United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant **and** **DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Ogden, UT, Employer**	)))))))))	**Docket No. 14-1702** **Issued: December 29, 2014**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2014 appellant, through his attorney, filed a timely appeal of a May 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has met his burden of proof to establish an occupational disease in the performance of duty.

FACTUAL HISTORY

On July 2, 2013 appellant then a 26-year-old computer operator filed a Form CA-2, occupational disease claim, alleging that he developed snapping scapula syndrome as a result of

[1] 5 U.S.C. §§ 8101-8193.

performing repetitive overhead arm use at work. He first became aware of his condition and realized it was causally related to his employment on February 12, 2013. Appellant did not stop work.

On July 11, 2013 OWCP advised appellant of the evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

In a December 8, 2010 report, Dr. Brent Baranko, a Board-certified orthopedic surgeon, treated appellant for bilateral shoulder pain. Appellant was seen by a physician's assistant on January 5 and 27, 2011 for wrist, and shoulder pain aggravated with movement. The physician's assistant diagnosed impingement of the shoulder, shoulder pain, pain in the joint forearm radius ulna wrist, and mild carpal tunnel syndrome. An x-ray of the right shoulder dated February 15, 2011 revealed no abnormalities.

On February 25, 2011 appellant was treated by Dr. Patrick E. Greis, a Board-certified orthopedic surgeon, for bilateral shoulder pain. He reported working in data entry and experiencing right shoulder popping, and grinding, and left shoulder pain with lifting. Dr. Greis noted findings of intact sensation, and strength, no atrophy, full range of motion bilaterally, and crepitus with scapular thoracic motion. He noted x-rays of the bilateral shoulders revealed type 2 acromion bilaterally. Dr. Greis diagnosed bilateral scapulothoracic bursitis, and recommended physical therapy. On March 26, 2012 appellant underwent physical therapy for his shoulder condition.

Appellant was later seen by Dr. John G. Tanner, a chiropractor, for right shoulder, and low back pain. Dr. Tanner reported that his shoulder, and back problems began two years ago and were a direct result of an auto accident. He performed manual adjustments, mechanical traction, electrical stimulation, and ultrasound. A November 12, 2012 report by Dr. Jeffrey S. Zavala, a Board-certified family practitioner, noted bilateral shoulder pain which began two years prior with an unknown etiology. Dr. Zavala noted findings of no atrophy, no scapular winging, nontender acromioclavicular joint, full active range of motion, and intact strength. He diagnosed bilateral shoulder pain. Various reports from Dr. Hans C. Jenkins, an osteopath, from February 14 to March 4, 2013, diagnosed bilateral shoulder pain. Appellant reported being a computer programmer, and lifting 50-pound boxes which increased his shoulder pain. He noted his right shoulder was painful for some time secondary to overuse as well as injuries which occurred earlier in life. Dr. Jenkins diagnosed right shoulder pain and referred appellant for physical therapy. A February 22, 2013, magnetic resonance imaging (MRI) scan of the right shoulder revealed no abnormalities.

Dr. Dann C. Byck, a Board-certified orthopedic surgeon, provided treatment notes from March 20 to 25, 2013 for bilateral shoulder pain associated with grinding, popping, clicking, and catching. He noted findings of marked crepitus of the bilateral shoulder range of motion, marked winging, limited range of motion, and intact sensory, and motor examination. Dr. Byck indicated x-rays of the bilateral shoulders revealed a normal shoulder except for a bony excrescence on the inferior old lateral third of the scapula. He diagnosed bilateral snapping scapula syndrome, and recommended a bilateral shoulder partial scapulectomy. In an initial claim for disability insurance dated March 26, 2013, Dr. Byck diagnosed scapular snapping

syndrome, and noted appellant could return to work on March 21, 2013 with lifting restrictions. In a return to work slip dated April 9, 2013, he stated that he was treating appellant for bilateral snapping scapula syndrome, and restricted him from working. In an undated attending physician's report, Dr. Byck noted a history of overuse of the shoulders, and diagnosed bilateral painful, and snapping scapula syndrome. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity noting "overuse of shoulders at work." In a July 1, 2013 report, Dr. Byck noted that appellant's condition was work related as he only had some bilateral shoulder pain prior to working at this particular job but it was manageable. However, after he started his current job his pain became unmanageable and his left shoulder began to exhibit similar symptoms. In a July 1, 2013 duty status report, Dr. Byck diagnosed bilateral snapping scapula with pain and noted that appellant could not return to work. On August 5, 2013 he noted appellant's symptoms of pain at the bilateral scapula with crepitus and popping. Dr. Byck diagnosed bilateral snapping scapula syndrome with significant pain. He noted that appellant's employment activities required him to carry and lift overhead which aggravated his medical condition. On March 25, 2013 a nurse practitioner diagnosed mild-to-moderate bilateral snapping scapula syndrome.

In a September 5, 2013 decision, OWCP denied the claim as the medical evidence was insufficient to establish a medical condition in connection with the claimed event or work factors.

Appellant requested an oral hearing which was held on March 13, 2014. He submitted a March 22, 2013 certificate of health care provider from Dr. Byck who diagnosed bilateral severe snapping scapula syndrome. Dr. Byck noted that appellant could not perform heavy lifting, and overhead work. Also submitted was a July 29, 2013 duty status report from him which again found that appellant could not return to work. Appellant submitted literature on snapping scapula syndrome, and scapulothoracic crepitus, and bursitis.

In a May 28, 2014 decision, an OWCP hearing representative affirmed as modified the decision dated September 5, 2013. The hearing representative found that appellant had diagnosed a medical condition but the medical evidence was insufficient to establish that the diagnosed condition was causally related to his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[2]

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[2] *See Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.[3]

ANALYSIS

It is not disputed that appellant's work duties included repetitive overhead lifting and carrying. However, he has not submitted sufficient medical evidence to establish that his diagnosed conditions were causally related to the specific employment factors. On July 11, 2013 OWCP advised appellant of the medical evidence needed to establish his claim. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

In reports dated March 20 and 25, 2013, Dr. Byck diagnosed bilateral snapping scapula syndrome, and recommended a bilateral shoulder partial scapulectomy. In a July 1, 2013 report, he found appellant's condition to be work related as his pain became unmanageable after working in this position. On August 5, 2013 Dr. Byck diagnosed bilateral snapping scapula syndrome and noted that appellant's work activities required that he carry and lift overhead which aggravated his medical condition. In these reports, however, he appears to merely be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that he is providing his own opinion, Dr. Byck failed to provide a rationalized opinion explaining the causal relationship between appellant's diagnosed conditions, and employment factors believed to have caused or contributed to such condition.[4] These reports are insufficient to meet appellant's burden of proof. In his undated report, Dr. Byck noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity noting "overuse of shoulders at work." The Board has held that when a physician's opinion on causal relationship consists only of checking

[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

"yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[5]

In the March 22, 2013 certificate of health care provider and the return to work slip dated April 9, 2013, and in duty status reports dated July 1 and 29, 2013, Dr. Byck noted treating appellant for bilateral snapping scapula syndrome and advised that appellant could not work. However, these notes neither provide a history of injury[6] nor offer an opinion on how appellant's employment could have caused or aggravated his condition.[7] Consequently these reports are of no probative value and do not establish appellant's occupational illness claim.

The reports from Dr. Jenkins, who treated appellant for bilateral shoulder pain failed to adequately provide any opinion regarding whether appellant's condition was work related. Rather they too appear to be merely repeating appellant's history of injury. Therefore, these reports are insufficient to meet appellant's burden of proof.

The reports from Dr. Baranko, who treated appellant for bilateral shoulder pain, from Dr. Greis, who diagnosed bilateral scapulothoracic bursitis, and from Dr. Zavala, who treated appellant for bilateral shoulder pain do not provide an opinion on the causal relationship between appellant's job duties and his diagnosed bilateral scapulothoracic bursitis. Thus, they are insufficient to meet appellant's burden of proof.[8]

Appellant was treated by Dr. Tanner, a chiropractor, for right shoulder pain. Dr. Tanner did not diagnose a subluxation of the spine and did not provide x-rays demonstrating such a subluxation of the spine. The Board finds that he does not qualify as a physician under FECA.[9] Other evidence submitted by appellant included reports from a nurse, physical therapist, and physician's assistant. However, the Board has held that treatment notes signed by a nurse, physical therapist, or a physician's assistant are not considered medical evidence as these providers are not physicians under FECA.[10]

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[5] *D.D.,* 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

[6] *See Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history).

[7] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[8] *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[9] 5 U.S.C. § 8101(2) 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. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988); *P.R.*, Docket No 14-1007 (issued August 13, 2014).

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

Appellant submitted literature on snapping scapula syndrome, scapulothoracic crepitus, and bursitis. However, the Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[11]

The remainder of the medical evidence, including reports of diagnostic testing, are insufficient to establish the claim as they fail to provide an opinion on the causal relationship between appellant's job and his diagnosed conditions.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

[11] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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