

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

R.H., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Jackson, MS, Employer**

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**Docket No. 14-1495
Issued: November 19, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 16, 2014 appellant, through his counsel, filed a timely appeal from an April 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. 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 met his burden of proof to establish that he sustained a left shoulder and neck injury in the performance of duty on November 8, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 20, 2012 appellant, then a 40-year-old maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on November 8, 2012 he was knocking a wall down with a sledge hammer and experienced pain in his left shoulder and neck.

In a November 28, 2012 emergency room report, Dr. Jo L. Harbour, Board-certified in internal medicine, reported that appellant presented with complaints of left shoulder pain that started after knocking a wall down with a sledge hammer on November 8, 2012. Upon physical examination, Dr. Harbour diagnosed muscle spasm in the neck and shoulder likely due to the employment-related activity. A December 20, 2012 magnetic resonance imaging (MRI) scan of the cervical spine and left shoulder revealed no abnormalities.

In a December 20, 2012 duty status report (Form CA-17), Dr. James Polk, Board-certified in family medicine, diagnosed appellant with severe pain in left shoulder and neck. Treatment notes were provided dated December 20, 2012 to March 14, 2013 documenting complaints of neck and left shoulder pain.

In a February 5, 2013 report, Dr. Charles Pringle, a Board-certified diagnostic radiologist, advised that an MRI scan of the cervical spine and skull was unremarkable.

In a March 11, 2013 report, Dr. Gary Cirilli, a Board-certified diagnostic radiologist, reported that an MRI scan of the left upper extremity revealed marked arthritic changes involving the right acromioclavicular (AC) joint. The supraspinatus tendon was intact and no joint effusion identified. There was a possible anterior labral tear.

In a March 14, 2013 treatment note, Dr. Polk noted that appellant's MRI scan suggested a labral tear and referred him for orthopedic evaluation.

By letter dated April 23, 2013, the employing establishment controverted the claim. It noted that appellant sustained his alleged injury on November 8, 2012 but did not file a claim until December 20, 2012.

By letter dated April 25, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised of the factual and medical evidence needed and asked to respond within 30 days.

By decision dated May 28, 2013, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that he sustained an injury because he did not submit sufficient medical evidence relating an injury to the accepted November 8, 2012 employment incident. The medical evidence submitted provided a diagnosis of "pain" which was not a firm medical condition.

On March 28, 2014 appellant, through counsel, requested reconsideration. Counsel stated that appellant was submitting medical reports from Dr. Polk not previously considered.

In an April 29, 2013 work capacity evaluation (OWCP 5-c), Dr. Polk stated that appellant required evaluation by an orthopedic surgeon. By letter dated March 3, 2014, Dr. Polk stated

that enclosed with his letter was a chronological order of the events pertaining to appellant's injury and treatment. He opined that appellant's accident was work related. Medical reports previously of record were resubmitted.

By decision dated April 28, 2014, OWCP denied modification of the May 29, 2013 decision. It found that appellant failed to establish a firm medical diagnosis causally related to the accepted November 8, 2012 employment incident.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

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.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *see supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that the November 8, 2012 employment incident occurred as alleged. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused a neck or left shoulder injury. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to the November 8, 2012 employment incident.⁷ The medical evidence is insufficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

In a November 28, 2012 report, Dr. Harbour noted that appellant presented to the emergency room that day with complaints of left shoulder pain that started after knocking a wall down with a sledge hammer on November 8, 2012. Upon physical examination, he diagnosed muscle spasm in the neck and shoulder likely due to the employment-related activity. The Board has held that a diagnosis of muscle spasm is not sufficient to establish a firm medical diagnosis as it is generally a description of a symptom.⁸ Moreover, Dr. Harbour's opinion that appellant's injury was "likely" work related is speculative and of diminished probative value in establishing causal relationship.⁹ To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty based on an accurate history and findings on physical examination.¹⁰

The diagnostic reports of record are also insufficient to establish appellant's claim. Dr. Pringle's February 5, 2013 report indicated that an MRI scan of the cervical spine and skull were unremarkable. Dr. Cirilli's March 11, 2013 diagnostic report noted that an MRI scan of the left upper extremity revealed marked arthritic changes involving the right AC joint. He noted a possible anterior labral tear. As diagnostic studies, these reports failed to provide a medical history, findings on physical examination or any details pertaining to the November 8, 2012 employment incident. Without any mention of the November 8, 2012 employment incident, these reports are insufficient to establish that appellant sustained injury to his neck or left shoulder.¹¹

Appellant also submitted medical reports from Dr. Polk dated December 20, 2012 to March 3, 2014. In a December 20, 2012 CA-17 form, Dr. Polk diagnosed severe pain in the left shoulder and neck and referred appellant for diagnostic testing. His diagnosis of neck and left shoulder pain is of little probative value. As noted, the Board has held that pain is a general description of a symptom and not a firm medical diagnoses.¹² In a March 14, 2013 treatment

⁷ See *Robert Broome*, 55 ECAB 339 (2004).

⁸ See *B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

⁹ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

¹⁰ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹¹ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹² *Supra* note 8.

note, Dr. Polk noted that appellant's MRI scan suggested a labral tear and referred him for orthopedic evaluation. This report does not establish a firm medical diagnosis regarding the left shoulder as his opinion regarding the condition is speculative and unconfirmed pending orthopedic evaluation.¹³ While Dr. Polk's March 3, 2014 note opined that appellant's accident was work related, the physician failed to provide a firm medical condition, related to the November 8, 2012 employment incident. Dr. Polk failed to provide any explanation or medical rationale on how appellant's neck or left shoulder conditions were caused or aggravated by the November 8, 2012 employment incident. Dr. Polk's medical reports do not constitute probative medical evidence because they fail to provide a clear diagnosis and do not adequately explain the cause of appellant's injury.¹⁴

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁵ An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.¹⁶ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹⁷ The evidence of record fails to establish a firm medical diagnosis causally related to the accepted November 8, 2012 employment incident. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a neck and left shoulder injury in the performance of duty on November 8, 2012.

¹³ *Supra* note 10.

¹⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁵ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁶ *D.D.*, 57 ECAB 734 (2006).

¹⁷ *Supra* note 4.

ORDER

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

Issued: November 19, 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