

ISSUE

The issue is whether appellant met his burden of proof to establish a right shoulder injury causally related to the accepted January 6, 2012 employment incident.

FACTUAL HISTORY

On January 24, 2012 appellant, then a 36-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2012 he experienced a burning sensation in his right shoulder and lower shoulder blade after taking down mail.

In a statement accompanying his claim, appellant related that he experienced low back pain sweeping mail beginning September 2011, when he started working on the Delivery Bar Code Sorter (DBCS) machine. In December 2011 he had burning in his right hip feeding mail. Appellant asserted that on January 6, 2012 he was sweeping the top row of mail on the machine when he felt burning in his right shoulder and lower shoulder blade. He took medication and completed his shift, but the medication was not effective so he stopped work due to the combined pain in his back, right hip, and right shoulder.

Dr. Phat Nguyen, an osteopath, completed a state workers' compensation form on January 20, 2012. He related that appellant had complained of low back pain since 2011, a burning in his right hip since December 2011, and pain and burning in his right shoulder and shoulder blade. Dr. Nguyen diagnosed lumbar strain, trochanteric bursitis, and sciatica and indicated that the conditions were due to the described injury. He advised that appellant could resume work on January 27, 2012. In a progress report dated January 26, 2012, Dr. Nguyen evaluated appellant for right shoulder, right hip, and back pain, noting that he did not experience "any specific injury" and that his symptoms began after he started his position at the employing establishment. He diagnosed low back pain and right hip bursitis.

By letter dated February 7, 2012, the employing establishment controverted the claim, noting that appellant had filed an occupational disease claim for a back and hip condition and a traumatic injury claim for the right shoulder. It submitted an undated statement from his supervisor, B.L. B.L. advised that appellant attributed his injury both to sweeping lower stackers and to sweeping upper stackers. She questioned his truthfulness, noting that he continued to work for nine days after the alleged January 6, 2012 employment injury.

OWCP, by letter dated February 21, 2012, requested that appellant provide additional factual and medical information, including a detailed report from his attending physician addressing the causal relationship between the diagnosed conditions and the claimed work incident.

Appellant, in a March 21, 2012 response, attributed his right shoulder injury to sweeping the top row of mail on a mail processing machine and his back injury to sweeping mail on the bottom row of the machine. He related, "Both injuries are from constant repeated motions over long periods of time during the course of a shift." Appellant advised that he continued working after his injury because he was afraid he might lose his job.

By decision dated March 28, 2012, OWCP denied appellant's traumatic injury claim as the medical evidence was insufficient to establish a right shoulder condition as a result of the accepted work incident. Thus, fact of injury was not established. OWCP noted that it was developing his claim for a back and hip condition under a separate file number.

In a report dated January 20, 2012, received by OWCP on April 30, 2012, Dr. Joohahn John Kim, a Board-certified internist, evaluated appellant for pain in his right hip and back. He noted that appellant also complained of shoulder pain beginning the past week due to repetitive employment duties. Dr. Kim diagnosed lumbar strain, possible trochanteric bursitis, and sacroiliac dysfunction.

In an April 2, 2012 progress report, Dr. Nguyen obtained a history of appellant experiencing right shoulder pain that "developed after [appellant] had repetitive use of his shoulders especially lifting things over his head. [He] does not have any history of [a] specific shoulder injury or pain in the past." On examination, he found mild right shoulder pain at the acromioclavicular joint and subacromial bursa on palpation and movement. Dr. Nguyen diagnosed shoulder tendinitis and possible subacromial bursitis and advised that appellant "has no history of injury except for repetitive injury at work due to physical work as above." He opined that appellant's "problems could have been caused by repetitive injury from his physical work." In an April 2, 2012 state workers' compensation form, Dr. Nguyen recommended a functional capacity evaluation.³

Dr. Nguyen, in a June 15, 2012 progress report, noted that appellant had low back, right hip, and right shoulder pain beginning September 2011. He indicated that appellant developed pain in his right shoulder after repetitive use, particularly lifting, without any past shoulder injury. Dr. Nguyen diagnosed right shoulder tendinitis and possible subacromial bursitis.

On August 16, 2012 Dr. Mark Scheffer, an orthopedic surgeon, discussed appellant's complaints of shoulder pain for the past eight months after doing repetitive motion at the employing establishment. He diagnosed shoulder bursitis and recommended a magnetic resonance imaging (MRI) scan study. An August 21, 2012 MRI scan of the right shoulder showed mild supraspinatus and subscapularis tendinopathy. Dr. Scheffer, in an August 30, 2012 report, provided a history of appellant feeling a sharp pain in his right shoulder after sweeping mail on January 6, 2012. He diagnosed rotator cuff tendinitis. Dr. Scheffer advised appellant that his condition was not related to work because he had only been at his position for three months. He found that appellant could perform his usual employment.

On March 28, 2013 appellant requested reconsideration. He provided a March 22, 2013 report from Dr. Nguyen, who related:

"[Appellant] has sustained right anterior shoulder pain consistent with bicipital tendinopathy and thoracic outlet syndrome, along with right lateral hip pain consistent with piriformis syndrome. It is my medical opinion [his] right shoulder injury and right hip injur[ies] are work related. The repetitive movements that his

³ Dr. Nguyen provided a similar report on June 15, 2012.

work requires at [the employing establishment] have caused him to sustain these injuries, causing pain and dysfunction in these joints.”

In a decision dated April 4, 2013 OWCP denied modification of its March 28, 2012 decision, finding that appellant had not submitted sufficient medical evidence to establish an employment-related diagnosed condition.

On July 26, 2013 Dr. Jason A. Oliviero, a Board-certified orthopedic surgeon, evaluated appellant for right shoulder pain beginning January 20, 2012 when he was “reaching upwards with his right arm overhead, and sweeping away several mail items. [Appellant] felt a strain in his right shoulder at that point and had difficulty lifting his arm overhead.” Dr. Oliviero diagnosed rotator cuff tendinitis and possible bicipital tendinitis. He related, “There is a time[-]related association between [appellant’s] injury and his development of pain. I think therefore the work[-]related injury and his shoulder pain are related.” Dr. Oliviero recommended physical therapy and found that appellant could perform his regular employment.

Appellant, through counsel, requested reconsideration on April 1, 2014.

In a decision dated June 16, 2014, OWCP denied modification of its April 4, 2013 decision. It noted that the medical evidence and appellant’s Form CA-1 provided differing dates of injury and mechanisms of injury. OWCP noted that Dr. Oliviero described an injury on January 20, 2012. It further advised that due to factual inconsistencies it was unable to determine whether appellant was claiming a traumatic injury or occupational disease.

Counsel, on March 23, 2015, notified OWCP that he had not received a copy of the June 16, 2014 decision. On June 19, 2015 he requested reconsideration based on a May 12, 2015 report from Dr. Nguyen. In the May 12, 2015 report, Dr. Nguyen diagnosed bicipital tendinopathy of the right shoulder and thoracic outlet syndrome. He attributed the conditions to repetitive movements during appellant’s work for the employing establishment.⁴

By decision dated July 16, 2015, OWCP vacated the June 16, 2014 decision as it had not been sent to counsel. In another decision dated July 16, 2015, it denied modification of its April 4, 2013 decision. OWCP found that the medical evidence was insufficient to show that appellant sustained a right shoulder condition due to the accepted January 6, 2012 work incident.

Dr. Oliviero, in a July 6, 2016 report, advised that he provided the date of injury as January 20, 2012 in error and that the date of injury was January 6, 2012 “as self reported by [appellant] and as reported by Dr. Nguyen’s note.”

On July 14, 2016 appellant, through counsel, requested reconsideration.

OWCP, in a December 7, 2016 decision, denied modification of its July 16, 2015 decision. It found that the medical evidence remained insufficient to show that appellant experienced a right shoulder condition as a result of work activities on January 6, 2012.

⁴ Dr. Nguyen, on March 28, 2014, also submitted a report identical to his March 22, 2013 opinion.

On appeal counsel contends that appellant's physician corrected the date of injury, the stated reason for the denial by OWCP.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his 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.⁶ 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.⁷

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury is established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁹ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹⁰

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹² must be one of reasonable medical certainty¹³ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

⁵ *Supra* note 2.

⁶ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁷ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁸ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁰ *Id.*

¹¹ *John J. Montoya*, 54 ECAB 306 (2003).

¹² *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, *supra* note 9.

¹³ *Supra* note 11.

¹⁴ *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS

Appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on January 6, 2012 taking down mail from the top row of a machine. In a March 21, 2012 statement, he advised that he experienced a right shoulder injury as the result of performing repetitive work activities for extended periods of time during the course of a work shift. A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.”¹⁵ An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.”¹⁶ OWCP determined in its July 16, 2014 decision that appellant had not submitted sufficient evidence to demonstrate whether he was claiming a traumatic injury or occupational disease due to inconsistencies. However, it subsequently denied his claim for a traumatic right shoulder injury as the medical evidence was insufficient to establish a diagnosed condition due to accepted work activity of sweeping mail on January 6, 2012.

The Board finds that the medical evidence is insufficient to establish an employment-related right shoulder injury on January 6, 2012. On January 20, 2012 Dr. Kim discussed appellant’s complaints of shoulder pain beginning over the last week due to repetitive work and worsening back pain. He diagnosed lumbar strain, possible trochanteric bursitis, and sacroiliac dysfunction. Dr. Kim did not provide a history of the January 6, 2012 work incident or diagnose a shoulder condition. Without a relevant diagnosis supported by medical rationale, the report is of little probative value.¹⁷

In reports dated January 20 and 26, 2012, Dr. Nguyen noted appellant’s complaints of right shoulder and shoulder blade pain, low back pain, and right hip burning. He diagnosed lumbar strain, trochanteric bursitis, and sciatica. Dr. Nguyen also failed to provide a history of the January 6, 2012 work incident or a right shoulder diagnosis. A physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant’s diagnosed medical condition.¹⁸ Dr. Nguyen, on April 2, 2012, evaluated appellant for right shoulder pain that began after repetitive work duties without a specific shoulder injury. He diagnosed shoulder tendinitis and possible subacromial bursitis and found that the diagnosed conditions “could have been caused” by repetitive employment duties. Dr. Nguyen provided a history of appellant experiencing shoulder pain over time rather than due to an injury on January 6, 2012. Additionally, his opinion that work duties could have caused shoulder tendinitis and possible bursitis is speculative in nature and thus of diminished probative value.¹⁹ Other reports from

¹⁵ 20 C.F.R. § 10.5(ee).

¹⁶ *Id.* at § 10.5(q).

¹⁷ See *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician’s opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

¹⁸ See *supra* note 11.

¹⁹ *Rickey 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).

Dr. Nguyen, such as his June 15, 2012, March 22, 2013, and May 12, 2015 reports, attributed appellant's condition to repetitive work duties. He did not relate a diagnosed condition to the January 6, 2012 work incident. Therefore, Dr. Nguyen's opinion is of limited probative value and insufficient to meet appellant's burden of proof.²⁰

Dr. Scheffer, on August 16, 2012, evaluated appellant for right shoulder pain for the past eight months that began after he performed repetitive work at the employing establishment. He diagnosed shoulder bursitis. On August 30, 2012 after reviewing the results of an MRI scan, Dr. Scheffer diagnosed rotator cuff tendinitis and advised that the condition was not related to appellant's employment due to the short time that he had been in his position. As he found that appellant's condition was not work related, it does not support that he sustained the claimed traumatic employment injury.

On July 26, 2013 Dr. Oliviero related that appellant experienced pain in his right shoulder on January 20, 2012 sweeping mail with his arm over his head. He diagnosed rotator cuff tendinitis and possible bicipital tendinitis. Dr. Oliviero determined that the injury and shoulder pain were related due to the "time[-]related association." On July 6, 2016 he indicated that the date of injury was January 6, 2012 rather than January 20, 2012. The Board has held, however, that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.²¹ Further, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.²² Dr. Oliviero did not explain how work duties on January 6, 2012 resulted in a diagnosed condition and thus his opinion is of little probative value.²³

On appeal counsel contends that appellant's physician provided the correct date of injury. As noted, however, appellant did not meet his burden of proof to submit rationalized medical evidence supporting a diagnosed condition due to the January 6, 2012 work incident. Therefore, he has not established a right shoulder injury causally related to the accepted employment incident.²⁴

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.

²⁰ See generally, *A.R.*, Docket No. 16-1416 (issued April 10, 2017). See also *J.C.*, Docket No. 16-1496 (issued May 3, 2017) (the Board has held that medical opinions based on an inaccurate or incomplete history are of diminished probative value).

²¹ *D.E.*, 58 ECAB 448 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

²² *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

²³ See *M.B.*, Docket No. 16-0878 (issued December 12, 2016).

²⁴ See *D.S.*, Docket No. 16-1801 (issued May 8, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder injury causally related to the accepted January 6, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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