

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

_____)	
J.A., Appellant)	
)	
and)	Docket No. 17-1936
)	Issued: August 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Edison, NJ, Employer)	
_____)	

Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 14, 2017 appellant, through counsel, filed a timely appeal from an August 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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 has met his burden of proof to establish that his right shoulder and cervical conditions were causally related to the accepted September 4, 2015 employment incident.

FACTUAL HISTORY

On September 4, 2015, 2015 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a right arm and shoulder injury while lifting mail trays and felt sudden sharp pain and numbness in his right arm and shoulder. He first notified his supervisor, stopped work, and sought medical treatment on the date of injury. On the reverse side of the form, appellant's supervisor controverted the claim stating that reenactment of the accident disclosed that appellant was improperly lifting the mail tray.

On September 4, 2015 the employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16), which indicated that he was authorized to seek medical treatment for his right shoulder strain with Dr. Lorelane Tindoc, Board-certified in family medicine.³

A September 4, 2015 Hackensack UMC emergency department visit summary documented treatment for the right shoulder with a diagnosis of right shoulder strain.

In a September 10, 2015 prescription note, excusing appellant from work, Dr. Tindoc reported that he was evaluated for right rotator cuff syndrome and possible radiculopathy.

By development letter dated September 25, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him of the medical and factual evidence needed and afforded 30 days to submit the additional evidence. OWCP provided appellant a questionnaire for completion requesting further information pertaining to the employment incident.

On October 5, 2015 appellant responded to OWCP's questionnaire stating that he had difficulty balancing when lifting mail trays due to a prior injury which caused him pain. He reported no prior issues with the right shoulder or arm, noting that he previously had chronic

³ A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employing establishment directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). On return of the case record OWCP shall determine whether appellant is entitled to payment of medical expense pursuant to this Form CA-16 authorization.

numbness and pain on his left shoulder, arm, and neck which was documented under OWCP File No. xxxxxx360 with a September 21, 2010 date of injury.⁴

In an October 1, 2015 medical report, Dr. Tindoc reported that appellant presented for evaluation on September 5, 2015 due to an acute right shoulder injury that occurred on September 4, 2015. Appellant reported pulling a tray at work when he felt sudden severe right shoulder and arm pain, causing him to seek emergency medical treatment. Dr. Tindoc provided physical examination findings of limited range of motion and weakness of the right upper extremity. She reported that given the nature of how appellant was injured and his presenting signs and symptoms, he sustained a rotator cuff injury and shoulder bursitis with possible radiculopathy due to pain and numbness. Dr. Tindoc noted a history of cervical stenosis with cervical spine disc bulge with radiculopathy involving the left upper extremity. She recommended a magnetic resonance imaging (MRI) scan due to continued pain and limited range of motion despite physical therapy treatment.

By decision dated October 21, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that his injury was causally related to the accepted September 4, 2015 employment incident.

On November 4, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. OWCP thereafter received additional medical evidence.

In a September 4, 2015 HUMC hospital report, Dr. David Forsh, a Board-certified orthopedic surgeon, diagnosed right shoulder strain and discharged appellant from treatment.

In a September 4, 2015 diagnostic report, Dr. Patrick Toth, a Board-certified diagnostic radiologist, reported that an x-ray of the right shoulder revealed a bony spur along the interior margin of the acromion. Otherwise, he found no acute bony pathology.

In an attending physician's report (Form CA-20) dated October 30, 2015, Dr. Tindoc reported that, on September 4, 2015, appellant was pulling a heavy tray at work he had sudden right shoulder pain with numbness to the right arm. She reported findings of limited range of motion, right shoulder pain, tenderness on palpation of right shoulder, weaker grip of right hand, and less sensation on right arm compared to left. Dr. Tindoc reported no prior history of right shoulder injury and diagnosed right rotator cuff tendinitis, numbness of the right upper limb, and cervical radiculopathy. She checked a box marked "yes" when asked if the condition was caused or aggravated by the employment activity, explaining that the right upper extremity had no prior pain or injury and appellant currently had nerve function involvement and significant pain. In an October 30, 2015 duty status report (Form CA-17), Dr. Tindoc restricted him from returning to work. In an October 30, 2015 work capacity evaluation (OWCP-5c), she reported a history of prior cervical stenosis with left arm involvement and noted findings for appellant's current right shoulder injury.

⁴ On September 21, 2010 appellant filed a traumatic injury claim (Form CA-1) alleging that on that same date he suffered a left hand, shoulder, and head injury when he was lifting flat tubs and trays of mail. By decision dated October 11, 2012, OWCP accepted his claim for resolved sprain of neck, OWCP File No. xxxxxx360.

In a November 23, 2015 report, Dr. Steve Lequerica, a Board-certified neurologist, reported that an electromyography (EMG) study of the right arm revealed signs of right C5-6 and C6-7 cervical radiculopathy. He diagnosed cervical disc disorder with radiculopathy, strain of muscle at neck level, and sprain of ligaments of lumbar spine.

A hearing was held on February 17, 2016 at which appellant testified regarding the circumstances surrounding the September 5, 2015 employment incident and subsequent course of treatment. He explained that, on the date of injury, he was lifting a tray that contained heavy mail weighing approximately 40 pounds when he felt sharp right shoulder pain.

By decision dated March 30, 2016, an OWCP hearing representative affirmed the October 21, 2015 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted September 4, 2015 employment incident.

By letter dated June 27, 2016, received by OWCP on July 1 2016, appellant, through counsel, requested reconsideration of OWCP's decision. Counsel noted submission of additional medical and diagnostic reports which established appellant's traumatic injury claim.

In a March 9, 2016 diagnostic report, Dr. Michael Pollack, a Board-certified neurologist, reported that a cervical spine MRI scan revealed mild multilevel degenerative disc disease and right-sided facet arthropathy at C2-3 and C3-4 leading to moderate right-sided foraminal narrowing at C3-4.

In a June 16, 2016 medical report, Dr. Tindoc described the September 4, 2015 employment incident when appellant was pulling a heavy tray and felt sudden sharp pain on the right shoulder and arm. She evaluated him on September 5, 2015 and noted physical examination findings of limited range of motion and weakness of the right upper extremity. Dr. Tindoc reported that, given the nature of how appellant was injured and his presenting signs and symptoms, her initial assessment was that of a rotator cuff injury and shoulder bursitis with possible radiculopathy as a direct result of heavy lifting at work. She noted that the radiculopathy component of the injury was part of an aggravation of his history of cervical spine stenosis. Dr. Tindoc noted a prior work injury, but that it involved left-sided radiculopathy. She further noted that appellant's physical findings were new as she saw him for medical clearance on July 28, 2015 and he had good range of motion without extremity pain at that time. Dr. Tindoc described his course of treatment and reported that the cervical spine MRI scan was completed on March 9, 2016 which revealed right-sided spinal stenosis with mild multilevel degenerative disc disease. She reported that appellant could not resume his current job which required heavy lifting. Dr. Tindoc provided light-duty restrictions and reported that he had reached maximum medical improvement.

In an October 20, 2016 medical report, Dr. Tony Wanich, a Board-certified orthopedic surgeon, provided physical examination findings pertaining to the right shoulder. He reported that an October 13, 2016 MRI scan of the right shoulder demonstrated a rotator cuff tear and recommended surgical repair. Dr. Wanich noted that the tear was "compatible and likely" causally related to appellant's work injury suffered one year prior.

By decision dated December 28, 2016, OWCP denied modification of the March 30, 2016 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted September 4, 2015 employment incident.

On May 18, 2017 OWCP received counsel's request for reconsideration of OWCP's decision. Counsel noted submission of a March 8, 2017 report from Dr. Tindoc and an April 4, 2017 report from Dr. Wanich in support of appellant's claim.

In a March 8, 2017 medical report, Dr. Tindoc reported that she evaluated appellant on that date and noted that he had right shoulder surgery for rotator cuff repair on January 30, 2017. She opined that the right shoulder pain from the rotator cuff tear was a direct result of the September 4, 2015 work injury which occurred when he pulled and lifted a heavy tray and immediately suffered sharp right shoulder pain. Dr. Tindoc reported that appellant was right handed and most of the force and strength was on his right shoulder. She explained that forceful pulling and lifting could injure the muscle and tendon of rotator cuff groups of muscles as they provided support and strength with the upper extremity pulling and lifting. Dr. Tindoc reported that appellant had no history of a right shoulder injury or pain prior to the September 4, 2015 work injury. She concluded that his chronic right shoulder pain was a direct result of the work injury.

In an April 4, 2017 medical report, Dr. Wanich reported that appellant underwent right rotator cuff repair on January 30, 2017. He opined that the right shoulder rotator cuff tear was a direct result of a work injury from lifting trays. Dr. Wanich explained that the mechanism of injury was consistent and causally related to the aforementioned accident within a reasonable degree of medical certainty.

By decision dated August 8, 2017, OWCP denied modification of the December 28, 2016 decision finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted September 4, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.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

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

⁵ *Supra* note 2.

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁸ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 supporting such causal relationship.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his right shoulder and cervical conditions were causally related to the accepted September 4, 2015 employment incident.¹¹

On the date of injury, appellant sought emergency medical treatment at HUMC emergency department for right shoulder pain. While Dr. Forsh's September 4, 2015 report diagnosed right shoulder strain, he provided no opinion regarding the cause of appellant's injury. 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.¹² While the HUMC hospital report reflects immediate treatment following the employment incident, it fails to relate any opinion regarding the cause of appellant's condition and are therefore insufficient to establish his traumatic injury claim.¹³

In medical reports dated September 10, 2015 through March 8, 2017, Dr. Tindoc described the circumstances surrounding the September 4, 2015 employment incident and discussed appellant's course of treatment. She opined that his right shoulder pain from the rotator cuff tear was a direct result of the September 4, 2015 work injury when he pulled and lifted a heavy tray at work and immediately suffered sharp pain on the right shoulder and arm. Dr. Tindoc reported that appellant had no history of a right shoulder injury or pain prior to the September 4, 2015 work

⁸ *Elaine Pendleton*, *supra* note 6 at 1143.

⁹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

¹¹ See *Robert Broome*, 55 ECAB 339 (2004).

¹² See *R.U.*, Docket No. 17-0168 (issued January 9, 2018).

¹³ *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

injury and as such, the chronic pain of the right shoulder had been a direct result of the work injury on that date.

The Board finds that the opinion of Dr. Tindoc is not well rationalized. Dr. Tindoc failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim. On the CA-20 form dated October 20, 2015 she checked a box marked “yes” indicating that the diagnosed conditions were caused by the employment injury. A report that addresses causal relationship with a check mark, without medical rationale explaining how the employment incident caused or aggravated the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹⁴ While Dr. Tindoc had some type of understanding of the September 4, 2015 employment incident, indicating that appellant was pulling a heavy tray or alternatively pulling and lifting a heavy tray, she failed to provide sufficient detail regarding the circumstances surrounding the incident pertaining to the weight and size of the tray and the specific movements, either lifting or pulling or both, involved which would result in his injury. She reported that he was right handed and most of the force and strength was on his right shoulder, explaining that forceful pulling and lifting can injure the muscle and tendon of rotator cuff groups of muscles as they provide support and strength with the upper extremity pulling and lifting.¹⁵ The Board finds that this statement to be speculative, without sufficient detail explaining how these movements actually caused appellant’s injury. 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.¹⁶ Dr. Tindoc opined that appellant sustained a work-related injury because he had no right shoulder pain prior to the September 4, 2015 employment incident, noting that she last evaluated him on July 28, 2015 with good range of motion examination findings. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹⁷ Without explaining how physiologically the movements involved in the accepted employment incident, specifically lifting, caused or contributed to appellant’s right rotator cuff tear, Dr. Tindoc’s opinion on causal relationship is equivocal in nature and of limited probative value.¹⁸

With respect to the diagnosis of radiculopathy and cervical spinal stenosis, Dr. Tindoc explained that this was a preexisting condition which related to the left upper extremity only. As such, she determined that the September 4, 2015 employment incident caused an aggravation of appellant’s spinal stenosis and radiculopathy based on a March 9, 2016 cervical MRI scan which

¹⁴ *Supra* note 12.

¹⁵ A medical opinion couched in such terms as might be, could be, or may be does not have as much probative value as an opinion stated unequivocally or with reasonable medical certainty. *See G.M.*, Docket No. 15-1288 (issued September 18, 2015).

¹⁶ *See D.F.*, Docket No. 17-0135 (issued June 5, 2017).

¹⁷ *Supra* note 12.

¹⁸ *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

revealed right-sided spinal stenosis with mild multilevel degenerative disc disease. The Board notes that Dr. Tindoc failed to discuss whether his preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹⁹ It is unclear if appellant's right-sided spinal stenosis with mild multilevel degenerative disc disease and radiculopathy were caused or aggravated by the September 4, 2015 employment incident, a result of a preexisting condition, or due to degenerative changes. A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.²⁰ As Dr. Tindoc's reports lack the specificity and detail needed to establish that appellant's right shoulder and cervical conditions were the result of the September 4, 2015 employment incident, her opinion is insufficient to establish his traumatic injury claim.²¹

In medical reports dated October 20, 2016 and April 4, 2017, Dr. Wanich reported that an October 13, 2016 MRI scan of the right shoulder demonstrated a rotator cuff tear. He opined that the right shoulder rotator cuff tear was a direct result of a work injury from lifting trays, explaining that the mechanism of injury was consistent and causally related to the aforementioned accident within a reasonable degree of medical certainty. The Board finds that Dr. Wanich's opinion is also not well rationalized. While he provided a sufficient diagnosis of rotator cuff tear based on diagnostic testing, he failed to note the date of the employment incident or adequately describe the details and circumstances surrounding the injury. Dr. Wanich did not evaluate appellant until over one year after the alleged employment injury and failed to provide any discussion of appellant's medical history or course of treatment. Without any mention of the September 4, 2015 employment incident, any findings made could not be related to his claim to establish causal relationship.²² Dr. Wanich's statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how lifting a tray full of mail weighing approximately 40 pounds would cause or aggravate appellant's right rotator cuff tear.²³ As he failed to provide a rationalized and detailed discussion of appellant's medical history, the employment incident, and cause of injury, his reports are insufficient to meet appellant's burden of proof.²⁴

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Toth's x-ray of the right shoulder simply interpreted diagnostic findings and also failed to provide any discussion on the cause of appellant's injury.²⁵ Dr. Lequerica's November 23, 2015 EMG study noted findings of right C5-6 and C6-7 cervical radiculopathy. While he provided

¹⁹ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

²⁰ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

²¹ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

²² *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

²³ *S.W.*, Docket 08-2538 (issued May 21, 2009).

²⁴ *S.R.*, *supra* note 21.

²⁵ *See P.T.*, Docket No. 17-1189 (issued December 27, 2017). The Board has repeatedly explained that diagnostic test reports are of limited probative value as they do not specifically address whether appellant's diagnosed conditions are causally related to the accepted work incident.

diagnoses of cervical disc disorder with radiculopathy, strain of muscle at neck level, and sprain of ligaments of lumbar spine, he made no mention of the September 4, 2015 employment incident and provided no opinion regarding the cause of appellant's conditions.²⁶ Dr. Pollack's March 9, 2016 diagnostic report provided MRI scan findings pertaining to the cervical spine while the October 13, 2016 report detailed imaging studies of the right shoulder. While these medical reports are relevant to appellant's claim, they are of no probative value as they interpreted diagnostic imaging studies with no opinion on the cause of his conditions.²⁷ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.²⁸

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²⁹ Appellant's honest belief that the September 4, 2015 employment incident caused his right shoulder rotator cuff tear and cervical condition is not in question, but that belief however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.³⁰

The evidence of record lacks rationalized medical evidence establishing a causal relationship between the accepted September 4, 2015 employment incident and appellant's right shoulder and cervical conditions. Thus, the Board finds that he has failed to meet his burden of proof.

Appellant may submit new evidence or argument 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 did not meet his burden of proof to establish that his right shoulder and cervical conditions were causally related to the accepted September 4, 2015 employment incident.

²⁶ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

²⁷ It is not possible to establish the cause of a medical condition, if the physician has not stated a firm medical diagnosis. *T.G.*, Docket No. 13-0076 (issued March 22, 2013).

²⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

²⁹ *D.D.*, 57 ECAB 734 (2006).

³⁰ *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 8, 2017 is affirmed.

Issued: August 13, 2018
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