

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

---

L.G., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Denver, CO, Employer )

---

**Docket No. 13-1449  
Issued: November 5, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 3, 2013 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' (OWCP) dated March 12, 2013. Pursuant to the Federal Employees' Compensation Act<sup>1</sup>(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 sustained an injury to his right shoulder in the performance of duty on April 8, 2012.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 28, 2012 appellant, then a 65-year-old transportation security officer, filed a claim for benefits, alleging that he experienced a ripping type of pain and numbness in his right shoulder and right arm on April 8, 2012.

By letter to appellant dated August 30, 2012, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition.

In a report dated August 9, 2012, Dr. Mark S. Fitzgerald, a specialist in orthopedic surgery, advised that appellant had been experiencing right shoulder pain and increasing weakness in his right shoulder for several months. He stated that appellant had been lifting bags for several years while working for the employing establishment and had experienced intermittent pain in the lateral aspect of the right shoulder with progressive weakness. Dr. Fitzgerald noted a mostly normal right shoulder examination with no signs of instability. He advised that radiographic tests showed a narrowed subacromial space with a hooked acromion, with no other bony or soft tissue pathology. Dr. Fitzgerald recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the right shoulder to evaluate the rotator cuff and its intra-articular structures.

In an August 23, 2012 report, Dr. Fitzgerald advised that appellant had undergone a right shoulder MRI scan. The results of this test showed a full thickness tear of the supraspinatus tendon measuring 2.5 centimeters, anteriorly to posteriorly, with 1.7 centimeters of retraction. Dr. Fitzgerald stated that the MRI scan also demonstrated a large joint effusion with fluid communicating through the rotator cuff into the subacromial/subdeltoid bursa. Based on these results, he recommended a right shoulder arthroscopy, rotator cuff repair and subacromial decompression.

By decision dated October 11, 2012, OWCP denied appellant's claim, finding that he failed to establish fact of injury. It found that he failed to establish that he sustained the claimed injury at the time, place and in the manner alleged.

On September 19, 2012 Dr. Fitzgerald performed a right shoulder arthroscopy procedure to repair appellant's right rotator cuff tear, in addition to a subacromial decompression.

In an October 18, 2012 report, Dr. Fitzgerald noted that he had performed a right shoulder arthroscopy with rotator cuff repair and subacromial decompression on September 19, 2012. He reviewed appellant's history of right shoulder pain and weakness, which had progressed over the past year and asserted that this was secondary to repetitive lifting at work, consistent with his MRI scan and arthroscopic findings. Dr. Fitzgerald opined that appellant's injury was workrelated.

Appellant submitted an October 25, 2012 statement in which he asserted that he sustained an injury on April 8, 2012 which occurred at approximately 4:30 p.m. when he was taking a bag from the conveyor belt; at this time he experienced a rip in his right shoulder. He advised that

the sensation was stronger than the customary pulling sensation which occurred when handling some bags that are heavier than others. Appellant did not experience inordinate pain at the time and continued with his usual work duties; shortly thereafter, however, he began to feel slight, intermittent numbness in his right arm. He related that the pain worsened to the point where he sought medical treatment in July and August 2012, at which time Dr. Fitzgerald advised that he had a torn muscle and torn rotator cuff in his right shoulder which required immediate attention.

On December 13, 2012 appellant requested reconsideration.

By decision dated March 12, 2013, OWCP modified the October 11, 2012 decision in part, finding that appellant established that he experienced pain in his right shoulder while pulling a bag from a conveyor belt on April 8, 2012. It found, however, that he failed to submit sufficient medical evidence to establish that he sustained a diagnosed condition causally related to the April 8, 2012 work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing that 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 within the applicable time limitation period of FECA, that an injury was sustained 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.<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>

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 or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> 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.<sup>6</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>7</sup>

---

<sup>2</sup>*Id.* at §§ 8101-8193.

<sup>3</sup>*Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>5</sup>*John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup>*Id.* For a definition of the term “injury,” see 20 C.F.R. §10.5(ee).

<sup>7</sup>See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

It is uncontested that appellant experienced pain in his right shoulder while pulling a bag from a conveyor belt on April 8, 2012. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>9</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the April 8, 2012 employment incident caused a personal injury and that the work accident would have been competent to cause the claimed injury.

Appellant submitted reports from Dr. Fitzgerald, who diagnosed a right-sided rotator cuff tear and performed a right shoulder arthroscopy to ameliorate this condition. Dr. Fitzgerald generally related appellant's right rotator cuff tear to the April 8, 2012 work incident. He, however, did not provide a probative, rationalized opinion regarding whether the April 8, 2012 work incident caused a personal injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>10</sup> Although Dr. Fitzgerald provided a diagnosis of right-sided rotator cuff tear he did not submit a report which related this diagnosis to appellant's claimed right shoulder condition and sufficiently address how the diagnosed condition was causally related to the April 8, 2012 work incident. He stated in his August 23, 2012 report that a right shoulder MRI scan demonstrated a full thickness tear of the supraspinatus tendon, in addition to a large joint effusion, with fluid emanating through the rotator cuff into the subacromial/subdeltoid bursa. Dr. Fitzgerald performed a right shoulder arthroscopy procedure on September 19, 2012, to repair appellant's right rotator cuff tear. He stated in an October 18, 2012 report that appellant's injury was workrelated, asserting that his right shoulder pain and weakness had progressed during the year prior but was secondary to repetitive lifting at work, consistent with his MRI scan and arthroscopic findings.

Dr. Fitzgerald's reports did not sufficiently explain how medically appellant would have sustained a right shoulder injury while pulling bags from a conveyor belt on April 8, 2012. They did not adequately describe appellant's accident or how the accident would have been competent to cause the claimed condition. Dr. Fitzgerald's opinion regarding causal relationship is of limited probative value for the further reason that he did not provide adequate medical rationale

---

<sup>8</sup>*Id.*

<sup>9</sup>*Supra* note 5.

<sup>10</sup>*See Anna C. Leanza*, 48 ECAB 115 (1996).

in support of his conclusions.<sup>11</sup> His reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's April 8, 2012 work incident and his claimed right shoulder condition.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the April 8, 2012 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained his right shoulder injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

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.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a right shoulder injury in the performance of duty on April 8, 2012.

---

<sup>11</sup>*William C. Thomas*, 45 ECAB 591 (1994).

<sup>12</sup> The Board notes that appellant submitted additional evidence to the record following OWCP's March 12, 2013 decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2013  
Washington, DC

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

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

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