United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 17-0153**
	)	**Issued: August 4, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Salt Lake City, UT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 31, 2016 appellant filed a timely appeal from a June 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a right shoulder condition causally related to an accepted January 26, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence following the June 6, 2016 decision. However, since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt,* 57 ECAB 126 (2005).

FACTUAL HISTORY

On January 27, 2016 appellant, then a 53-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 26, 2016 he sprained his right shoulder while pushing a general purpose mail container (GPMC) full of empty tubs. The claim form does not indicate whether appellant stopped work.

Appellant was initially treated by Randy Vawdrey, a certified nurse practitioner. In examination notes dated January 27 and February 26, 2016, Mr. Vawdrey related appellant's complaints of constant right shoulder pain since January 26, 2016. He indicated that appellant pulled a large mail cart off a bumper when it got caught on something and felt a large tear in his shoulder. Upon examination, Mr. Vawdrey observed significant discomfort and loss of strength with resistance to abduction in the frontal and lateral plane. He reported that range of motion was not impaired, but revealed discomfort. Mr. Vawdrey diagnosed right rotator cuff sprain. In the February 26, 2016 note, he related that appellant could work with restrictions and provided a duty status report with restrictions.

Mr. Vawdrey submitted prescription notes dated January 27, 2016, which noted a diagnosis of right shoulder sprain. He indicated that appellant worked for the employing establishment and checked a box marked "yes" indicating that the condition was work related. Mr. Vawdrey recommended therapy two to three times a week for four weeks. He also prescribed no pushing or pulling with the right upper extremity more than five pounds, no lifting of the right upper extremity more than five pounds, and range of motion as tolerated.

In a January 27, 2016 duty status report (Form CA-17), Jim McGregor, a certified nurse practitioner, noted a date of injury of January 26, 2016 and that appellant worked as a mail handler. He indicated that appellant could work with restrictions of lifting up to five pounds to shoulder height and no lifting above the shoulder with his right arm.

Appellant was also treated by Robert Barkus, a physician assistant. In a February 10, 2016 examination note, Mr. Barkus related that appellant was seen for a follow-up examination of worsening right shoulder pain. He reported abnormal right shoulder range of motion and strength, as well as swelling and tenderness. Mr. Barkus diagnosed worsening right shoulder rotator cuff sprain. He noted that appellant could work with restrictions and provided a work status note.

In a March 2, 2016 magnetic resonance imaging (MRI) scan report of appellant's right shoulder, Dr. Jared H. Bailey, a Board-certified diagnostic radiologist, observed chronic full-thickness rotator cuff tears of the supraspinatus, infraspinatus, and subscapularis tendons. He also noted high-riding humeral head with moderate to severe degenerative changes of the glenohumeral joint.

Mr. Barkus continued to treat appellant. In a March 7, 2016 prescription note, he noted a diagnosis of rotator cuff tear. In a March 11, 2016 record, Mr. Barkus indicated that he treated appellant for follow-up pain in the right shoulder that began on January 26, 2016. Upon physical examination, he observed swelling and tenderness of his right shoulder and reduced range of motion with abduction. Mr. Barkus diagnosed unspecified rotator cuff tear or rupture of right

shoulder. He related that appellant could work with restrictions of no use of the right arm and provided a duty status report with restrictions.

In a March 29, 2016 narrative report, Dr. Kenneth E. Newhouse, a Board-certified orthopedic surgeon, related that on January 26, 2016 appellant hurt his shoulder when he pushed hard to get a mail cart, weighing about 200 to 250 pounds, into a truck and felt a tearing sensation in his shoulder. He discussed the medical treatment that appellant had received and noted that a right shoulder MRI scan report noted a large, full-thickness rotator cuff tear. Dr. Newhouse reviewed appellant's history and conducted a physical examination of appellant's right shoulder. He observed full range of motion with some coaxing and significant weakness to resisted abduction and external rotation. Dr. Newhouse also reported tenderness directly over appellant's acromioclavicular (AC) joint. He indicated that radiographs showed some AC joint arthrosis and mild high riding of his humeral head. Dr. Newhouse related that the MRI scan also revealed a full-thickness rotator cuff tear with some retraction. He opined that appellant had an acute on chronic rotator cuff tear. Dr. Newhouse noted that appellant never had previous shoulder symptoms.

On April 12, 2016 appellant accepted a modified job offer.

On April 25, 2016 appellant began to file claims for wage-loss compensation (Form CA-7) claiming partial disability compensation beginning March 15, 2016 alleging that no work was available.

By letter dated May 2, 2016, OWCP informed appellant that his claim was initially accepted as a minor injury, but was reopened for consideration because he filed a claim for wage-loss compensation. It requested that he respond to an attached questionnaire and submit additional medical evidence to establish that his right shoulder condition was causally related to the January 26, 2016 employment incident. Appellant was afforded 30 days to submit the additional information.

Appellant resubmitted Dr. Newhouse's March 29, 2016 medical report and Mr. Barkus' February 10, 2016 report.

Appellant also submitted an April 22, 2016 narrative report by Dr. Jared Kam, a Board-certified family practitioner specializing in sports medicine. Dr. Kam indicated that he examined appellant for preoperative evaluation and reported that appellant had no barriers to surgery.

In a May 26, 2016 duty status report, Dr. Newhouse noted a date of injury of January 26, 2016 and a diagnosis of rotator cuff tear. He indicated that appellant could work with restrictions of no use of the right arm.

On May 27, 2016 OWCP received appellant's handwritten response to its May 2, 2016 development letter. Appellant indicated that he was on the loading dock at work rolling empty and full GPMCs into and out of a truck. He related that as he rolled one of the GPMCs, it got stuck and suddenly stopped, jerking his shoulder. Appellant reported that his shoulder felt like it was on fire. He informed his supervisor of what happened. Appellant noted that he put ice and heat on his shoulder that night and went into work the next day.

OWCP denied appellant's claim in a decision dated June 6, 2016. It accepted that the January 26, 2016 incident occurred as alleged and that he had diagnosed shoulder condition, but denied his claim because the medical evidence of record failed to establish a causal relationship between his right shoulder condition and the accepted work incident. OWCP determined that appellant's physicians did not provide a well-reasoned opinion explaining how his right shoulder condition resulted from the January 26, 2016 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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[4] 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 he actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[11] The weight of the medical evidence is determined by its reliability, its probative

[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).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant alleged that on January 26, 2016 he sustained a right shoulder condition as a result of pushing a GPMC in the performance of duty. OWCP accepted that the January 26, 2016 incident occurred as alleged and that a right shoulder condition was diagnosed. The Board finds that appellant failed to meet his burden of proof to establish a right shoulder condition causally related to the accepted January 26, 2016 employment incident.

Appellant was treated by Dr. Newhouse. In a report dated March 29, 2016, Dr. Newhouse accurately described the January 26, 2016 incident and reviewed the medical treatment that appellant received. He noted that a right shoulder MRI scan showed a large, full-thickness rotator cuff tear. Dr. Newhouse provided physical examination findings and diagnosed an acute on chronic rotator cuff tear. In a May 26, 2016 duty status report, he indicated that appellant could work with restrictions of no use of the right arm. Although Dr. Newhouse diagnosed a right shoulder condition, he did not offer any opinion on the cause of the diagnosed condition. The Board has found 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.[13] Dr. Newhouse's reports, therefore, are insufficient to establish appellant's traumatic injury claim.

Similarly, Dr. Bailey's March 2, 2016 MRI scan report and Dr. Kam's April 22, 2016 report are insufficient to establish causal relationship. Neither physician offered an opinion on whether appellant's right shoulder condition was causally related to his federal employment. As previously noted, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[14]

The additional examination records dated January 27 to March 7, 2016 by Mr. Vawdrey and Mr. McGregor, who are nurse practitioners, and Mr. Barkus, a physician assistant, are also insufficient to establish appellant's traumatic injury claim because nurse practitioners and

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[14] *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).

physician assistants are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative value.[15]

On appeal, appellant alleged that he had worked in high intensity labor position his entire life, but his shoulder was torn while working for the employing establishment. He noted that regardless of any previous wear and tear on his shoulder, he was not experiencing any pain and had full use of his shoulder and arm until January 26, 2016. However, causal relationship is a medical question that must be established by probative medical opinion from a physician.[16] The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[17] As appellant has not submitted such rationalized medical evidence in this case, he has not met his burden of proof to establish his traumatic injury claim.

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. §§ 10.606 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his right shoulder condition was causally related to the accepted January 26, 2016 employment incident.

[15] Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physician[s] as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. *K.W., supra* note 13; *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).

[16] *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, *supra* note 8.

[17] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board