

FACTUAL HISTORY

On May 6, 2011 appellant, then a 61-year-old transportation security officer, filed a traumatic injury claim alleging that he sustained a shoulder strain that day when he shifted his weight forward while pushing a cart. He stumbled after being struck in the left heel by a gate. The employing establishment noted there was no lost time from work but appellant sought medical treatment.

In a May 6, 2011 report, Richard Shouse, a physician's assistant, diagnosed a trapezius/rhomboid strain. Appellant related that the injury occurred when a coworker closed a gate on his left heel, which caused him to almost fall while pushing a cart. A physical examination of the right shoulder revealed normal rotator cuff motion, no joint line tenderness and tenderness in the mid-trapezius region from the shoulder to the neck. The remainder of appellant's shoulder examination was noted as unremarkable.

By letter dated May 17, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to provide this information.

In response to OWCP's request, appellant submitted medical notes for the period May through July 2011 from Mr. Shouse, who provided physical findings and diagnosed a possible impingement syndrome, trapezius/rhomboid strain and right shoulder strain.

In a May 24, 2011 attending physician's report (Form CA-20), Dr. James D. Fox, a treating physician, diagnosed right trapezius/rhomboid strain. Under history of injury, he noted that appellant's heel got caught by a gate while pushing a cart and he sustained a strained shoulder. X-ray interpretations were negative. Dr. Fox checked "yes" to the question as to whether the diagnosed condition was employment related.

In a May 26, 2011 report, Dr. Fox provided a summary of his findings to OWCP. The date of injury was May 6, 2011 with a resulting injury of right shoulder posterior strain along the trapezius muscle from the neck to scapular region. Dr. Fox reported a negative x-ray interpretation and full neck and shoulder range of motion. He opined that the May 6, 2011 work incident was the cause of the right shoulder injury.

In a June 30, 2011 report, Dr. Mark S. Failinger, an examining Board-certified orthopedic surgeon, diagnosed possible right shoulder subscapularis tear with possible biceps tendon subluxation. He described the injury as occurring on May 6, 2011 when appellant was walking, slipped and leaned forward. A review of x-rays revealed no obvious abnormalities. Physical examination findings included some pain with abduction in the supraspinatus, 5-/5 strength, 170 degrees forward flexion and no redness or increased warmth in the shoulder. Dr. Failinger recommended a magnetic resonance imaging (MRI) scan to ensure there was no full-thickness tear.

On July 7, 2011 Dr. Fox diagnosed a right shoulder labral tear based on an MRI scan. He noted that there was a question about causation of this condition and whether it was attributable to the May 6, 2011 employment incident. Dr. Fox deferred to Dr. Failinger to address causation.

On July 14, 2011 Dr. Failinger diagnosed right shoulder probable rotator cuff strain, pectoralis strain and a degenerative labral tear with possible acute-on-chronic component. A physical examination revealed good external rotation, 160 degrees forward flexion with some pain and no warmth, redness or instability. An injury date of May 6, 2011 was noted.

OWCP referred appellant to Dr. A.C. Lotman, a Board-certified orthopedic surgeon, for a second opinion examination. On August 2, 2011 Dr. Lotman opined that there was no evidence supporting a right shoulder injury due to the May 6, 2011 incident. The physical examination revealed good cervical range of motion, some mild localized tenderness at C7, full right shoulder range of motion, positive labral signs and no gross right shoulder instability. A review of the videotape of the May 6, 2011 incident showed appellant pushing a cart with a cross-bar at approximately lower chest level. At one point, appellant appeared to lift the cart and push it forward with no sign of limping. He returned to his workstation, placing his right arm on the x-ray machine with his right shoulder in an elevated abducted position. No pain behavior was seen. Appellant returned his right arm to his side and pointed at a coworker or passenger with no signs of discomfort. Dr. Lotman concluded, based on his physical examination, review of medical records and the videotape, that a right shoulder injury was not established. Appellant's physical examination findings after the employment incident showed a full cervical and shoulder range of motion, no radiculopathy and no cervical tenderness. Four days after the May 6, 2011 incident, his physical examination findings were not supportive of a right shoulder injury. The findings made four days after the May 6, 2011 incident included full range of cervical motion, no cervical spine tenderness, full right shoulder range of motion with no pain, no radiculopathy and 4/5 right shoulder strength.

By decision dated August 12, 2011, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained a right shoulder condition due to the accepted May 6, 2011 employment incident.

On August 17, 2011 appellant's counsel requested a telephonic hearing, which was held on November 16, 2011.

On September 20, 2011 Dr. Douglas A. Foulk, an examining Board-certified orthopedic surgeon, diagnosed right posterior superior glenoid labrum tear. He reported the history of the injury as occurring at work on May 6, 2011 when appellant stumbled forward while pushing a cart after a coworker closed a gate on his left heel. The stumbling caused appellant to catch his weight on the cart he was pushing, which resulted in an immediate onset of shoulder, neck and foot pain.

In a September 28, 2011 report, Dr. Failinger diagnosed right rotator cuff tendinitis and possible right shoulder posterior/superior labral tear. Appellant related that at the time of the incident, he placed his weight on his right arm to prevent himself from falling. He immediately noted right shoulder pain and reported it to his supervisor. Dr. Failinger reviewed a videotape of the May 6, 2011 incident which did not show the right shoulder during the incident. The videotape showed the left shoulder, appellant stopping abruptly, hopping and the continuing to push the cart. Dr. Failinger observed appellant placing his right hand on the x-ray machine with elbow bent and limited right shoulder flexion/abduction. He stated that there was no evidence on the videotape that significant weight had been placed on the shoulder at the time of the incident.

Dr. Failinger stated that “it would take a fair amount of force and weight to be placed on that right shoulder in either a push or a pull type of mechanism to cause any significant symptomatology.” He could “only rely on [appellant’s] subjective report” after relating that appellant stated a fair amount of weight and force had occurred.

By decision dated December 30, 2011, an OWCP hearing representative affirmed the August 12, 2011 decision denying appellant’s claim.²

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.³ 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.⁴

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.⁵ 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ 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

² The Board notes that, following the December 30, 2011 hearing representative’s decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

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

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D’Wayne Avila*, 57 ECAB 642 (2006).

compensable employment factors.⁹ 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.¹⁰

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.¹¹ 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.¹²

ANALYSIS

Appellant filed a traumatic injury claim alleging that he sustained a right shoulder injury as the result of an incident on May 6, 2011. OWCP denied his claim on August 12, 2011 on the grounds that the medical evidence was insufficient to establish a right shoulder condition causally related to the May 6, 2011 employment incident. On December 30, 2011 an OWCP hearing representative affirmed the denial. The issue before the Board is whether appellant established a right shoulder condition was caused or aggravated by the accepted May 6, 2011 employment incident. The Board finds that OWCP properly denied his traumatic injury claim.

Appellant was referred for a second opinion examination by Dr. Lotman, who opined that the evidence was insufficient to support a right shoulder condition as a result of the May 6, 2011 employment incident. Dr. Lotman reported that his physical examination of appellant revealed a good cervical range of motion and full shoulder motion. He compared reports contemporaneous to the employment incident and noted that they also included full range of motion, no cervical spine tenderness, full right shoulder motion with no pain and no radiculopathy. Dr. Lotman also noted that the videotape did not show any pain behavior. He concluded that, based on his own examination of appellant, a review of a videotape of the incident and physical findings from reports immediately after the injury showed that no shoulder condition occurred as a result of the May 6, 2011 employment incident.

The Board finds that Dr. Lotman's second opinion report is sufficient to negate a causal relationship between the May 6, 2011 work incident and appellant's right shoulder condition. Dr. Lotman reviewed the statement of accepted facts, video tape of the incident, medical records and performed a physical examination and concluded that no shoulder injury was sustained as a result of the May 6, 2011 incident at work. The Board therefore finds that it constitutes the

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹² *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Sean O'Connell*, 56 ECAB 195 (2004); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

weight of medical opinion. Appellant did not establish that he sustained a right shoulder injury on May 6, 2011.

Dr. Failinger failed to directly address the issue of causal relationship as he did not explain how the mechanism of the May 6, 2011 employment incident was sufficient to cause or aggravate appellant's right shoulder conditions. In a June 30, 2011 report, he listed the diagnosed conditions as a possible right shoulder subscapularis tear with possible biceps tendon subluxation to the May 6, 2011 employment injury. Dr. Failinger did not provide medical rationale explaining how appellant's right shoulder conditions had been caused or aggravated by the May 6, 2011 employment incident. He offered no opinion as to the cause of the diagnosed right shoulder conditions in his July 14, 2011 report. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on May 6, 2011.¹³

The record also contains a September 28, 2011 report from Dr. Failinger, in which he reviewed a videotape of the May 6, 2011 incident. Based on his review of the videotape, Dr. Failinger stated that it did not appear that appellant placed significant weight on his shoulder at the time of the incident sufficient to cause a shoulder injury. He noted that his opinion was based on information provided by appellant who stated that there had been significant force to cause the shoulder injury. Dr. Failinger stated that he had to rely upon information provided by appellant in rendering his opinion. He failed to explain how appellant's stumbling when his left heel was hit by a gate and shifting his weight forward onto a cart he was pushing on May 6, 2011 pathophysiologically caused or contributed to the diagnosed condition.¹⁴ Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.¹⁵ Thus, this report is insufficient to support appellant's claim.

Appellant also submitted a September 20, 2011 report from Dr. Foulk and a July 7, 2011 report from Dr. Fox, which are of limited probative value as they offered no opinion on whether appellant's May 6, 2011 employment incident caused or aggravated his right shoulder condition.¹⁶

The record also contains a May 24, 2011 attending physician's report and a May 26 2011 report from Dr. Fox. In his May 24 and 26, 2011 reports, Dr. Fox diagnosed a right trapezius/rhomboid strain. He checked "yes" to the question of whether the diagnosed condition was caused by the employment incident in the May 24, 2011 attending physician's report. The

¹³ See *S.S.*, 59 ECAB 315 (2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof). See also *M.W.*, 57 ECAB 710 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

¹⁴ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹⁵ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁶ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Ellen L. Noble*, 55 ECAB 530 (2004).

Board has held that a check mark without more, by way of rationale, is insufficient to establish a claim for compensation.¹⁷ In a May 26, 2011 report Dr. Fox attributed appellant's right shoulder injury to the May 6, 2011 employment incident. However, he provided no explanation as to how the May 6, 2011 employment incident caused the diagnosed trapezius/rhomboid strain. In his May 26, 2011 report, Dr. Fox attributed appellant's right shoulder condition to the May 6, 2011 employment incident. However, he provided no supporting rationale explaining this conclusion. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.¹⁸

The record also contains a number of reports from Mr. Shouse, a physician's assistant. However, the reports have no probative value as medical evidence as they were not signed or approved by a physician. A physician's assistant is not a physician as defined under FECA.¹⁹ Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.²⁰

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 that he sustained a right shoulder injury on May 6, 2011.

¹⁷ *Cecelia M. Corley*, *supra* note 13.

¹⁸ *S.S.*, *supra* note 13; *Roma A. Mortenson-Kindschi*, *supra* note 11.

¹⁹ *See J.M.*, 58 ECAB 303 (2007); *Lyle E. Dayberry*, 49 ECAB 369 (1998) (the reports of a physician's assistant are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA).

²⁰ 5 U.S.C. § 8101(2). *Thomas O. Bouis*, 57 ECAB 602 (2006); *see also Paul Foster*, 56 ECAB 208 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 30, 2011 is affirmed.

Issued: January 7, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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