

that a September 25, 2014 report from Dr. Miguel A. Schmitz, a Board-certified orthopedic surgeon, establishes that he sustained a work-related injury that required surgery.

FACTUAL HISTORY

On May 14, 2014 appellant, then a 63-year-old hydromechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 23, 2014 he experienced extreme pain, inflammation, and limited range of motion in his right shoulder, and tingling and numbness in his right arm as a result of pushing on a sling to slide a 260-pound bearing shoe onto a surface plate.

In daily notes dated May 20 to July 10, 2014, appellant's physical therapists addressed the treatment of his right shoulder conditions.

In duty status reports (Form CA-17) dated May 12 and 20, 2014, Shelly Gilliland, a registered nurse practitioner, diagnosed a right shoulder strain and provided appellant with work restrictions. On April 23, 2014 she advised him that he could perform his regular work duties.

By letter dated July 28, 2014, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

In daily notes dated July 23 to 31, 2014, appellant's physical therapists addressed the treatment of appellant's right shoulder conditions.

In a July 15, 2014 medical report, Dr. William W. Faloon, Jr., a Board-certified orthopedic surgeon, provided a history of injury that in August 2013 appellant possibly dislocated his right shoulder while pulling a 16-foot plank and placing it onto a ledge. He noted his medical treatment, and family and social background. Dr. Faloon provided examination findings and diagnosed right shoulder pain. He ordered additional diagnostic testing. In a July 15, 2014 discharge summary report, Dr. Faloon ordered a magnetic resonance arthrogram (MRA) of the right shoulder to assess the status of appellant's labrum and rotator cuff.

On August 14, 2014 Dr. Corey D. Judd, a Board-certified radiologist, noted that appellant had right shoulder pain and that he was being evaluated for a rotator cuff tear versus a labral tear. He administered a successful intra-articular injection into appellant's right shoulder for an MRA under fluoroscopy.

By decision dated September 3, 2014, OWCP accepted that the April 23, 2014 incident occurred as alleged. However, it denied appellant's claim and determined that the medical evidence did not establish a causal relationship between his right shoulder conditions and the accepted employment incident.

In a letter dated November 9, 2014, appellant requested reconsideration. He noted that prior to the instant claim he filed a claim under File No. xxxxxx722 alleging that he sustained a right shoulder injury at work on August 26, 2013. Appellant's condition was treated with anti-inflammatory medication and he sufficiently recovered to resume a normal life with minimal discomfort. He reinjured the same shoulder on April 23, 2014. Appellant's condition was

treated with anti-inflammatory and pain medications and physical therapy. He also underwent diagnostic testing. Appellant contended that the instant case was closed before OWCP received a diagnosis from Dr. Faloon. He further contended that a September 25, 2014 report from Dr. Schmitz established that he sustained a work-related injury that required surgery.

Appellant submitted an unsigned August 14, 2014 right upper extremity MRI scan and right shoulder MRA which provided an impression of a small focal partial thickness articular-sided tear along the anterior distal supraspinatus tendon, extensive chondromalacia throughout the glenohumeral joint, large loose body in the axillary recess of the joint capsule with suspected smaller loose bodies in the subscapular recess, and moderately severe hypertrophic degenerative change of the acromioclavicular (AC) joint.

In a September 25, 2014 report, Dr. Schmitz described appellant's work duties and history of his two claims for a right shoulder injury sustained at work. He noted that appellant's prior right shoulder claim was closed. Dr. Schmitz reported physical examination findings and reviewed the findings of x-rays and an MRI scan of the right shoulder. He assessed right glenohumeral arthritis and closed dislocation of the right glenohumeral joint sequela with a loose body present. Appellant also had a posterior subluxation of the shoulder, but it was likely he had post-traumatic multidirectional instability secondary to the trauma about one year ago. His more recent episode was likely an expression of his first injury which occurred one year ago. Dr. Schmitz noted that there was an arthritic component to appellant's current complaints, but this was not an insidious onset problem. It occurred precipitously with the trauma approximately one year ago. Dr. Schmitz summarized that the subtle osteophyte changes in appellant's shoulder were likely secondary to occupational disease versus traumatic disorder. The multidirectional instability appeared to be traumatic as his examination of the right shoulder was distinctly different from the left shoulder which was stable. Dr. Schmitz noted that appellant had maneuvers that he brought about with the right shoulder at work that made him feel as if his shoulder was dropping out of the joint. He recommended right shoulder arthroscopy with a subacromial decompression and AC resection combined with glenohumeral stabilization and loose body removal from the glenohumeral joint.

By decision dated December 17, 2014, OWCP denied modification of the September 3, 2014 decision. It found that the medical evidence was insufficient to establish a right shoulder injury causally related to the accepted April 23, 2014 employment incident.

In a February 16, 2015 letter, appellant requested reconsideration, reiterating his prior contention that he sustained a work-related right shoulder injury on April 23, 2014 based on Dr. Schmitz's September 25, 2014 report.

By letter dated January 16, 2015, Dr. Schmitz disagreed with the denial of appellant's claim. There were no shoulder studies that predated the April 2014 incident with the exception of a right shoulder x-ray from August 26, 2013 which described AC joint osteoarthritis.² Dr. Schmitz noted that appellant's August 2013 workers' compensation claim was closed after he was treated successfully with anti-inflammatory medications. He opined that current state

² The Board notes that the August 26, 2013 right shoulder x-ray pertaining to appellant's claim under File No. xxxxxx722 is not contained in the instant case record.

was related to his April 2014 shoulder injury. Since this injury, appellant's shoulder locked up on many occasions. Dr. Schmitz related that the second right shoulder injury seemingly was responsible for appellant's ongoing issues which he interpreted as an element of glenohumeral instability. He further related that appellant had one cumulative work-related shoulder injury at the same job site rather than two separate injuries at two different job sites. Dr. Schmitz could have better understood OWCP's December 17, 2014 decision denying appellant's claim, if appellant had been involved with avocational activities that predisposed him to shoulder problems. Based on these considerations and conversations with appellant, he determined that it was more probable than not that appellant sought medical treatment for his right shoulder due to his April 2014 injury. Dr. Schmitz advised that he may have osteoarthritis and/or loose bodies in this shoulder, but the exact timing of the development of these conditions was unknown unless there were other available shoulder radiographs. He ascertained from appellant that his job was very physical as appellant was required to lift a 350-pound object at work. Dr. Schmitz noted that he had developed osteoarthritis on a relatively rapid basis, possibly within the last two and one-half years, as he transitioned from a desk job to his current physical job. He concluded that appellant's April 2014 claim relates to his current right shoulder evaluation and management. Although appellant had osteoarthritic changes, it was within the realm of possibilities that osteoarthritis in his shoulder had accelerated to the extent that it required surgical intervention.

In a March 20, 2015 decision, OWCP denied modification of the December 17, 2014 decision. It found that Dr. Schmitz's January 16, 2015 opinion on causal relationship was speculative in nature and indicated that appellant sustained an occupational work injury rather than a traumatic work injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷

³ *Supra* note 1.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury caused by the accepted April 23, 2014 employment incident. Appellant failed to submit sufficient medical evidence to establish that he had a right shoulder injury causally related to the accepted employment incident.

Dr. Schmitz's September 25, 2014 report found that appellant had right glenohumeral arthritis and closed dislocation of the right glenohumeral joint sequela with a loose body present based on physical examination findings and a review of right shoulder x-rays and MRI scan results. He opined that the subtle osteophyte changes in his shoulder were likely secondary to occupational disease versus traumatic disorder. Dr. Schmitz further opined that the multidirectional instability appeared to be traumatic as his examination of the right shoulder was distinctly different from the left shoulder which was stable. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹¹ While Dr. Schmitz, in a January 16, 2015 report, opined that appellant had an element of glenohumeral instability that was "seemingly" related to the accepted April 2014 employment incident, the Board finds that his opinion is speculative in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹² Further, Dr. Schmitz did not adequately explain, with citation to objective findings, whether appellant's diagnosed right shoulder condition was in fact caused by the April 23, 2014 employment incident. He reasoned that appellant's diagnosed right shoulder condition was causally related to the accepted April 23, 2014 employment incident because no x-ray studies predated this work incident except an August 26, 2013 x-ray which showed AC joint osteoarthritis that had been successfully treated and was related to appellant's August 2013 claim. Dr. Schmitz further reasoned that appellant was not involved in avocational activities which would have predisposed him to shoulder problems. A medical opinion, however, that a condition is causally related to an employment injury because the employee was asymptomatic

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ See *R.C.*, Docket No. 15-315 (issued May 4, 2015); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹² *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹³ Dr. Schmitz did not explain the mechanism by which pushing on a sling to slide a 260-pound bearing shoe onto a surface plate at work resulted in the diagnosed condition.¹⁴ In addition, he reasoned that appellant sustained a cumulative work-related shoulder injury and not two different injuries.

Dr. Faloon's July 15, 2014 report found that appellant had right shoulder pain. He provided a history that appellant possibly dislocated his right shoulder at work in August 2013. Dr. Faloon did not provide a medical diagnosis regarding appellant's right shoulder pain. The Board has held that pain is a symptom, not a compensable medical diagnosis.¹⁵ Moreover, Dr. Faloon did not relate the diagnosed right shoulder condition to the accepted April 23, 2014 employment incident. He did not address how pushing on a sling to slide a bearing shoe onto a surface plate caused a right shoulder condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Further, While Dr. Faloon's remaining report dated July 15, 2014 ordered a right shoulder MRA to assess the status of appellant's labrum and rotator cuff, he did not state that either condition was caused or aggravated by the accepted work incident.¹⁷

Dr. Judd's August 14, 2014 report found that appellant had right shoulder pain. He administered a successful intra-articular injection into his right shoulder for an MRA under fluoroscopy to evaluate whether appellant had a rotator cuff tear versus a labral tear. As stated, pain is a symptom, not a compensable medical diagnosis.¹⁸ Moreover, Dr. Judd did not provide an opinion explaining how appellant's right shoulder pain was caused or aggravated by the accepted April 23, 2014 employment incident.¹⁹

The May 12 and 20, 2014 Form CA-17 reports from Ms. Gilliland, a registered nurse practitioner, noted that appellant had a right shoulder strain and that he could return to work as of April 23, 2014 with restrictions, have no probative medical value as a registered nurse practitioner is not a physician as defined under FECA.²⁰

¹³ *E.B.*, Docket No. 15-631 (issued May 18, 2015); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁴ See cases cited, *supra* note 12.

¹⁵ *K.W.*, Docket No. 12-1590 (issued December 18, 2012).

¹⁶ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁷ *Id.*

¹⁸ *Supra* note 17.

¹⁹ See cases cited, *supra* note 18.

²⁰ *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

Similarly, the daily notes dated May 20 to July 31, 2014 from appellant's physical therapists are insufficient to establish appellant's claim. The Board has held that treatment notes signed by a physical therapist are not considered medical evidence as such provider is not considered a physician under FECA.²¹

An unsigned August 14, 2014 right upper extremity MRI scan and right shoulder MRA reported appellant's right shoulder conditions. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²²

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained a right shoulder injury causally related to the accepted April 23, 2014 employment incident.

On appeal, appellant contends that he sustained a right shoulder injury at work on April 23, 2014. He asserts that the instant case was closed before OWCP received the results of an authorized MRI scan. Appellant further asserts that Dr. Schmitz's September 25, 2014 report establishes that he sustained a work-related injury that required surgery. As discussed above, the August 14, 2014 MRI scan and MRA report and Dr. Schmitz's September 25, 2014 report are of diminished probative value and are insufficient to represent the weight of medical opinion.

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 failed to meet his burden of proof to establish a right shoulder injury on April 23, 2014 while in the performance of duty.

²¹ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2).

²² *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board