

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

G.H., Appellant)	
)	
and)	Docket No. 15-1614
)	Issued: December 17, 2015
U.S. POSTAL SERVICE, POST OFFICE, Gulfport, MS, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 22, 2015 appellant filed a timely appeal from a May 11, 2015 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 met his burden of proof to establish a left shoulder injury on April 2, 2015 in the performance of duty.

FACTUAL HISTORY

On April 2, 2015 appellant, then a 32-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that at 11:20 a.m. that day, he dislocated his left shoulder when reaching for a package on the floor of his delivery truck. In a supporting statement, appellant explained that he attempted to pull a package from under a tray. When this failed, he

¹ 5 U.S.C. § 8101 *et seq.*

“went around and twisted shoulder to dislocation.” Appellant stopped work on April 2, 2015. His supervisor affirmed that appellant was in the performance of duty at the time of the claimed incident. On April 2, 2015 the supervisor completed a Form CA-16 authorizing appellant to seek medical treatment.

In an April 6, 2015 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including factual evidence corroborating that the claimed April 2, 2015 incident occurred at the time, place, and in the manner alleged, and narrative report from his attending physician explaining how and why that incident would cause a left shoulder dislocation. It afforded appellant 30 days to submit such evidence.

In response, appellant provided April 2, 2015 reports from Dr. Ronnie Ali, an attending osteopathic physician Board-certified in emergency medicine, diagnosing a left shoulder dislocation.² He presented at the emergency room at 12:33 pm. Dr. Ali related appellant’s account of “a left shoulder dislocation that occurred today when he tried to pick something up. [Appellant] has a history of shoulder dislocations.” Dr. Ali reduced the dislocation and prescribed analgesic medication. He released appellant to work with no use of the left arm. Dr. Ali checked a box marked “yes” indicating his support for causal relationship “as stated by [appellant’s] history.”

Dr. Henry Leis, an attending Board-certified orthopedic surgeon, noted that appellant presented on April 8, 2015 “for a new workers’ comp visit.” He related appellant’s account of feeling a pop in his left shoulder when he reached for a package six days previously, and his emergency treatment for a dislocation. Appellant experienced ongoing pain and paresthesias from the left shoulder radiating into the left elbow. On examination of the left shoulder, Dr. Leis found tenderness to palpation, full ranges of motion, full strength, and positive Hawkins, Neer, and Crosman signs. He obtained x-rays showing acromioclavicular joint arthrosis with narrowing of the supraspinatus outlet. Dr. Leis diagnosed a history of left shoulder dislocation times two, left shoulder derangement, left shoulder instability, and a possible labral tear. He administered a Depo Medrol injection to the left shoulder. Dr. Leis released appellant to limited duty with no use of the left arm.³

The employing establishment submitted an April 20, 2015 letter controverting the claim as appellant had a history of left shoulder dislocation due to an injury sustained while in military service. It asserted that the preexisting shoulder condition negated his compensation claim.

By decision dated May 11 2015, OWCP denied appellant’s claim, finding that fact of injury was not established. It found that he did not establish the April 2, 2015 reaching incident as factual because he did not respond to the April 6, 2015 request for a statement describing the incident. OWCP further found that, had appellant established the April 2, 2015 incident as factual, the medical evidence was insufficient to establish causal relationship as Dr. Leis did “not state the injury was a result of work factors, but rather references a history of shoulder dislocation.”

² April 2, 2015 x-rays of the left shoulder demonstrated an anterior shoulder dislocation.

³ It is not clear from the record if or when appellant returned to work.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

In order to determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

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.⁹

ANALYSIS

Appellant claimed that he dislocated his left shoulder while in the performance of duty at 11:20 a.m. on April 2, 2015, when he tried to lift a package from the floor of his delivery truck. He provided a detailed description on his claim form and in his supporting statement of how he dislocated his shoulder. OWCP denied the claim, finding that appellant had not established the April 2, 2015 lifting incident as factual. However, the Board finds that the record supports fact of incident.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

Appellant promptly reported the incident to his supervisor on April 2, 2015. The supervisor confirmed that appellant was in the performance of duty at the time. She also completed a Form CA-16 authorizing medical treatment. Appellant reported to an emergency room at 12:33 pm on April 2, 2015, approximately 1 hour and 10 minutes after the alleged lifting incident. Further, there is no evidence of record indicating that the April 2, 2015 lifting incident did not occur at the time, place, and in the manner alleged. The Board notes that while the employing establishment controverted the claim, it did not argue that the claimed April 2, 2015 incident did not occur as appellant alleged. Appellant's account of events is thus entitled to substantial weight.¹⁰ Under these circumstances, he has established fact of incident. Therefore, the medical evidence must be analyzed to determine whether appellant has established causal relationship.

In support of his claim, appellant submitted April 2, 2015 reports from Dr. Ali, an attending osteopathic physician Board-certified in emergency medicine. Dr. Ali noted appellant's account of injuring his shoulder earlier that day while trying to lift something, but did not specifically mention a work incident. He acknowledged appellant's history of shoulder dislocations. Dr. Ali checked a box marked "yes" on a form report indicating that the left shoulder dislocation was due to the history appellant described. However, the Board has held that, in the absence of rationale, checking a box on a form report is of diminished probative value in establishing causal relationship.¹¹ Dr. Ali's opinion is therefore insufficient to meet appellant's burden of proof.

Dr. Leis, an attending Board-certified orthopedic surgeon, noted the April 2, 2015 occupational incident, and diagnosed a history of left shoulder dislocation with derangement. However, he did not explain how and why appellant's attempt to lift a package from under a tray in his truck, or twisting his shoulder on his second attempt, would cause the claimed left shoulder dislocation. The lack of medical rationale significantly diminishes the probative value of Dr. Leis' opinion.¹²

OWCP advised appellant by April 6, 2015 letter of the necessity of providing a narrative report from his attending physician with medical rationale supporting causal relationship. As appellant did not provide such evidence, OWCP's May 11, 2015 decision denying the claim was proper, but the claim shall be modified to reflect that appellant established that the claimed incident occurred but that he did not meet his burden of proof in establishing that the incident caused an injury.

The Board notes that the employing establishment issued a Form CA-16 authorization for medical treatment on April 2, 2015. Where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.¹³ The period for which treatment is authorized by a Form CA-16

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *D.D.*, 57 ECAB 734, 738 (2006)

¹² *Deborah L. Beatty*, *supra* note 8.

¹³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *A.B.*, Docket No. 15-1002 (issued August 14, 2015).

is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.¹⁴ In this case, it is unclear whether OWCP paid for the cost of appellant's examinations. On return of the case record, OWCP should further address the issue.¹⁵

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 met his burden of proof to establish a left shoulder injury in the performance of duty on April 2, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2015 is affirmed as modified.

Issued: December 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ 20 C.F.R. § 10.300(c).

¹⁵ *Tracey P. Spillane, supra* note 13.