United States Department of Labor
Employees' Compensation Appeals Board

P.J., Appellant	)	
and	)	**Docket No. 17-0722**
	)	**Issued: August 1, 2017**
DEPARTMENT OF HOMELAND SECURITY, AIR MARSHAL SERVICE, Brooklyn Heights, OH, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 13, 2017 appellant, through counsel, filed a timely appeal from a January 6, 2017 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 to consider the merits of this case.

[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.*

ISSUE

The issue is whether appellant met his burden of proof to establish a right shoulder injury causally related to the accepted March 26, 2008 employment incident.

FACTUAL HISTORY

On March 26, 2008 appellant, then a 36-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that, on that day, he injured his right shoulder while performing pull-ups.

In an April 7, 2008 authorization for examination and treatment (Form CA-16), *J.H.*, an authorizing official, noted an injury date of March 26, 2008 for appellant's right shoulder injury. He approved treatment for the effects of the diagnosed condition.

In an April 7, 2008 attending physician's report (Form CA-16) Part B, Dr. Larry K. Lika, a treating osteopath Board-certified in orthopedic surgery, diagnosed bicipital tendinitis. He described the injury as occurring while appellant was performing pull-ups and heard a pop in the right shoulder. Dr. Lika checked a box marked "yes" to the question of whether the diagnosed condition had been caused or aggravated by the alleged employment activity.

Dr. Lika, in an April 7, 2008 duty status report (Form CA-17), noted an injury date of March 26, 2008, a diagnosis of bicipital tendinitis, and that appellant could return to work that day with no restrictions.

On April 7, 2008 Dr. Lika conducted a physical examination of appellant. He noted that appellant related hearing his right shoulder pop while doing pull-ups for his fitness examination. Appellant's physical examination revealed tenderness on palpation along the biceps tendon long head, positive impingement sign, no swelling, and negative Jibe's sign. Dr. Lika diagnosed right shoulder bicipital tendinitis.

Further documentation was not received in the record until 2016. On January 19, 2016 appellant filed a claim for a schedule award (Form CA-7).

By letter dated January 20, 2016, OWCP acknowledged receipt of appellant's claim for a schedule award, but advised that no action could be taken on his claim as the March 26, 2008 traumatic claim had never been adjudicated.

By letter dated January 25, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him regarding the required medical and factual evidence and afforded him 30 days to provide this information.

In response to OWCP's request, appellant submitted physical therapy notes for the period August 8, 2014 to April 3, 2015. OWCP also received the following evidence.

A January 8, 2015 surgical report from Dr. Alan D. Davis, a treating Board-certified orthopedic surgeon, noted a preoperative diagnosis of possible right rotator cuff tear and

acromioclavicular impingement pain. He performed a right shoulder arthroscopy with distal clavicle excision and acromioplasty surgery.

On February 13, March 13, and April 10, 2015 Dr. Davis noted that appellant was seen for postoperative follow-up. Physical examination findings were provided and diagnoses of right shoulder impingement, rotator cuff tear, and acromioclavicular impingement pain. Dr. Davis released appellant to return to work with restrictions on February 13 and March 13, 2015 and to full duty with no restrictions on April 10, 2015.

In February 21, 2016 report, Dr. Joseph Deveau, a treating Board-certified family medicine physician, noted the dates he had seen appellant and the history of injury, and provided examination findings. He, based on review of an October 17, 2014 magnetic resonance imaging (MRI) scan, diagnosed right shoulder partial supraspinatus and infraspinatus tendon tears, and acromioclavicular supraspinatus tendon impingement with degenerative changes. Dr. Deveau opined that the pull-ups appellant performed in March 2008 were a direct cause of his shoulder tendon tears and the limitations in his right shoulder.

By decision dated March 4, 2016, OWCP denied appellant's claim. It found that the evidence of record established that the March 26, 2008 incident occurred as alleged, but denied the claim as the medical evidence failed to establish that the diagnosed condition was causally related to the accepted March 26, 2008 employment incident.

On March 14, 2016 appellant, through counsel requested a telephonic hearing before an OWCP hearing representative, which was held on November 14, 2016.

Subsequent to the hearing appellant submitted a February 10, 2009 right knee MRI scan and November 2, 2011 progress notes from Dr. Lika regarding right knee and right index finger complaints.

By decision dated January 6, 2017, the hearing representative affirmed the March 4, 2016 denial of appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish 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]

[3] *Id.*

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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.[6] 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[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]

ANALYSIS

Appellant alleged that he sustained a right shoulder injury as the result of performing pull-ups on March 26, 2008. OWCP accepted that the incident occurred as alleged, but denied the claim as it found the medical evidence insufficient to establish a causal relationship between the accepted March 26, 2008 employment incident and the diagnosed right shoulder conditions.

The Board finds that appellant failed to meet his burden of proof.

The record contains an April 7, 2008 narrative report and Form CA-17 duty status report from Dr. Lika diagnosing right shoulder bicipital tendinitis. In his report, Dr. Lika noted physical examination findings and that appellant heard a pop in his right shoulder while performing pull-ups for his fitness examination. On the CA-17 form he noted March 26, 2008 as the date of injury and that appellant could return to work with no restrictions. The Board finds, however, that Dr. Lika failed to adequately address the issue of causal relationship in either his report or Form CA-17 duty status report dated April 7, 2008. Dr. Lika did not explain, with medical rationale, the mechanism by which performing pull-ups on March 26, 2008 could have caused or aggravated appellant's diagnosed right shoulder bicipital tendinitis. Medical reports

[6] *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

[7] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

without any rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[12]

The record contains an April 7, 2008 attending physician's report from Dr. Lika diagnosing bicipital tendinitis which occurred while appellant was performing pull-ups. He checked a box marked "yes" to the question of whether the diagnosed condition had been caused or aggravated by the identified employment activity. The Board has held that when a physician's opinion on causal relationship which consists only of checking "yes" to a form question, without explanation or rationale, it is of diminished probative value and is insufficient to establish a claim.[13]

Appellant also submitted reports from Dr. Davis dated February 13, March 13, and April 10, 2015 diagnosing right shoulder impingement, rotator cuff tear, and acromioclavicular impingement. However, Dr. Davis offered no opinion as to the cause of the diagnosed conditions. In this case, the accepted employment incident occurred on March 26, 2008, but the record lacks any bridging evidence of a right shoulder condition until 2015.[14] Thus, the reports from Dr. Davis are of limited probative value as they failed to provide rationalized medical opinion, based upon a complete medical history, explaining the causal relationship between appellant's accepted March 28, 2008 work incident and his 2015 diagnosed right shoulder conditions.[15]

The record contains a February 21, 2016 report from Dr. Deveau diagnosing right shoulder partial supraspinatus and infraspinatus tears, degenerative changes, and acromioclavicular tendon impingements. He attributed appellant's right shoulder tendon tears and limitations to the pull-ups which were performed on March 26, 2008. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[16] Dr. Deveau provided no rationale explaining how the accepted March 26, 2008 work incident caused or aggravated appellant's 2015 diagnosed right shoulder condition. A rationalized explanation is especially important in this case as Dr. Deveau's diagnoses occurred some eight years following the accepted employment incident and there is a lack of bridging evidence from the accepted incident to the current diagnoses.[17]

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006).

[13] *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

[14] *See Ernest C. Martinez*, Docket No. 97-2855 (issued August 24, 1999).

[15] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Ellen L. Noble*, 55 ECAB 530 (2004) (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] *C.M.*, Docket No. 14-0088 (issued April 18, 2014); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[17] *B.G.*, Docket No. 07-0620 (issued May 23, 2007).

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[18] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[19] Causal relationship must be established by rationalized medical opinion evidence.[20] Appellant failed to submit such evidence and therefore he has not met his burden of proof.

The Board notes, however, that the record does not verify that the issue of appellant's incurred medical expenses has been addressed. The record contains an undated Form CA-16 from the employing establishment noting a March 26, 2008 injury date and signed by J.H. ATSAC authorizing medical treatment. Ordinarily, where the employing establishment authorizes treatment of a job-related injury by providing the employee a properly executed CA-16 form,[21] OWCP is under contractual obligation to pay for the medical.[22] The Board finds that, upon return of the case record, this matter should be addressed.

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 established a right shoulder injury causally related to the accepted March 26, 2008 employment incident.

[18] *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[19] *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

[20] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[21] *See Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

[22] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-0469 (issued June 2, 2010); *see also* Federal (FECA) Procedure Manual, *id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 6, 2017 is affirmed.

Issued: August 1, 2017
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