



On appeal counsel argued that an attending osteopath submitted sufficient medical opinion to establish a left shoulder condition and aggravation of cervical degenerative disc disease and disc herniations.

### **FACTUAL HISTORY**

On April 22, 2011 appellant, then a 56-year-old boiler plant equipment mechanic, filed a traumatic injury claim alleging that pain to both shoulders, both arms and his upper back on April 14, 2011 when a coworker grabbed his elbows. Appellant stated: "Employee was sitting in his chair with hands behind his head when another employee came from behind and grabbed employee's elbows causing employee to react, causing a popping sound in his neck with pain shooting from both shoulders down his arms."

Dr. William Artz, an osteopath, examined appellant on April 29, 2011. He described the horseplay which resulted in appellant's neck and arm pain. He noted that appellant had a prior cervical disc injury in 1989. Dr. Artz diagnosed cervical strain and sprain with exacerbation of degenerative disc disease, left cervical radiculopathy and left shoulder impingement. A May 13, 2011 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated multilevel degenerative changes with disc bulges and spondylosis.

Appellant underwent a left shoulder MRI scan on June 9, 2011 which demonstrated acromioclavicular (AC) joint arthritis with marrow edema in the distal clavicle and a likely labral tear. On June 28, 2011 Dr. Craig A. Rubenstein, Board-certified in emergency room medicine, diagnosed rotator cuff strain or labral tear due to appellant's employment activity. On June 28, 2011 Dr. Rubenstein described the employment incident and examined appellant's left shoulder. He found pain with resisted cuff testing, positive labral testing and mildly positive impingement testing. Dr. Rubenstein diagnosed a work-related rotator cuff strain with probable labral tear on the left.

On July 29, 2011 OWCP accepted appellant's claim for a cervical strain.

Dr. Rubenstein examined appellant on August 16 and 30, 2011 and diagnosed left shoulder AC joint sprain.

By decision dated September 27, 2011, OWCP denied appellant's claim for the acromioclavicular degenerative joint disease, rotator cuff disease, cervical spine multilevel disc desiccation or disc herniations and bulges of C3-4, C4-5, C5-6, cervical stenosis, spondylosis and loss of lordosis.

On October 5, 2011 Dr. Artz diagnosed cervical strain with cervical radiculopathy and exacerbation of the degenerative disc disease of the cervical spine as well as herniated disc at C5-6. He also found left shoulder AC joint sprain and exacerbation of osteoarthritis with myofascial pain. Dr. Artz stated, "All these conditions are solely due to work injury of April 14, 2011 as evidenced by patient's full unrestricted work status at the time of the injury."

In a report dated October 5, 2011, Dr. Rubenstein diagnosed left shoulder pain. He stated that appellant's pain was stemming from edema in the AC joint. Dr. Rubenstein stated, "With regards to his injury at work, the mechanism of injury may have resulted in his neck issues. It is

not clear that this is really causing his prolonged AC joint pain as it is not a typical mechanism of injury of the AC joint and, therefore, I cannot say with any degree of medical certainty that this injury did cause the AC joint pain.”

Appellant requested a review of the written record by an OWCP hearing representative. On October 5, 2011 Dr. Artz diagnosed cervical strain with cervical radiculopathy and exacerbation of degenerative disc disease of the cervical spine. He found a herniated disc at C5-6 and left shoulder AC joint sprain and exacerbation of osteoarthritis. Dr. Artz indicated with a checkmark “yes” that appellant’s condition was caused or aggravated by the horseplay at work. On October 10, 2011 Dr. Artz stated that appellant’s initial examination demonstrated cervical and clavicular injuries. He stated that the April 14, 2011 work injury of being placed into a restraint hold or full Nelson forced appellant’s neck into extension and his shoulders into forced abduction and extension thus straining the muscles and ligaments of his neck, clavicle and shoulder.

By decision dated February 8, 2012, the hearing representative found that the reports of Dr. Artz did not establish that appellant’s left shoulder AC degenerative joint disease and rotator cuff disease or cervical conditions of multilevel disc desiccation, disc herniation or bulging discs at C3-4, C4-5 and C5-6, cervical stenosis, cervical spondylosis and loss of lordosis were causally related to the April 14, 2011 work injury.

Appellant, through his attorney, requested reconsideration on November 26, 2012. He submitted a note from Dr. Artz dated November 23, 2012, who diagnosed unspecified disorder of the shoulder joint, neuralgia, neuritis and radiculitis, as well as displacement of cervical intervertebral disc without myelopathy. He stated, “The patient continues to experience symptoms related to the injury of April 14, 2011 wherein he suffered a strain of the shoulder and a hyperflexion of the neck exacerbating his previous injury of July 9, 1989.” Dr. Artz stated that appellant had continued evidence of nerve dysfunction in the left upper extremity as evidenced by the loss of reflexes and muscle atrophy.

By decision dated March 13, 2013, OWCP denied modification of its prior decisions.

Appellant requested reconsideration on April 11, 2013. Dr. Rubenstein completed a report on March 20, 2013 and addressed appellant’s left shoulder condition. He stated:

“With regards to causation of his pain, the description and visual depiction of the injury he sustained is not the typical mechanism of injury for AC joint injury, which is typically caused by a compressive force. Furthermore, he did have a significant neck injury from that work injury and I believe that may have been the injury sustained at work. I cannot say with any reasonable degree of certainty that the work incident caused the AC joint pain. Furthermore, if he did sprain his AC joint in that manner, it was a mild sprain and should have resolved on its own. He had underlying preexisting degenerative changes of the AC joint which in all likelihood is causing his persistent pain.”

On April 26, 2013 Dr. Artz stated that appellant remained symptomatic from left shoulder tendon strain and AC joint strain as well as cervical nerve purification and displaced cervical disc caused on April 14, 2011. Dr. Artz opined:

“On that date patient was on break sitting with hands interlocked behind his head when suddenly without warning service personnel grabbed him from behind forcing his shoulders into hard extension and abduction as well as his neck in extension then forced flexion. The patient released himself from the hold after several second fall to the floor supporting himself with only his arms. This maneuver forced the acromioclavicular joint into a position straining the tendons. Additionally, the neck was forced into abnormal positioning whereby nerve roots were impinged upon by cervical discs and spurs causing nerve damage.”

By decision dated June 25, 2013, OWCP accepted the additional conditions of sprain of the shoulder and upper arm and acromioclavicular, left. In a separate decision of the same date, OWCP found that Dr. Artz’s April 26, 2013 report was sufficient to establish AC joint strain but that the medical evidence did not establish AC joint degenerative disease, rotator cuff disease, cervical spine multilevel disc desiccation, disc herniation and bulges of C3-4, C4-5 and C5-6, cervical stenosis, spondylosis and loss of lordosis as resulting from the April 14, 2011 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”<sup>5</sup> 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. First, the employee must submit sufficient evidence to establish that he and she actually experienced the employment

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<sup>2</sup> 5 U.S.C. §§ 8101-1893.

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> 20 C.F.R. § 10.5(ee).

incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>8</sup> Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained cervical strain, sprain of the shoulder and upper arm and acromioclavicular, left. Appellant alleged additional conditions were caused or aggravated by his April 14, 2011 traumatic employment injury including acromioclavicular joint degenerative disease, rotator cuff disease, cervical spine multilevel disc desiccation, disc herniation and bulges of C3-4, C4-5 and C5-6, cervical stenosis, spondylosis and loss of lordosis.

In support of his claim for additional conditions arising from the employment injury, appellant submitted reports from Dr. Artz and Dr. Rubenstein. Dr. Artz diagnosed exacerbation of the degenerative disc disease of the cervical spine as well as herniated disc at C5-6. He also found exacerbation of osteoarthritis with myofascial pain. Dr. Artz opined that these additional conditions were due to appellant's work injury as appellant was capable of performing full duty prior to his April 14, 2011 work injury. While the physician noted an accurate history of injury and generally supported a causal relationship between the additional diagnosed conditions and appellant's employment, he did not provide adequate medical rationale to establish appellant's claim. The Board has held the fact that a condition arises after an injury and was not present before an injury is not sufficient to support causal relationship.<sup>10</sup> This report only offers a general statement that the conditions diagnosed were not disabling prior to the employment injury. It is not sufficiently well reasoned as to addressing appellant's history of prior cervical injury in 1989 or how the injury accepted in this case was competent to exacerbate the degenerative disease process.

In a report dated November 23, 2012, Dr. Artz stated that appellant's April 14, 2011 injury resulted in hyperflexion of the neck exacerbating his previous injury of July 9, 1989. In

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<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>8</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>10</sup> *Michael S. Mina*, 57 ECAB 379 (2006).

his April 16, 2013 report, Dr. Artz opined that “Additionally, the neck was forced into abnormal positioning whereby nerve roots were impinged upon by cervical discs and spurs causing nerve damage.” This report is not sufficiently detailed to meet appellant’s burden of proof in establishing any additional cervical conditions. Dr. Artz did not sufficiently explain which nerve roots were impinged or damaged by the employment injury.

On June 28, 2011 Dr. Rubenstein described appellant’s employment injury and providing physical findings. He diagnosed a work-related rotator cuff strain with probable labral tear on the left. OWCP has accepted cervical strain. Dr. Rubenstein did not provide sufficient medical reasoning addressing how a labral tear was due to the employment injury. His report is speculative as to whether appellant has a labral tear. The Board has held that medical opinions that are speculative or equivocal in character diminish the probative value of the medical opinion.<sup>11</sup> On October 5, 2011 and March 20, 2013, Dr. Rubenstein opined that the injury accepted in this case was not of the type likely to cause AC joint pain.

Appellant has not submitted the necessary rationalized medical opinion evidence required to establish any additional employment-related conditions or aggravations.

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 not established any additional medical conditions due to his accepted traumatic injury.

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<sup>11</sup> A.G., Docket No. 12-659 (issued August 22, 2012); *D.D.*, 57 ECAB 734, 738 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** June 25 and March 13, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 24, 2013  
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