



almost a month after the alleged injury. Don Holloway, an acting supervisor, noted that he was not informed of the incident.

By letter dated April 2, 2013, OWCP requested that appellant submit further evidence in support of his claim.

In an undated statement received by OWCP on April 16, 2013, Patrick C. Deariso, a coworker, noted that on February 25, 2013 at around 7:45 a.m., he observed appellant attempting to adjust a drum on a pallet. He noticed that the pallet was about to slip and he assisted appellant in readjusting the drum on the pallet. After moving the drum, appellant stated that he thought he pulled a muscle in his shoulder.

In an April 15, 2013 statement, appellant advised that on March 5, 2013 he informed Keithon Smith, his acting supervisor, that his hand was numb and his shoulder hurt. He experienced pain from March 5 through 19, 2013 and then went to the base doctor for treatment. Appellant noted that, prior to March 19, 2013, he informed his supervisor of the accident to which there was a witness, but the information was not recorded.

Appellant submitted the March 5 and 11, 2013 reports of Dr. Tracy S. McGee, a Board-certified orthopedic surgeon, who treated appellant and recommended a return to light-duty work. Dr. McGee noted right shoulder pain and stated that appellant's prior left shoulder problems from 2012 might have caused his right shoulder pain.

In a March 15, 2013 treatment note, Dr. Phillip D. Hajek, a Board-certified orthopedic surgeon, advised that appellant had a probable rotator cuff tear, should not use his right upper extremity and prescribed medication.<sup>2</sup>

In an April 17, 2013 memorandum, Joe Blanton, an injury compensation specialist, noted that a meeting was held that day with appellant, management and the union concerning his injury. When questioned why he did not go to the dispensary before going to his personal doctor, appellant explained that his supervisor told him that he needed to see the nurse first. Mr. Smith stated that he did not know appellant had been injured, but when "put on the spot," he acknowledged that he knew about the injury but failed to complete paperwork at that time.<sup>3</sup> The memorandum noted that appellant would be accommodated while awaiting a compensation decision.

In a May 2, 2013 memorandum, Mr. Blanton noted that appellant did not inform his supervisor or his chain of command of an injury until almost a month after the fact. He stated that appellant had an accepted left shoulder claim for a rotator cuff tear. Mr. Blanton noted that prior to his left shoulder injury, appellant was a weight lifter. He stated that the notification of injury was extremely late, and the Form CA-1 was not completed until after issuance of a medical requirement letter almost a month after the incident.

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<sup>2</sup> Notes from a physician's assistant addressed appellant's work restrictions limiting lifting to 10 pounds and no prolonged use of the right arm or overhead work.

<sup>3</sup> In an April 18, 2013 memorandum, Mr. Smith noted speaking to appellant about his work restrictions and medical documentation. He noted vaguely recalling appellant mentioning an injury with a drum.

By decision dated May 10, 2013, OWCP denied appellant's claim. It accepted the February 25, 2013 incident occurred, as alleged, but found that the medical evidence was not sufficient to establish that his right shoulder condition was caused or contributed to by the incident with the drums.

By letter dated May 23, 2013, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. At the November 1, 2013 hearing, he testified that on the morning of February 25, 2013 he was working as a hazmat coordinator to remove hazardous waste as needed. While working with another person, appellant was stacking 55-gallon full drums when he noted that the lip of one drum was on another. As they tried to move it, the drum tilted over and he tried to catch it to keep it from falling over and hitting the floor. Appellant experienced a sharp pain in his right hand and his fingers started tingling. He informed his supervisor and ultimately sought treatment from Dr. McGee. Appellant continued to work after the injury, but not with the drums. He reported the injury to his original supervisor, who retired. As his employer was going through a transition, appellant also informed Mr. Smith, on March 4 or 5, 2013.<sup>4</sup>

In a March 15, 2013 report, Dr. McGee noted that appellant complained of pain in the right shoulder. Appellant had a history of a complex rotator cuff tear reconstruction to his left shoulder in the recent past. Dr. McGee stated that there were multiple factors that resulted in rotator cuff pathology, but noted that appellant had a manual labor job. He opined that the job was one factor and, although it was his feeling that the activity at work was contributory; appellant's native anatomy, the shape of his acromion, his health maintenance activities in terms of stretching and strengthening the rotator cuff were also factors. Dr. McGee stated that the "bottom line is [appellant's] left side was done under workers' comp[ensation] and he wants back to work." He diagnosed impingement and rotator cuff bursitis.

On June 3, 2013 Dr. Bobby Prince, a Board-certified orthopedic surgeon, stated that appellant was scheduled for right shoulder arthroscopic rotator cuff repair. He anticipated that recovery time would be at least 14 weeks and appellant would have light-duty restrictions. In a June 6, 2013 report, Dr. Prince performed a right shoulder arthroscopic massive rotator cuff repair, a right shoulder acromioplasty and a right shoulder acromioclavicular (AC) joint resection. On July 3, 2013 he completed a questionnaire. In handwritten responses, Dr. Prince noted that appellant stated that, while at work, he tried to catch a 55-gallon barrel that was falling and felt pain in his right shoulder. He noted that appellant had pain with forward flexion and abduction and breakaway weakness was present with external rotation and abduction. Dr. Prince was also tender over the AC joint. A computerized tomography scan on May 17, 2013 and an x-ray on May 29, 2013 revealed a right rotator cuff tear and AC osteoarthritis.<sup>5</sup> As to causal relationship, Dr. Prince's typed response stated that the fact of injury was the direct and proximate cause of the diagnosis based on reasonable medical probability. He noted that there may be other causes for appellant's medical problem, but one of the causes was clearly the activities described at work.

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<sup>4</sup> Appellant submitted the March 19 and 20, 2013 progress notes from a physician's assistant, who listed a history that his right shoulder was treated after he moved a 55-gallon drum at work.

<sup>5</sup> The diagnostic tests were submitted to the record.

By decision dated December 11, 2013, an OWCP hearing representative affirmed the denial of appellant's claim. She found that he failed to establish the February 25, 2013 incident at work; noting inconsistencies in the histories contained in the medical and factual evidence.

### **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 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. 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>6</sup>

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 or exposure, which is alleged to have occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>9</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>10</sup>

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<sup>6</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>9</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>10</sup> *T.B.*, Docket No. 13-1823 (issued March 20, 2014).

## ANALYSIS

Appellant alleged injury on February 25, 2013 while attempting to move drums on a pallet. He stated that he was attempting to adjust a drum with a coworker when he pulled a muscle in his right shoulder. While the hearing representative determined that there were inconsistencies in the record which cast doubt on appellant's claim. The Board finds that the February 25, 2013 incident occurred at the time, place and in the manner alleged.

In his claim form, appellant stated that on February 25, 2013 he was moving waste drums on a pallet when he sustained injury to his right shoulder. An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> The evidence of record does not refute appellant's statement as to the incident at work. Mr. Deariso, a coworker, submitted a statement that he was working with appellant on February 25, 2013 when they attempted to adjust a drum on the pallet. After adjusting the drum, appellant stated that he pulled a muscle in his right shoulder. He related that he informed his supervisor about the incident, but the supervisor subsequently retired. Appellant then informed his acting supervisor of the incident on March 4 or 5, 2013, several weeks prior to submitting his claim. Mr. Smith noted on April 18, 2013 that he vaguely recalled appellant mentioning an injury involving a drum. Mr. Blanton, the injury compensation specialist, noted in an April 7, 2013 memorandum that Mr. Smith acknowledged that he knew about the injury but failed to prepare paperwork at that time.

The evidence from the employing establishment is not sufficient to cast doubt on the fact that appellant was attempting to move waste drums with a coworker on February 25, 2013. While it was contended that notice of the injury was late, the Board finds that appellant timely informed his supervisors of the incident and submitted his claim within several weeks of the event at work. The delay of several weeks in submitting the claim is not sufficient to cast doubt on the incident alleged in this case. Further, when he saw Dr. McGee on March 5, 2013 appellant provided a history of injury consistent with the moving of a 55-gallon drum when he experienced the onset of pain in his right shoulder. Based on this evidence, the Board finds that the February 25, 2013 incident occurred as alleged.

Appellant must also establish that the accepted employment incident caused a personal injury by probative medical evidence.<sup>12</sup> The Board finds, however, that the medical evidence of record is not sufficient to establish that his right shoulder condition for which he underwent surgery on June 6, 2013, was caused or contributed to by the February 25, 2013 incident.<sup>13</sup>

The treatment notes from Dr. McGee are insufficient to establish that appellant sustained a right shoulder condition causally related to the accepted employment incident. Dr. McGee saw appellant for right shoulder pain, but he addressed treatment for a complex rotator cuff tear of the left shoulder which might have contributed to appellant's current condition. He stated that there

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<sup>11</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>12</sup> *C.M.*, Docket No. 13-2009 (issued July 14, 2014).

<sup>13</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

were multiple factors that resulted in rotator cuff pathology: including manual labor; appellant's native anatomy; the shape of his acromion; and activities involving the rotator cuff. The Board finds that Dr. McGee did not provide a fully-rationalized opinion addressing how the February 25, 2013 incident caused or aggravated appellant's right shoulder condition. Dr. McGee did not provide a full or accurate medical history, did not address appellant's prior weight lifting activities or address the diagnostic studies obtained prior to surgery. For these reasons, the Board finds that his reports are of diminished probative value on the issue of causal relation.

Dr. Prince performed a right shoulder arthroscopic rotator cuff repair, acromioplasty and joint resection of the AC joint on June 6, 2013. In a questionnaire dated July 3, 2013, he diagnosed rotator cuff tear and AC osteoarthritis. Dr. Prince listed a history that appellant was trying to catch a 55-gallon barrel that was falling when he experienced pain in his right shoulder at work but did not provide the date of the incident at work. He stated that the factors of injury were the direct and proximate cause of the diagnosis based on reasonable medical probability, but noted that there could be other causes for appellant's medical problem, but one cause was clearly the activities of work described by appellant. The Board finds that Dr. Prince's reports are insufficient to establish causal relationship. Dr. Prince did not provide a full history of the incident accepted in this case. He did not list the date of the employment incident but made general reference to appellant's activities at work. It is not apparent that Dr. Prince based his opinion on the traumatic incident of February 25, 2013 or on work activities occurring over more than one shift. He did not adequately explain how the February 25, 2013 incident caused or contributed to appellant's rotator cuff tear or AC osteoarthritis. Dr. Prince did not address the diagnostic testing, the history of appellant's left shoulder rotator cuff tear or weight lifting activities. The Board finds that the opinion of Dr. Prince on causal relationship is of diminished probative value.

The reports from the physician's assistants and diagnostic studies are not probative on the issue of causal relation. A physician's assistant is not a "physician" as defined under FECA.<sup>14</sup> The diagnostic studies do not address causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment or his belief that his condition was caused by his employment sufficient to establish causal relationship.<sup>15</sup> Appellant did not submit sufficient medical opinion to establish a causal relationship between the February 25, 2013 incident and his right shoulder condition. He did not meet his burden of proof.

### **CONCLUSION**

The Board finds that the employment incident of February 25, 2013 is established, but the medical evidence of record does not establish that appellant sustained a right shoulder injury as a result.

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<sup>14</sup> 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>15</sup> *Walter D. Morehead*, 31 ECAB 188 (1986).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 11, 2013 is affirmed, as modified.

Issued: December 9, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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