United States Department of Labor
Employees' Compensation Appeals Board

K.F., Appellant	)	
and	)	**Docket No. 12-118**
	)	**Issued: May 7, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Salt Lake City, UT, Employer	)	

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 October 26, 2011 appellant filed a timely appeal from an August 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (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 met his burden of proof to establish that he sustained right shoulder impingement and acromioclavicular (AC) arthrosis in the performance of duty on September 5, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 12, 2011 appellant, then a 42-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2010 he sustained a pinched nerve and pulled his shoulder muscle when he was assisting to move an obese patient from a stretcher to a bed. The employing establishment controverted the claim stating that his position did not include assistance with patient care.

By letter dated April 20, 2011, OWCP requested additional evidence from appellant and asked that he respond to the provided questions within 30 days. By letter of the same date, it requested additional information from the employing establishment.

By decision dated June 1, 2011, OWCP denied appellant's claim for fact of injury on the grounds that there was no medical evidence that contained a medical diagnosis in connection to the September 5, 2010 incident.

On June 8, 2011 appellant requested reconsideration of OWCP's decision. In a narrative statement, he reported that, on September 5, 2010, an obese patient was brought into his department on a stretcher and he was asked to help transfer him to a bed. Upon lifting the patient, appellant pulled a muscle in his right shoulder. He reported that he sought treatment at an emergency room and reported his injury to management but did not file a claim until his injury got worse.

In a May 16, 2011 medical report, Dr. Andrew D. Cooper, Board-certified in orthopedic surgery, reported that he had been treating appellant for shoulder problems since September 2010 when he got injured. He diagnosed right shoulder impingement and AC arthrosis. Dr. Cooper noted that appellant complained of severe pain and recommended a right shoulder arthroscopy, subacromial decompression and distal clavicle resection.

By letter dated May 23, 2011, the employing establishment controverted the claim stating that appellant was not performing his assigned duties at the time of the injury and that there were no witnesses to the incident. In support of its allegation, the employing establishment submitted a position description for a medical support assistant.

By decision dated August 19, 2011, OWCP modified its June 1, 2011 decision finding that the evidence was sufficient to establish fact of injury. It denied appellant's claim, however, on the grounds that the evidence of record failed to establish that the diagnosed medical condition was causally related to the accepted September 5, 2010 employment incident.

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; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[3]

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.[4] 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.[5] 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.[6]

ANALYSIS

OWCP accepted that the September 5, 2010 incident occurred as alleged. The issue is whether appellant established that the incident caused his right shoulder impingement and AC arthrosis. The Board finds that appellant did not submit sufficient medical evidence to support that his right shoulder impingement and AC arthrosis is causally related to the September 5, 2010 employment incident.[7]

In a May 16, 2011 medical report, Dr. Cooper reported that he had been treating appellant for shoulder problems since September 2010 when he was injured. He diagnosed right shoulder impingement and AC arthrosis. Dr. Cooper noted that appellant complained of severe pain and recommended a right shoulder arthroscopy, subacromial decompression and distal clavicle resection.

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[6] *James Mack*, 43 ECAB 321 (1991).

[7] *See Robert Broome*, 55 ECAB 339 (2004).

The Board finds that the opinion of Dr. Cooper is not of sufficient probative value to establish appellant's claim. Dr. Cooper failed to address appellant's medical history and only briefly noted that appellant was having shoulder problems since September 2010. He made no mention of the September 5, 2010 employment incident and failed to provide an opinion on the cause of appellant's injury. While Dr. Cooper diagnosed appellant's right shoulder impingement and AC arthrosis, he did not explain whether or how the accepted September 5, 2010 incident caused or contributed to any shoulder injury. 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.[8] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[9] Dr. Cooper's report does not meet that standard and is insufficient to meet appellant's burden of proof.

Appellant's honest belief that work caused his shoulder condition is not in question. But that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the September 5, 2010 employment incident and appellant's right shoulder impingement and AC arthrosis. Thus, appellant has failed to meet his burden of proof.

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 did not meet his burden of proof to establish that his right shoulder impingement and AC arthrosis is causally related to the September 5, 2010 employment incident, as alleged.

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

[9] *See Lee R. Haywood*, 48 ECAB 145 (1996).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 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