United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 16-1737**
	)	**Issued: August 17, 2017**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 30, 2016 appellant, through counsel, filed a timely appeal from a June 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The record provided to the Board includes evidence OWCP received after having issued its June 8, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met his burden of proof to establish that his claimed right rotator cuff tear is causally related to the accepted March 11, 2014 employment injury.

FACTUAL HISTORY

On March 17, 2014 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for a right arm/shoulder injury that allegedly occurred on March 11, 2014 while lifting the back door of his work vehicle while in the performance of duty. He reportedly felt pain between his arm and shoulder lifting/closing the van door. Appellant did not stop work at the time of the alleged right arm/shoulder injury.

In a March 17, 2014 report, Dr. Dennis G. Motchan, an internist specializing in preventative medicine, diagnosed shoulder and upper arm sprain. Appellant reported having injured his right arm/shoulder on March 11, 2014 while lowering the rear door of his van. Dr. Motchan recommended physical therapy three times per week for two weeks and advised that appellant could return to work with restrictions that included no pushing/pulling over 35 pounds of force and no reaching above shoulder. He also imposed a 25-pound lifting restriction.

In a March 28, 2014 report, Dr. Motchan diagnosed right shoulder strain resolved. He explained that appellant had reached maximum medical improvement (MMI) and was being released to regular duty with no sign of permanent impairment from his injury. Dr. Motchan reported that appellant had been injured 17 days ago when he strained his right shoulder pulling on a rear van door and since then appellant had been on modified duty. He also noted that appellant completed six sessions of physical therapy and had responded well. Appellant's arm was currently "just a little 'sore.'" Dr. Motchan discontinued physical therapy, advised that appellant could resume regular activities, and released him from further medical care.

OWCP also received physical therapy treatment records covering the period March 18 through 28, 2014.

On August 14, 2014 OWCP informed appellant that his claim had been accepted for right shoulder sprain, which resolved as of March 28, 2014.[4]

By decision dated September 5, 2014, OWCP informed appellant that, as Dr. Motchan had released him from care and noted that his accepted right shoulder sprain had resolved in his March 28, 2014 letter, no further benefits for a right shoulder sprain would be covered.

By letter dated July 21, 2015, counsel requested that OWCP expand the claim to include full-thickness rotator cuff tear as an accepted condition. In support of his request, counsel submitted two medical reports from Dr. Randall D. Roush, a Board-certified in orthopedic surgery.

[4] That same day, OWCP received verification from the employing establishment that effective March 28, 2014 appellant had resumed full-time regular duty.

In an October 28, 2014 report, Dr. Roush advised that appellant was experiencing pain in his right shoulder. He related that things were basically unchanged, with pain in the anterior superior aspect of the right shoulder, which increased with activities. Dr. Roush noted that appellant had previously undergone physical therapy without improvement. He advised that a right shoulder magnetic resonance imaging (MRI) scan indicated findings of os-acromiale and a partial-thickness rotator cuff tear, which appeared to be a greater than 50 percent tear. Dr. Roush noted that he and appellant had discussed right shoulder surgery and appellant had agreed to proceed with surgery.

In an April 24, 2015 report, Dr. Roush advised that he first examined appellant on October 13, 2014 for right shoulder pain. He further explained that an October 28, 2014 right shoulder MRI scan showed evidence of os-acromiale, but not a full-thickness right rotator cuff tear. Dr. Roush indicated that he performed outpatient surgery on December 10, 2014 for open reduction and internal fixation of os-acromiale and, during surgery, he also identified and repaired a full-thickness right rotator cuff tear.

On August 14, 2015 counsel formally requested reconsideration of OWCP's September 5, 2014 decision.

By decision dated November 9, 2015, OWCP denied modification of its prior decision. It found that Dr. Roush's reports were insufficient to establish that appellant's right shoulder os-acromiale and rotator cuff tear were causally related to the March 11, 2014 employment incident.

On March 10, 2016 counsel requested reconsideration.

In a November 18, 2015 follow-up report, Dr. Roush indicated that appellant reported occasional right shoulder aches that were somewhat weather related, but otherwise he had minimal problems and was back to work. He diagnosed status post right rotator cuff repair and status post os-acromiale arthrodesis. Dr. Roush indicated that appellant reported that his symptoms began after a work injury in which he was pulling on the door and felt a pop in his shoulder. He stated that the rotator cuff tear was consistent with the history of injury, but the os-acromiale was developmental, and not part of the employment injury. Dr. Roush further advised that appellant had reached MMI, and was currently released to regular-duty work. Lastly, he instructed appellant to follow-up on an as-needed basis.

In a February 22, 2016 report, Dr. Roush advised that he initially examined appellant on October 13, 2014, at which time appellant provided a five-month history of right shoulder pain after pulling on a door and feeling a pop in his shoulder. The initial physical examination revealed right shoulder acromioclavicular (AC) joint tenderness, pain during range of motion maneuvers, but no swelling. Dr. Roush further noted that right shoulder x-rays revealed some mild AC joint arthrosis. Additional diagnostic studies, including a right shoulder MRI scan showed os-acromiale and a partial-thickness rotator cuff tear. There was also evidence of an intramuscular cyst associated with the rotator cuff tear. Dr. Roush noted that appellant underwent right shoulder surgery to address both the rotator cuff tear and the unstable os-acromiale, which eventually healed. When he was last seen on November 18, 2015, appellant reported some occasional aches, but otherwise he was back to work and having minimal problems. Dr. Roush reiterated his November 18, 2015 remarks regarding causal relationship,

noting that appellant's rotator cuff tear was work related and the os-acromiale was developmental and unrelated to the work injury.

By decision dated June 8, 2016, OWCP denied modification of the November 9, 2015 decision. It found that Dr. Roush had not provided a well-reasoned medical opinion with objective findings to support a bridging of the right rotator cuff tear and os-acromiale to the March 11, 2014 incident. OWCP further found that there was no evidence to contradict its earlier determination that the accepted right shoulder sprain/strain had not resolved as of March 28, 2014.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[6]

To determine if 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 in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is claimed is causally related to the injury.[9]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[10]

[5] *Supra* note 2.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[10] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[11]

ANALYSIS

OWCP accepted that appellant sustained a right shoulder sprain in the performance of duty on March 11, 2014. Based on medical evidence provided by his then-treating physician, it found that his right shoulder sprain had resolved as of March 28, 2014. The record also demonstrated that, as of March 28, 2014, appellant had resumed his full-time regular duties as a letter carrier. In October 2014, he received a diagnosis of os-acromiale and right shoulder partial-thickness rotator cuff tear. On December 10, 2014 appellant underwent right shoulder surgery.[12] In a July 21, 2015 letter, counsel requested that OWCP expand appellant's claim to include full-thickness rotator cuff tear as an accepted condition.

Pursuant to the request, by decisions dated November 9, 2015 and June 8, 2016, OWCP declined to expand appellant's claim to include the additional diagnoses of os-acromiale and right shoulder rotator cuff tear. Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[13]

Counsel has not argued, nor does the record establish, that appellant continued to suffer residuals of his accepted right shoulder sprain which, according to Dr. Motchan, had resolved as of March 28, 2014. Additionally, neither counsel nor Dr. Roush asserted that appellant's diagnosed os-acromiale was causally related to the March 11, 2014 employment injury. To the contrary, Dr. Roush specifically indicated that this condition was "developmental" and that the medical treatment associated with appellant's os-acromiale was unrelated to his work injury.

With respect to appellant's right shoulder rotator cuff tear and related surgery, the Board finds that he failed to meet his burden of proof to establish that the diagnosed condition was causally related to the March 11, 2014 employment injury.

In his October 28, 2014 and April 24, 2015 reports, Dr. Roush did not specifically address the cause of appellant's right rotator cuff tear. Consequently, these reports are insufficient to satisfy his burden of proof to establish a causal relationship between the diagnosed condition and the March 11, 2014 employment injury.

In his November 18, 2015 follow-up report, Dr. Roush indicated that appellant reported occasional right shoulder aches that were "somewhat weather-related," but otherwise he had

[11] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[12] The surgical procedure consisted of an open reduction and internal fixation of os-acromiale and full-thickness rotator cuff repair.

[13] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

minimal problems and was back to work. He diagnosed status post right rotator cuff repair and status post os-acromiale arthrodesis. Dr. Roush indicated that appellant reported that his symptoms began after a work injury in which he was pulling on the door and felt a pop in his shoulder. He explained that the rotator cuff tear was consistent with the history of injury, but the os-acromiale was developmental and not part of the employment injury. A physician's opinion on causal relationship must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[14] Although Dr. Roush expressed his belief that appellant's right rotator cuff tear was "consistent with the history" of injury, he did not explain how "pulling on the door" either caused or contributed to the diagnosed rotator cuff tear. Consequently, his November 18, 2015 report is insufficient to satisfy appellant's burden of proof.[15]

Dr. Roush's February 22, 2016 report is similarly deficient. He noted that appellant had a full-thickness right rotator cuff repair that was surgically repaired. Dr. Roush also noted a history of injury of "pulling on a door." He opined that, given appellant's history of injury at work consisting of a pulling motion then feeling a pop in the shoulder, this was "consistent with a rotator cuff tear which [appeared] to be work related." Dr. Roush failed to explain how a "pulling motion" was responsible for a full-thickness rotator cuff tear that ostensibly went undetected for approximately seven months following the March 11, 2014 employment incident. Moreover, his statement that the diagnosis "appears" work related is equivocal. As noted, a physician's opinion on causal relationship must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale.[16]

For the above-noted reasons, the various reports from Dr. Roush fail to establish that appellant's right rotator cuff tear is causally related to the March 11, 2014 employment injury. Appellant's personal belief that his employment activities either caused or contributed to his condition is insufficient, by itself, to establish causal relationship.[17] Accordingly, OWCP properly declined to expand appellant's claim beyond the previously accepted right shoulder sprain, which had resolved as of March 28, 2014.

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 failed to meet his burden of proof to establish that his claimed right shoulder rotator cuff tear was causally related to the accepted March 11, 2014 employment injury.

[14] *Victor J. Woodhams*, *supra* note 9.

[15] *Id.*

[16] *Id.*

[17] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2017
Washington, DC

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

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

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