

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

S.D., Appellant

and

**DEPARTMENT OF THE INTERIOR, Page, AZ,
Employer**

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**Docket No. 13-801
Issued: June 18, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 21, 2013 appellant filed a timely appeal from a January 8, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left arm injury causally related to factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the January 8, 2013 OWCP decision, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 21, 2012 appellant, then a 50-year-old visitor use assistant, submitted a claim for traumatic injury, alleging that on September 20, 2012 he aggravated a preexisting left shoulder condition as he grabbed a visitor's motorcycle, which had begun to tip over.

In a December 7, 2012 letter, OWCP advised appellant of the deficiencies in his claim. Appellant was asked to submit further evidence in support of his claim, including a medical report diagnosing a firm medical condition and explaining how the diagnosed condition was causally related to his work. He was provided 30 days to submit the requested information.

In response, appellant submitted an emergency room report dated September 20, 2012 from Ralph Brown, a physician's assistant, who noted that appellant arrived by ambulance, one hour after injury. X-ray findings were noted and a diagnosis was stated of left shoulder pain.

Appellant also submitted an insurance form from the PII Hospital, an ambulance bill and a National Park incident report, each dated September 20, 2012.

In a December 13, 2012 statement, appellant asserted that he made a timely report of injury and that he was a civil employee at the time of the incident. He would provide reports from the hospital as well as his neurosurgeon in order to establish the causal relationship element in his claim.

By decision dated January 8, 2013, OWCP denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his left shoulder condition was due to the September 20, 2012 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden to establish 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 timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the 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 the fact of injury has been established. 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.⁵ Second, the employee must submit

³ 5 U.S.C. §§ 8101-8193.

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant.⁷

ANALYSIS

The Board notes that appellant reached for a motorcycle to support it as it was tipping over in the performance of his work duties. Appellant has submitted insufficient medical evidence; however, to establish that he had aggravated a left shoulder injury due to this incident.

OWCP informed appellant of the deficiencies of his claim and asked that he submit a medical report that included a history of injury, a diagnosis of his medical condition and medical rationale explaining the relationship of that condition to his employment. 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 State law.

Appellant submitted the September 20, 2012 emergency room report which noted x-ray findings and diagnosed left shoulder pain. The document provided no history of injury and was signed by a physician's assistant. A physician's assistant, such as Mr. Brown is not a physician as defined under FECA. His opinion regarding appellant's diagnosis and causal relationship is of no probative medical value.⁸

The Board finds that appellant has not submitted any probative medical evidence which provides a recitation of his work incident or which explains how his left shoulder condition was aggravated as a result of the incident.

As the only medical documents pertaining to appellant's claimed condition are of no probative medical value, he failed to establish that his left shoulder condition was caused by the accepted work incident.

The Board notes that appellant was transported to the hospital by ambulance within an hour of the employment incident. Upon return of the case record, OWCP should determine whether his medical care at the hospital should be authorized as a case involving emergency or unusual circumstances, pursuant to 20 C.F.R. § 10.304.

⁶ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *T.H.*, 59 ECAB 388 (2008).

⁷ *D.G.*, 59 ECAB 734 (2008); *G.T.*, 59 ECAB 447 (2008); *I.J.*, 59 ECAB 408 (2008).

⁸ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

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 establish that he sustained left shoulder injuries in the performance of duty on September 20, 2012.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: June 18, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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