any probative medical evidence establishing that he sustained an injury in the performance of duty.

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 meet his burden of proof to establish that he sustained a left shoulder injury causally related to his September 5, 2009 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 14, 2010 is affirmed.

Issued: March 13, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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