

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

N.I., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS & BORDER PATROL,
West Palm Beach, FL, Employer**

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**Docket No. 14-1439
Issued: October 15, 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 4, 2014 appellant, through his attorney, filed a timely appeal of a March 18, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision denying his claim for employment-related injury. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on July 25, 2012, as alleged.

FACTUAL HISTORY

On May 23, 2013 appellant, then a 45-year-old marine interdiction agent, filed a traumatic injury claim alleging that on July 25, 2012 he sprained his shoulders while boarding a

¹ 5 U.S.C. § 8101 *et seq.*

vessel due to the pounding and bouncing of the boat. He stated that he was holding the upper rail with both arms and sustained acute trauma to his neck and shoulders. The employing establishment indicated that appellant was not injured in the performance of duty and stated that appellant reported on an agency memorandum that the incident occurred on July 25, 2012 while undergoing patrol.

In a letter dated June 5, 2013, OWCP requested additional factual and medical evidence in support of appellant's claim including a detailed narrative statement describing the alleged employment incident and a medical report including a diagnosed condition and a statement that the incident resulted in the diagnosed condition.

Appellant submitted reports from Dr. Rena R. Amro, a Board-certified orthopedic surgeon, dated October 19 and 26, and November 26, 2012 which are largely illegible. Dr. Amro stated that in July 2012 he reinjured his cervical area while responding to a boat chase in rough waters. She diagnosed possible cervical radiculopathy and work-related injury. On February 13, 2013 Dr. Amro noted appellant's onset of neck and left shoulder pain in July 2012. She stated that he was having pain in the left shoulder that was related to his injury on July 24, 2012. Dr. Amro diagnosed cervicalgia, degeneration of the cervical intervertebral disc, pain in the joint involving the shoulder region and disorders of the bursa and tendons of the shoulder region. On x-rays she identified acromioclavicular joint separation with arthropathy and calcification. In reports dated April 12, May 1, 14, and June 3, 2013, Dr. Amro repeated her diagnoses. She stated that on May 14, 2013 appellant believed that his shoulder pain was due to his recent accident. In her June 26, 2013 note, Dr. Amro indicated that she first treated appellant on October 12, 2012 and that he described crossing to another boat and grabbing a railing on July 25, 2012 which resulted in neck and shoulder pain.

Appellant underwent a magnetic resonance imaging (MRI) scan on May 6, 2013 which demonstrated a tear of the superior labrum and biceps labral complex with tendinosis and probable tear of the intra-articular portion of the biceps tendon. He also demonstrated tendinosis of the supraspinatus and infraspinatus tendons with partial tearing of the supraspinatus tendon as well as moderate degenerative changes of the acromioclavicular joint and impingement.

In a telephone memorandum, OWCP indicated that appellant had a claim accepted for a neck condition, but that his shoulders were not part of that claim.

Appellant completed a narrative statement dated June 13, 2013 and stated his injury occurred while he was in an interceptor vessel and boarding another vessel. He was uncertain whether the incident occurred on July 24 or 25, 2012. Appellant stated that following this incident he experienced neck and shoulder discomfort. He had a cervical condition prior to this incident. Appellant stated that he believed that his current condition was the result of his cervical condition until his physician identified a shoulder injury. On May 21, 2013 he confirmed with his supervisor that he was on a float on July 25, 2012 and that his injury therefore occurred on this date.

In a separate statement dated July 10, 2013, appellant described the events of July 25, 2012 and stated that while in the performance of his job duties he was boarding another vessel and while crossing from the employing establishment boat to the suspect's boat he grabbed the

upper rail on the top of the boat and immediately felt discomfort in the left side of his neck and shoulder blade. He continued to perform his duties. Appellant noted that he had a previous neck injury on September 23, 2009, OWCP File No. xxxxxx738, and thought that the July 25, 2012 incident was a minor recurrence of his neck injury. He reopened his neck claim in accordance with the advice of his supervisor. After appellant's previous attending physician moved away, he sought treatment with Dr. Amro in October 2012. Dr. Amro diagnosed a left shoulder condition.

By decision dated July 19, 2013, OWCP denied appellant's claim finding that he had not established that the injury occurred at the time, place and in the manner alleged. It noted that there was no contemporaneous medical evidence or medical evidence providing a consistent date of injury and that he was unclear when the employment incident occurred. Counsel requested an oral hearing on July 23, 2013 before an OWCP hearing representative.

On August 15, 2013 Dr. Amro performed a surgical arthroscopy of the left shoulder to repair a left shoulder labral tear, left shoulder superior labrum anterior and posterior lesion and left shoulder rotator cuff partial tear.

Appellant testified at the oral hearing on December 30, 2013. He stated that at the time his injury occurred he was boarding a boat. Appellant stated that he had to secure himself on the top rails of the other boat, with all his weight on his shoulders. He felt a weakness like a sprain or strain on his neck and shoulders. Appellant noted that he had a previous neck injury. He completed his task and shift and did not seek medical attention for at least a week following this incident. Appellant noted that he used sick leave immediately following the incident. He testified that he initially thought that his prior neck condition had resurfaced, but when he saw Dr. Amro in November or December she diagnosed a shoulder condition. Appellant stated that he had no other left shoulder incidents since July 2012.

By decision dated March 18, 2014, OWCP's hearing representative found that appellant failed to submit rationalized medical opinion evidence establishing that his left shoulder tears were due to his July 25, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ 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.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁹

ANALYSIS

OWCP accepted that appellant sustained an employment incident on July 25, 2012 when boarding a ship in the performance of duty. The issue remaining on appeal is whether appellant has submitted sufficient medical opinion evidence to establish that this incident resulted in an injury.

Appellant submitted a series of reports from Dr. Amro beginning in October 2012. Dr. Amro opined that in July 2012 appellant reinjured his cervical area while responding to a boat chase in rough waters. She diagnosed possible cervical radiculopathy and work-related injury. On February 13, 2013 Dr. Amro stated that appellant was having pain in the left shoulder that was related to his injury on July 24, 2012. She diagnosed cervicalgia, degeneration of the cervical intervertebral disc, pain in the joint involving the shoulder region and disorders of the bursa and tendons of the shoulder region. Dr. Amro stated that on May 14, 2013 appellant believed that his shoulder pain was due to his recent accident. In her June 26, 2013 note, she indicated that she first treated appellant on October 12, 2012 and that he described crossing to another boat and grabbing a railing on July 25, 2012 which resulted in neck and shoulder pain.

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

The Board finds that Dr. Amro's reports are not sufficiently detailed and well-reasoned to establish appellant's traumatic injury claim. Although Dr. Amro noted appellant's employment incident on July 25, 2012 and indicated that appellant believed that this incident resulted in his shoulder condition, she did not opine that she believed that this incident resulted in appellant's left shoulder injury. Furthermore, she did not explain how or why the July 25, 2012 incident would have resulted in appellant's diagnosed shoulder condition and surgery.

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 nor his belief that his condition was caused by his employment is sufficient to establish causal relationship.¹⁰ As appellant did not submit sufficient medical opinion evidence to establish a diagnosed condition as a result of his accepted medical activities, he did not meet his burden of proof.

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 has not submitted the necessary medical opinion evidence to establish a causal relationship between his diagnosed left shoulder condition and his accepted employment incident. Appellant has not, therefore, met his burden of proof in establishing a traumatic injury claim.

¹⁰ *P.R.*, *supra* note 8; *Walter D. Morehead*, 31 ECAB 188 (1986).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 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