

**United States Department of Labor
Employees' Compensation Appeals Board**

D.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 17-0135
Issued: June 5, 2017**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 27, 2016 appellant filed a timely appeal from an October 7, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its October 7, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On January 19, 2016 appellant, then a 59-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that he developed right shoulder tendinitis as a result of his occupational employment duties. He reported that he mainly used his right arm to perform his employment duties for 8 to 12 hours per day, 7 days per week. Appellant stopped work on January 17, 2016 and returned to work on January 19, 2016. On the reverse side of the form, the employing establishment controverted the claim.

In an accompanying narrative statement, appellant described his repetitive employment duties which required the use of his arms and shoulders to drive his tractor trailer, hook lines, release doors, raise trailers, and load mail. He reported that he had severe pain in his right shoulder and arm and was diagnosed with calcific tendinitis and shoulder sprain. Appellant reported that the tendinitis was not a sudden injury and had been occurring for a while.

In a January 17, 2016 report, Dr. Olusola A. Akindele, Board-certified in occupational medicine, reported that appellant was a right-handed male who complained of right shoulder pain which had progressively worsened over time, resulting in his inability to raise his right arm. He noted that appellant's symptoms worsened after an increased workload due to the Christmas holiday season. Dr. Akindele ordered an x-ray of appellant's right shoulder. He diagnosed calcific tendinitis of the right shoulder and right shoulder sprain and provided appellant modified work duties.

In work activity status reports dated January 17 through February 16, 2016, Dr. Akindele related appellant's work restrictions.

On January 19, 2016 appellant accepted an offer of modified assignment pursuant to his physician's restrictions.

By letter dated January 21, 2016, the employing establishment controverted the claim.

In a January 28, 2016 diagnostic report, Dr. Ubaid A. Akhtar, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed calcific tendinopathy and subacromial subdeltoid bursitis. He further noted a small partial-thickness undersurface enthesal tear of the supraspinatus, no full-thickness rotator cuff tear, and moderate hypertrophic degenerative arthrosis of the acromioclavicular joint.

In a February 9, 2016 medical report form, Dr. Robert L. Waltrip, a Board-certified orthopedic surgeon, diagnosed right shoulder calcific bursitis and restricted appellant to light-duty work.

By letter dated February 29, 2016, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and he was afforded 30 days to submit the requested evidence. In another letter of that same date, OWCP requested that the employing establishment provide further information pertaining to appellant's occupational disease claim.

In a March 9, 2016 e-mail correspondence, the employing establishment reported that appellant was back to work full duty effective March 8, 2016.

In a March 17, 2016 narrative statement, appellant reported that both his supervisor and the building safety manager concurred that his injury was work related, explaining that they were not contesting his claim.

In support of his claim, appellant submitted additional medical reports.

In a January 17, 2016 diagnostic report, Dr. Edmond V. Russ, a Board-certified diagnostic radiologist, reported that an x-ray of appellant's right shoulder revealed calcific tendinosis and no acute bony abnormality.

In treatment notes dated January 18 through March 1, 2016, Dr. Akindele provided findings on physical examination and review of diagnostic testing. He diagnosed sprain of right shoulder and calcific tendinitis of the right shoulder. Dr. Akindele provided appellant with continued work restrictions and referred him for an orthopedic evaluation.

In a February 9, 2016 medical report, Dr. Waltrip reported that appellant presented for evaluation of his right shoulder with complaints of mild intermittent symptoms over the last six to eight months which worsened around the Christmas holiday with his increasing work activities. He noted that appellant worked as a spotter/driver for the employing establishment which entailed moving trailers around the yard and a lot of heavy pushing and pulling at approximately chest level. Appellant was evaluated on January 17, 2016 when his pain worsened and he was placed on light duty. Dr. Waltrip provided findings on physical examination and review of diagnostic testing. He diagnosed very prominent calcific bursitis of appellant's right shoulder. Dr. Waltrip performed a subacromial corticosteroid injection and recommended physical therapy.

In a March 8, 2016 note, Dr. Waltrip released appellant to full-duty work.

By decision dated April 22, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that his diagnosed conditions were causally related to his accepted federal employment duties.

On June 6, 2016 appellant requested reconsideration of OWCP's decision. He resubmitted his prior narrative statement describing his employment duties and reported that his orthopedic surgeon would be submitting a statement addressing causal relationship.

In an accompanying narrative statement, appellant detailed his employment duties by listing his daily repetitive activities which he reported performing approximately 50 times per day. He noted that the majority of his work involved movement with his arms and shoulders which had been bothering him on and off for approximately one year. Appellant reported that he typically worked a 40-hour week, but due to a shortage of manpower and increasing volume during the holiday season, he was working up to 12 hours per day, sometimes 7 days per week, causing his shoulder condition to worsen. He further stated that the pain and numbness he was experiencing on his right side required surgery which was scheduled for July 22, 2016.

In treatment reports dated March 8 and May 16, 2016, Dr. Waltrip provided findings on physical examination and noted continued symptoms from calcific tendinitis/bursitis. He reported that appellant could continue with full-duty work.

In a May 11, 2016 medical report, Dr. Waltrip reported that he first evaluated appellant on February 9, 2016 for right shoulder pain. Appellant attributed his symptoms of increased pain to moving trailers around the yard as well as heavy pushing and pulling at approximately chest level. His radiographs showed very prominent calcific bursitis and he was noted to have increased signal throughout the subacromial space on MRI scan. Dr. Waltrip reported that the job duties appellant described may increase pain for a patient with such prominent calcific bursitis on radiological studies. Accordingly, appellant's job-related activities may have aggravated his symptoms and contributed to the pain for which he sought treatment. Dr. Waltrip reported that he did not believe that appellant sustained a specific isolated vocational injury to cause his calcific bursitis, but opined that his job-related activities likely contributed to his pain as a result of the inflammatory condition.

In progress notes dated June 13 through August 8, 2016, Natalie Llewellyn, a physician assistant, documented treatment provided for appellant's right shoulder injury. Ms. Llewellyn reported that appellant elected to undergo surgery in the form of a right shoulder arthroscopy with subacromial decompression, debridement calcific tendinitis, and possible rotator cuff repair.

In a June 22, 2016 medical report, Dr. Benedict C. Woo, Board-certified in physical medicine and rehabilitation, reported that appellant presented for consultation regarding numbness, tingling, and pain from chronic right shoulder pain which traveled to the neck at times. He noted that appellant was scheduled for right shoulder surgery on July 22, 2016. Dr. Woo diagnosed cervical strain, trapezius strain, and right arm numbness. He recommended an electromyography test of the upper right extremity to evaluate for radiculopathy and plexopathy prior to surgery.

In diagnostic reports dated July 11, 2016, preoperative testing revealed normal prior to the scheduled July 22, 2016 surgery.

In a September 12, 2016 medical report, Dr. Waltrip reported that appellant was doing well after his right shoulder arthroscopy and released him to light-duty work.

By decision dated October 7, 2016, OWCP affirmed the April 22, 2016 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to his accepted federal employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed is causally related to the

employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.⁷ The opinion of the physician 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

OWCP accepted that appellant engaged in repetitive upper extremity activities as a tractor trailer operator. It denied his claim, however, finding the evidence of record failed to establish a causal relationship between those activities and his right shoulder diagnosis. The Board finds that the medical evidence of record is insufficient to establish that appellant developed right shoulder calcific bursitis and a right shoulder sprain causally related to factors of his federal employment as a tractor trailer operator.

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

In medical reports dated January 17 through March 1, 2016, Dr. Akindele provided findings on physical examination and diagnosed sprain of the right shoulder and right shoulder calcific tendinitis. He failed to describe appellant's employment duties or provide any opinion regarding the cause of his condition. The Board has found that a physician must provide a narrative description of the identified employment factors and a reasoned opinion on whether the employment factors described caused or contributed to the diagnosed medical condition.⁹ As such, his reports are insufficient to meet appellant's burden of proof.

In medical reports dated February 9 through September 12, 2012, Dr. Waltrip provided findings on physical examination and review of diagnostic testing. He diagnosed right shoulder calcific bursitis. The Board finds that the opinion of Dr. Waltrip is insufficiently rationalized to establish appellant's occupational disease claim.

In his May 11, 2016 report, Dr. Waltrip opined that appellant's job-related activities may have aggravated his symptoms and contributed to the pain for which he sought treatment. The Board notes that Dr. Waltrip's opinion on causation is highly speculative as he notes that appellant's employment duties "may have" aggravated his symptoms without a firm conclusion that they did in fact cause or aggravate his injury.¹⁰ 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. To be of probative value, a physician's opinion on causal relationship should be expressed in terms of reasonable medical certainty.¹¹ Dr. Waltrip further reported that he did not believe that appellant sustained a specific isolated vocational injury to cause his calcific bursitis, but opined that his job-related activities likely contributed to his pain as a result of the inflammatory condition. The Board notes that Dr. Waltrip associated appellant's pain to his employment duties rather than the diagnosed medical condition. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.¹² As Dr. Waltrip is attributing appellant's symptoms to his employment duties rather than the right shoulder calcific bursitis, his opinion on causal relationship is of limited probative value.¹³

Dr. Waltrip did not identify the cause of appellant's underlying condition. He reported that appellant had prominent calcific bursitis on radiological studies. The Board notes that it is unclear if appellant's calcific bursitis was caused or aggravated by his occupational employment duties, a result of a preexisting condition, or due to degenerative changes. A well-rationalized opinion is particularly warranted when there is history of a preexisting condition.¹⁴

Dr. Waltrip did not provide a sufficiently rationalized medical opinion explaining the mechanism of injury pertaining to this occupational disease claim. He did not explain how or

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *See Michael R. Shaffer*, 55 ECAB 339 (2004).

¹¹ *Rickey S. Storms*, 52 ECAB 349 (2001); *Beverly R. Jones*, 55 ECAB 411 (2004).

¹² *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹³ *M.R.*, Docket No. 14-11 (issued August 27, 2014).

¹⁴ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

why the repetitive pushing and pulling activities described by appellant would have caused or aggravated his right shoulder calcific bursitis or shoulder sprain.¹⁵ As such, Dr. Waltrip's report lacks the specificity and detail needed to establish that appellant's right shoulder conditions were a result of a work-related occupational exposure.¹⁶

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Russ and Dr. Akhtar's diagnostic reports only interpreted imaging studies and provided no opinion on the cause of appellant's injury.¹⁷ Without any mention of the repetitive employment duties, any findings made could not be related to his claim to establish causal relationship.¹⁸

While Dr. Woo's June 22, 2016 medical report provided additional diagnoses of cervical and trapezius strain, he failed to discuss appellant's federal employment duties or give any opinion on the cause of his diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's conditions is of limited probative value.¹⁹

Ms. Llewellyn's progress notes dated June 13 through August 8, 2016 are also insufficient to establish appellant's claim. Physician assistants are not considered physicians as defined under FECA; therefore, their opinions are not medical evidence and are of no probative value.²⁰

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²¹ Appellant's honest belief that his occupational employment duties caused his medical injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a tractor trailer operator and his diagnosed right shoulder calcific bursitis and sprain. Thus, appellant has failed to meet his burden of proof.

¹⁵ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁶ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁷ *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁸ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹⁹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²⁰ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *M.S.*, Docket No. 16-1497 (issued December 20, 2016); see *Roy L. Humphrey*, 57 ECAB 238 (2005). See also *W.M.*, Docket No. 16-1658 (issued May 3, 2017); *A.F.*, Docket No. 15-1555 (issued December 16, 2015).

²¹ *D.D.*, 57 ECAB 734 (2006).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right shoulder conditions causally related to factors of his federal employment as a tractor trailer operator.

ORDER

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

Issued: June 5, 2017
Washington, DC

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

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

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