

ISSUE

The issue is whether appellant has established a right shoulder injury causally related to the accepted March 23, 2015 employment incident.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

On March 23, 2015 appellant, then a 35-year-old welder, filed a traumatic injury claim (Form CA-1) alleging that on that date, while grinding off an old lug from a mine-resistant ambush protected (MRAP) overhead, "the grinder grabbed hold of a boss" and jerked out of appellant's hands. He noted that he felt instant pain and felt a pop in his right shoulder. Appellant stopped work on the date of the injury and returned to light duty on May 11, 2015.

Appellant was seen on March 23, 2015 at the employing establishment's health clinic. Dr. Gary K. Luttermoser, a Board-certified family practitioner, noted that appellant alleged an injury at work. He described appellant's account of the injury and indicated that due to appellant's significant right shoulder pain with movement of right arm, he referred appellant to a hospital for evaluation and treatment.

Appellant also submitted medical records from a March 23, 2015 visit to Chambersburg Hospital, where appellant was seen by Dr. Peter Viriassov, an osteopath Board-certified in emergency medicine. Dr. Viriassov noted the history of injury, and indicated that the diagnostic test results of appellant's right shoulder demonstrated no fracture or dislocation. He listed his diagnoses as acute right shoulder injury and concern for rotator cuff tear. Dr. Viriassov ordered a follow-up appointment in one to two days for reevaluation with Occupational Health Associates. He also completed a form indicating that appellant had an acute right shoulder injury and was not to return to work until he was medically evaluated again. The hospital record also includes a diagnostic imaging report, signed by Dr. Stephen T. Thuahnai, a Board-certified radiologist, indicating no fracture of the right shoulder. Appellant also submitted discharge instruction forms from Chambersburg Hospital discussing shoulder sprains and rotator cuff injuries.

In a March 25, 2015 report, Dr. Anthony Bruno, a Board-certified orthopedic surgeon, noted appellant's history of injury and physical examination findings. He diagnosed pain in the shoulder joint region. Dr. Bruno provided appellant instructions regarding exercise to increase the range of motion in his elbow, fingers and wrists. He also gave appellant a sling, and prescribed medication.

In reviewing an April 3, 2015 magnetic resonance imaging (MRI) scan, Dr. Henry Ching, a Board-certified radiologist, listed impressions of: (1) moderate degenerative joint disease right glenohumeral joint; (2) tears of the bases of the anterior and posterior labrum, moderate degenerative change of the anterior and posterior labrum, small tear through the superior labrum; (3) moderate tendinopathy of the supraspinatus, infraspinatus, and subscapularis tendons; and (4) moderate degenerative joint disease of the right acromioclavicular joint. In a diagnostic imaging report of the same date, Dr. Ching noted that appellant's right shoulder joint capsule volume was somewhat small in overall size, and also noted degenerative joint disease of the right

glenohumeral joint without evidence of extravasation of contrast into the subacromial or subdeltoid spaces.

In an April 6, 2015 report, Dr. Albert Tom, an orthopedic surgeon, noted that appellant complained of shoulder pain, and he diagnosed early glenohumeral arthritis and degenerative labral tears. He related that appellant had an injury to the right shoulder on March 23, 2015 at the employing establishment. Dr. Tom continued to treat appellant for osteoarthritis of the shoulder region and pain in the joint shoulder.

Dr. Roger J. Robertson, a Board-certified orthopedic surgeon, reported on May 6, 2015, that appellant would be sent for a second opinion as he was very resistant to treatment, had not seen much improvement, and is having quite a bit of discomfort.

In a May 13, 2015 letter, OWCP noted that a limited amount of medical bills had been paid, but that the merits of his claim had not been considered. However, as the medical bills had now exceeded \$1,500.00, appellant was required to submit further specified information to support his claim. Appellant was afforded 30 days to submit additional medical evidence.

Appellant submitted physical therapy notes from Fulton County Medical Center for four sessions from April 24 through May 21, 2015.

In a May 28, 2015 outpatient note from Penn State Hershey Medical Center, Dr. Hyun-Min Kim, an orthopedic surgeon, noted appellant's history of injury on March 23, 2015. He assessed appellant with right shoulder osteoarthritis with acute symptoms which developed after a work injury. Dr. Donald J. Flemming, a Board-certified radiologist, conducted an x-ray on that date which evinced moderate glenohumeral osteoarthritis.

By decision dated June 12, 2015, OWCP denied appellant's claim as he had not established an injury causally related to the accepted employment event.

In a June 18, 2015 report, Dr. Gregory R. Jaques, a family practitioner, examined appellant for the employing establishment. He noted that appellant had an accident on March 23, 2015 while working as a welder, that he reviewed the records with appellant including the work release to full duty on June 29, 2015, and encouraged appellant to continue his home exercise program.

On June 30, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a July 29, 2015 report, Dr. Tom noted that appellant's MRI scan of April 3, 2015 showed evidence of degenerative arthritis, but no evidence of rotator cuff tear or tendinopathy of the rotator cuff. He discussed various treatment options with appellant, noting the complications caused by his young age. Dr. Tom noted that appellant was to continue to work full duty, prescribed him Emloxicam, and recommended follow-up at Hershey Medical Center.

At a hearing held on February 11, 2015, counsel argued that the emergency department report from March 23, 2015 met the criteria for a rationalized report of causal relationship. He noted that the history of the injury in the report from the emergency department was complete,

and that as it noted a rotator cuff injury, the necessary elements to establish a claim were in the report. Counsel argued that emergency room physicians do not write complete reports, that it was unrealistic to expect a complete report from an emergency room physician, and that this is not the law. Appellant described how the injury occurred, and noted that his supervisor told him to go to the hospital.

By decision dated April 21, 2016, the hearing representative affirmed the June 12, 2015 decision. The hearing representative found that Dr. Kim was the only physician of record who addressed the cause of appellant's right shoulder condition; however, as his opinion was speculative it was of little probative value.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, that an injury was caused 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 upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. 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.⁶ 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.⁷

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.⁸ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the

³ *Id.*

⁴ *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

⁸ *I.J.*, 59 ECAB 408 (2008); *supra* note 5.

care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

The Board finds that the medical evidence of record fails to establish a causal relationship between the accepted March 23, 2015 employment incident and a resulting medical diagnosis.

As noted by OWCP's hearing representative, Dr. Kim was the only physician of record who offered an opinion regarding causal relationship. He noted that appellant had a work injury on March 23, 2015 and noted that appellant's right shoulder osteoarthritis with acute symptoms developed after the employment injury. However, Dr. Kim did not explain the pathophysiological process by which appellant's employment incident would have caused or aggravated his condition.¹⁰ As such his opinion is of limited probative value.

Dr. Luttermoser examined appellant immediately after the March 23, 2015 employment incident for the employing establishment for right shoulder pain, but did not treat appellant nor did he offer a definitive diagnosis or opinion on causal relationship. Instead he referred appellant to the emergency room for treatment and consultation for significant right shoulder pain. Dr. Viriassov examined appellant on the date of injury at the hospital and noted an acute right shoulder injury and his concern for a rotator cuff tear. He ordered follow-up care. Dr. Viriassov did not reach any conclusion with regard to a definitive diagnosis or causal relationship. These two physicians offered no opinion regarding the cause of appellant's right shoulder condition, therefore, these reports are insufficient to meet appellant's burden of proof. Medical evidence submitted to support a claim for compensation should reflect a correct history and should offer a medically-sound explanation of how the work incident caused a diagnosed condition.¹¹

Similarly the reports from Drs. Bruno, Robertson, Jacques, and Tom offered no opinion regarding causal relationship. In his March 25, 2015 report, Dr. Bruno noted appellant's history of injury, physical examination findings, and diagnosed right shoulder pain. Dr. Robertson in his May 6, 2015 report related that appellant would be sent for second opinion evaluation. Dr. Jacques' report of June 18, 2015 for the employing establishment cleared appellant for full-duty work but did not address causal relation. Likewise, Dr. Tom provided reports dated July 29, 2015, wherein he discussed appellant's degenerative arthritis, but failed to provide any explanation linking this condition to the March 23, 2015 employment incident. Lacking rationalized medical explanation as to how the accepted employment incident caused the diagnosed condition, these reports are also of limited probative value.¹²

Drs. Thuahnai Ching and Fleming's diagnostic study reports are of limited probative value as they also do not address whether the employment incident of March 23, 2015 caused the

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *T.O.*, Docket No. 16-9423 (issued June 20, 2016).

¹¹ *See B.L.*, Docket No. 16-1205 (issued November 23, 2016).

¹² *Id.*

diagnosed conditions. Medical evidence which 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

Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁴ An award of compensation may not be based on surmise, conjecture, or speculation.¹⁵ As appellant did not establish that his medical condition was causally related to the accepted employment incident, he has not met his burden of proof.

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 23, 2015 employment incident.

¹³ *G.M.*, Docket No. 14-2057 (issued May 12, 2015); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁵ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 21, 2016 is affirmed.

Issued: January 24, 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