

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

W.G., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Jersey City, NJ, Employer**

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**Docket No. 14-1420
Issued: November 12, 2014**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2014 appellant, through his attorney, filed a timely appeal from a March 25, 2014 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.

ISSUE

The issue is whether appellant has established that he sustained a right shoulder injury in the performance of duty on June 9, 2012.

FACTUAL HISTORY

On July 3, 2012 appellant, then a 60-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2012 he sustained a right shoulder injury when he tripped over an empty pallet and fell back on his shoulder. The record contains a Form CA-16

¹ 5 U.S.C. § 8101 *et seq.*

(authorization for examination and treatment) dated July 2, 2012 indicating that Meadowlands Hospital was authorized to provide necessary treatment.

Appellant received treatment at the hospital on July 2, 2012 from Dr. Fabian Morales, Board-certified in emergency medicine, who provided a history that appellant was status post right rotator cuff tear and injury sustained at work one year earlier and repaired. Dr. Morales indicated that appellant had fallen at work three weeks earlier. He provided results on examination and diagnosed rotator cuff impingement syndrome. In a July 3, 2012 Form CA-20 report, Dr. Morales indicated that appellant had undergone rotator cuff surgery in 2011. He diagnosed rotator cuff impairment syndrome and shoulder pain, checking a box "yes" that the conditions were employment related.

In a report dated July 16, 2012, Dr. Edward Decter, a Board-certified orthopedic surgeon, stated that appellant had prior right shoulder surgery from a Dr. Zafer A. Termanini in 2011 and "June 2012." Dr. Decter stated that appellant had tripped over a pallet and reinjured his shoulder and an magnetic resonance imaging (MRI) scan was necessary to determine if he had a re-tear of his rotator cuff. Appellant underwent an MRI scan on October 3, 2012 and in a report of that date, Dr. Anuj Tolia, a radiologist, stated that the MRI scan did not show a rotator cuff re-tear or labral tear, but did indicate stable, moderate acromioclavicular (AC) joint osteoarthritis. In a brief report dated October 5, 2012, Dr. Decter noted the MRI scan results and stated that arthroscopic surgery was planned to treat the arthritis.

In a decision dated November 27, 2012, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

Appellant requested a hearing, which was held on March 25, 2013. In a report dated March 4, 2013, Dr. Decter noted that appellant "is still having persistence of pain of his right AC joint, which [appellant] injured over of the years of doing repetitive motions." He indicated that appellant was still interested in surgery. By report dated May 16, 2013, Dr. Decter stated that appellant injured his right shoulder on June 2012 when he tripped and fell backwards on his shoulder. He diagnosed AC joint osteoarthritis, stating that appellant continued to have right shoulder pain and arthroscopic surgery should be authorized.

By decision dated June 12, 2013, the hearing representative affirmed the November 27, 2012 OWCP decision. The hearing representative found that the medical evidence was not sufficient to establish causal relationship between a diagnosed condition and the employment incident.

On February 3, 2014 appellant, through his representative, requested reconsideration. He submitted a January 23, 2014 report from Dr. Decter, stating that in June 2012 appellant had fallen and injured his shoulder. Dr. Decter indicated that appellant had surgery by a Dr. Termanini and appellant was sent back to work and then he hurt his shoulder. He again stated that appellant had osteoarthritis of the AC joint and surgery was recommended. Dr. Decter further stated, "I believe that this accident is the precipitating cause of [appellant's] shoulder pain and he has had an unsuccessful procedure by Dr. Termanini."

In a decision dated March 25, 2014, OWCP reviewed the case on its merits and denied modification. It found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”² The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of employment.”³ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ 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 which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

OWCP’s procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁶ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁷

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁸

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁷ *Id.*

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ANALYSIS

In the present case, appellant alleged that he fell backward on his right shoulder while in the performance of duty on June 9, 2012. OWCP accepted that the incident occurred as alleged. The issue is whether there is sufficient medical evidence to establish causal relationship between a diagnosed condition and the employment incident.

Appellant initially received treatment from Dr. Morales on July 2, 2012. He diagnosed a rotator cuff impingement syndrome and shoulder pain, without providing a rationalized medical opinion on causal relationship with the June 9, 2012 employment incident. The checking of a box “yes” in the July 3, 2012 CA-20 form report is of little probative value without further explanation.⁹

With respect to the reports from Dr. Decter, the Board finds that appellant has not submitted a report with a rationalized medical opinion based on a complete and accurate background. In his initial July 16, 2012 report, Dr. Decter indicated that appellant had two prior right shoulder surgeries. He stated that the first was in 2011 and a second in June 2012. Dr. Morales referred to only a prior surgery in 2011 and in his January 23, 2014 report Dr. Decter appears to discuss only one prior surgery, without providing the date. The relevant medical history regarding the right shoulder is not clearly set forth for proper foundation in the reports of record.

In his brief March 4, 2013 report, Dr. Decter states that the diagnosed arthritis condition was the result of years of repetitive motion. However, appellant has not alleged an occupation disease claim.¹⁰ As to the June 9, 2012 incident, Dr. Decter states in his January 23, 2014 report that this was the “precipitating cause” of appellant’s arthritis condition. Stating that an incident is the precipitating cause of a condition is not sufficient to show causal relationship without additional explanation.¹¹ That is particularly true in this case, as Dr. Decter had previously referred to years of repetitive motion as the cause of appellant’s shoulder condition. He did not clearly explain the relationship between the employment incident and the diagnosed osteoarthritis condition.

The Board finds that the record does not contain a rationalized medical opinion, based on a complete and accurate background, as to the causal relationship between a diagnosed AC joint arthritis and the June 9, 2012 employment incident. It is appellant’s burden of proof and for the reasons set forth herein, he did not meet his burden in this case.

On appeal, appellant argues that Dr. Decter’s January 23, 2014 report is sufficient to establish causal relationship, as he opined that the employing establishment incident was the precipitating cause of appellant’s condition. For the reasons noted above, the Board finds that the medical evidence is not sufficient to establish a right shoulder arthritis condition as causally related to the June 9, 2012 employment incident.

⁹ See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

¹⁰ An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹¹ See, e.g., *Roberta Kirwin*, Docket No. 97-1772 (issued February 25, 1999).

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.

The Board also notes that the employing establishment issued appellant a CA-16 form on July 2, 2012 authorizing medical treatment.¹² The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.¹³ Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the CA-16 form. Upon return of the case record, OWCP should further address this issue.¹⁴

CONCLUSION

The Board finds that appellant has not established that he sustained a right shoulder injury in the performance of duty on June 9, 2012. Upon return of the case record, OWCP should address the issue of whether appellant is entitled to reimbursement of medical expenses pursuant to the CA-16 form.

¹² 20 C.F.R. § 10.300 provides that, when an employee sustains a work-related traumatic injury requiring medical treatment, the employing establishment should issue a CA-16 form.

¹³ See *D.M.*, Docket No. 13-535 (issued June 6, 2013).

¹⁴ See *P.B.*, Docket No. 14-837 (issued August 12, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2014 is affirmed as modified.

Issued: November 12, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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