



## ISSUE

The issue is whether appellant met his burden of proof to establish that his diagnosed right shoulder condition is causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On July 7, 2014 appellant, then a 46-year-old welder, filed an occupational disease (Form CA-2) alleging a right elbow and shoulder condition which arose on or about April 23, 2014. He indicated that he was working in the cleaning room of the foundry performing arc gouging and removing gates and risers on muzzle brake castings. Appellant further noted that he had been using a large grinder to smooth parts. As a result, he developed a sharp pain in his elbow and shoulder which continued over the next few days. Appellant described his condition as a torn biceps muscle. The employing establishment noted that appellant first reported his condition to his supervisor on June 3, 2014.

Appellant's supervisor, J.K., provided a June 3, 2014 preliminary incident notification report. He indicated that appellant came to the office that morning and reported that he had been grinding on a muzzle brake on April 23, 2014, and at the end of the day his shoulder was sore. Appellant also reportedly informed J.K. that he had been seeing a doctor for a torn muscle in his right shoulder. J.K. indicated that he sent appellant to the employee clinic.

On June 3, 2014 a registered nurse from the employing establishment's occupational health clinic indicated that appellant had been advised to resume regular activities. Appellant was seen for complaints of right shoulder pain that he attributed to an April 20, 2013 incident while he was grinding at work.

In a July 7, 2014 statement, J.K. questioned whether appellant injured his right shoulder at work. He explained that appellant did a lot of the same kind of work at home, noting that he junks-out cars, works on derby cars, and welds on the side. J.K. indicated that, on June 2, 2014, he overheard another employee telling appellant how much money he was getting for his hand, and the following day (June 3, 2014) appellant reported having torn a muscle in his right shoulder, and that he had been seeing a doctor for it since April 23, 2014. Because of the delay in reporting the injury and appellant's outside activities, J.K. stated that he had a hard time believing that appellant's reported injury was work related.

On July 8, 2014 the employing establishment formally controverted the claim indicating its belief that appellant filed a fraudulent claim in an attempt to secure leave for his pending surgery, as well as to secure payment for a schedule award.

By development letter dated August 1, 2014, OWCP requested that appellant provide additional factual and medical evidence in support of his claimed right elbow/shoulder injury. It specifically inquired about the delay in reporting the alleged injury, whether appellant sustained any other elbow/shoulder injury in the interim period, and whether he was claiming an occupational disease or a traumatic injury. OWCP afforded him at least 30 days to submit the requested information.

In an August 14, 2014 narrative statement, appellant clarified that he was claiming an occupational disease. Regarding the six-week delay in reporting his injury, he indicated that he experienced slight pain in his arm and shoulder while doing a lot of grinding, which he thought was due to overuse and just required some rest. However, the pain was consistent when lifting heavy objects or when grinding. Once appellant decided to get it looked at, it took one week to see the doctor, then another two weeks to see a specialist, and then two more weeks to have a magnetic resonance imaging (MRI) scan and obtain the results. Appellant also described his specific employment duties.

In a September 30, 2014 statement, J.K. described appellant's various duties as a welder. He also noted a conversation he had with appellant on June 5, 2014 when appellant reportedly told him he thought he hurt himself working on a muzzle brake on April 23, 2014, but was not sure. Appellant pointed out a cutting booth table with a hoist that was reportedly difficult to use. J.K. indicated that the particular cutting booth was seldom used. Additionally, he reiterated that it was only after talking to another employee who had received a large settlement, that appellant decided to file a claim.

OWCP also received a May 20, 2014 narrative report from Dr. Mark G. Stewart, a Board-certified orthopedic surgeon. Dr. Stewart noted that appellant presented with right shoulder pain. Appellant reported that he was grinding with a large grinder at work and hurt his arm. A right shoulder x-ray revealed acromioclavicular (AC) joint arthritis. On physical examination, Dr. Stewart found full range of motion in each shoulder with tenderness over the anterolateral corner of the right shoulder and tenderness over the AC joint and prominence. He recommended an MRI scan and evaluation for rotator cuff tear. Appellant was advised to return after obtaining a right shoulder MRI scan.

A May 23, 2014 right shoulder MRI scan arthrogram revealed a large, full-thickness tear of the supraspinatus tendon, probable superior labral anterior to posterior tear (SLAP) of the biceps-labral complex, and moderate degenerative changes of the AC joint.

In a June 2, 2014 follow-up report, Dr. Stewart noted that appellant's recent MRI scan was consistent with a labral tear. He and appellant discussed various treatment options, including arthroscopic surgery. Appellant opted to undergo surgery.

On August 20, 2014 Dr. Stewart performed a right shoulder arthroscopic subacromial decompression and rotator cuff repair. The preoperative diagnosis was labral tear, but the postoperative diagnosis was right shoulder rotator cuff tear.<sup>3</sup>

By decision dated October 2, 2014, OWCP denied appellant's occupational disease claim. It found that the evidence of record was insufficient to establish that the event(s) occurred as alleged.

On March 2, 2015 appellant requested reconsideration.

---

<sup>3</sup> The arthroscopy revealed that both the labrum and biceps tendon were intact.

OWCP received follow-up treatment reports from Dr. Stewart dated August 27, September 24, November 5, and December 8, 2014. He advised that appellant could return to work in a limited-duty capacity on September 24, 2014. Dr. Stewart released appellant to full, unrestricted activities effective December 8, 2014.

By decision dated May 28, 2015, OWCP modified its October 2, 2014 decision to reflect that appellant had established fact of injury. It accepted that appellant's duties required repetitive grinding and lifting heavy objects. OWCP also noted that Dr. Stewart initially diagnosed a labral tear, and that appellant had undergone surgery on August 20, 2014 to repair a torn rotator cuff. Thus, the record established a medical diagnosis. However, OWCP continued to deny the claim as Dr. Stewart had not identified specific employment factors he believed either caused or contributed to appellant's diagnosed condition(s).

On June 8, 2015 appellant again requested reconsideration.

In an October 27, 2014 report, Dr. Stewart explained that he initially evaluated appellant on May 20, 2014, with a chief complaint of right shoulder pain. He noted that appellant reported that he developed right shoulder pain after utilizing a grinder at work, which hurt his arm. Dr. Stewart advised that, prior to this injury, appellant did not have any pain with use of the grinder. He further noted that appellant reported that his work activities aggravated his shoulder pain. Lastly, Dr. Stewart noted that appellant had undergone a rotator cuff repair, and that he remained under his care.

In a July 17, 2015 decision, OWCP denied appellant's request for reconsideration of the merits of his claim.

On April 18, 2016 appellant, through counsel, again requested reconsideration and submitted additional evidence, including an April 28, 2014 right shoulder x-ray that revealed moderately-sized AC joint osteophytes and mild glenohumeral degenerative changes. In an April 28, 2014 narrative report, Dr. Even C. Kvelland, a Board-certified internist, noted that appellant presented with gradually progressive shoulder problems over a two-year period. The right shoulder was far more symptomatic than the left. Dr. Kvelland also noted that appellant was right-handed. He reported that appellant worked at an industrial site doing repetitive and heavy work. There was no known direct trauma to either shoulder. Dr. Kvelland noted that appellant currently had some discomfort at the elbow, and sometimes a sense of numbness in both hands. His clinical assessment was right shoulder discomfort, which he noted was elicited by motion of the shoulder. Dr. Kvelland prescribed a corticosteroid (Prednisone) and ordered x-rays.

In a March 8, 2016 report, Dr. Stewart noted that appellant reported having left shoulder pain for the last year. Appellant also reported that his shoulder popped, and it was getting worse. Left shoulder x-rays revealed no fracture or dislocation. Dr. Stewart diagnosed left shoulder pain, possible rotator cuff tear. He recommended a left shoulder MRI scan. With respect to the cause of appellant's right shoulder condition, Dr. Stewart opined that the pain was a result of his work

activities, which aggravated his symptoms.<sup>4</sup> He noted that appellant eventually had to have a right shoulder labral repair in 2014.

By decision dated August 1, 2016, OWCP denied modification of its May 28, 2015 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>5</sup> 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, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.<sup>8</sup> Temporal relationship alone will not suffice.<sup>9</sup> Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.<sup>10</sup>

---

<sup>4</sup> Dr. Stewart indicated that appellant provided him a copy of his (welder) position description.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>7</sup> *Victor J. Woodhams, id.*

<sup>8</sup> 20 C.F.R. § 10.115(e).

<sup>9</sup> *See D.I.*, 59 ECAB 158, 162 (2007).

<sup>10</sup> *See M.H.*, Docket No. 16-0228 (issued June 8, 2016).

## ANALYSIS

OWCP found that appellant established fact of injury. However, it denied his occupational disease claim because the medical evidence of record failed to establish causal relationship between the diagnosed right shoulder condition and appellant's specific duties as a welder.

When Dr. Kvelland examined appellant on April 28, 2014, he did not provide a specific diagnosis, rather, he merely noted right shoulder discomfort. However, pain and/or discomfort is only considered a symptom, not a medical diagnosis.<sup>11</sup> Moreover, Dr. Kvelland did not address the cause of appellant's right shoulder complaints. Accordingly, his report is insufficient to satisfy appellant's burden of proof.

Appellant's diagnostic studies, which included an April 28, 2014 x-ray and a May 23, 2014 MRI scan arthrogram, did not address the cause of the diagnosed right shoulder condition. The Board has previously held 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.<sup>12</sup>

When Dr. Stewart initially examined appellant on May 20, 2014, he noted that there was x-ray evidence of right AC joint arthritis. He recommended a right shoulder MRI scan for evaluation of a rotator cuff tear. Dr. Stewart noted a history of "grinding with a large grinder at work." However, at that time, he did not offer an opinion on causal relationship. Dr. Stewart's June 2, 2014 follow-up report also did not address the cause of the suspected right shoulder labral tear. As such, the May 20 and June 2, 2014 reports are of limited probative value on the issue of causal relationship.<sup>13</sup>

The June 3, 2014 occupational health treatment records are insufficient to satisfy appellant's burden of proof because the healthcare provider was a nurse. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>14</sup> Consequently, the medical findings and/or opinions of the nurse will not suffice for purposes of establishing entitlement to FECA benefits<sup>15</sup> as the reports of nurses do not constitute competent medical evidence.<sup>16</sup>

Dr. Stewart's August 20, 2014 operative report included a postoperative diagnosis of right shoulder rotator cuff tear. However, he did not specifically address causal relationship. Neither did the follow-up treatment reports covering the period August 27 through December 8, 2014. As

---

<sup>11</sup> Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

<sup>12</sup> *K.W.*, 59 ECAB 271, 279 (2007).

<sup>13</sup> *Id.*; *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>14</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>15</sup> *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (January 2013).

<sup>16</sup> *A.L.*, Docket No. 17-2002 (issued March 23, 2018).

noted, 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.<sup>17</sup>

In his October 27, 2014 report, Dr. Stewart noted that he initially evaluated appellant on May 20, 2014 for complaints of right shoulder pain, which appellant reported had developed after utilizing a grinder at work. Appellant also reported that his work activities aggravated his shoulder pain. He also advised Dr. Stewart that, prior to the injury, he did not have any pain with the use of the grinder. Additionally, Dr. Stewart noted that appellant had undergone a rotator cuff repair.

The October 27, 2014 report reiterated information appellant provided Dr. Stewart. However, Dr. Stewart did not specifically attribute appellant's right rotator cuff condition to his duties as a welder.<sup>18</sup> His October 27, 2014 report did not include medical reasoning, or rationale, explaining how appellant's reported work activities either caused or contributed to the diagnosed right rotator cuff tear.<sup>19</sup>

In his latest report dated March 8, 2016, Dr. Stewart indicated that appellant's right shoulder pain was the result of his "work activities." He also noted that appellant eventually underwent surgery. However, Dr. Stewart did not identify the particular "work activities" or explain how they either caused or contributed to appellant's right shoulder condition. A physician's opinion on causal relationship must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>20</sup>

As the record is devoid of rationalized medical opinion evidence explaining how or why appellant's employment duties either caused or contributed to his diagnosed right shoulder condition, appellant has not met his burden of proof to establish causal relationship.

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 met his burden of proof to establish that his diagnosed right shoulder condition is causally related to the accepted factors of his federal employment.

---

<sup>17</sup> *K.W.*, *supra* note 12.

<sup>18</sup> *See A.M.*, Docket No. 10-0205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

<sup>19</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

<sup>20</sup> *Victor J. Woodhams*, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2018  
Washington, DC

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

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

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