

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

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<b>C.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0148</b>
	)	<b>Issued: August 20, 2018</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS ADMINISTRATION MEDICAL</b>	)	
<b>CENTER, Decatur, GA, Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 26, 2017 appellant, through counsel, filed a timely appeal from an August 17, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish that his diagnosed right shoulder conditions are causally related to the accepted October 21, 2016 employment incident.

## FACTUAL HISTORY

On November 9, 2016 appellant, then a 50-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that, on October 21, 2016, he lifted a patient's duffle bag and injured his right shoulder. He did not stop work.

In a November 22, 2016 development letter, OWCP advised appellant of the type of factual and medical evidence needed to support his claim, including a report from a physician containing a medical diagnosis and a rationalized explanation as to how the reported work incident caused or aggravated the claimed injury. It also requested that he respond to a questionnaire to substantiate the factual elements of his claim. OWCP afforded appellant 30 days to provide the necessary information.

OWCP subsequently received an October 21, 2016 right shoulder x-ray, which revealed no acute fracture or malalignment and rotator cuff insertional calcific tendinosis.

On November 8, 2016 appellant was seen in the employing establishment's occupational health clinic for follow-up of a right shoulder injury that occurred on October 21, 2016. Dr. Elsie C. Morris, Board-certified in occupational medicine, noted that he injured his right shoulder lifting a heavy duffle bag that belonged to a patient, and that he currently complained of right shoulder pain. The treatment notes also indicated that appellant was initially seen in the emergency room for this injury. He previously suffered a right shoulder rotator cuff tear that was surgically repaired in 1994 and 2013. On physical examination appellant's right shoulder revealed tenderness to palpation over the glenohumeral joint, but no acromioclavicular (AC) joint tenderness. There was also evidence of decreased range of motion in all planes. Dr. Morris provided work restrictions which included limited lifting with a 10-pound weight restriction, no overhead work, and limited pushing and pulling. She advised appellant to take his prescribed medications and referred him for a magnetic resonance imaging (MRI) scan.

In a December 1, 2016 note, Dr. Morris referred appellant for an orthopedic surgery consultation. Appellant's diagnoses included supraspinatus and infraspinatus tendinosis, superior labrum tear, mild thickening of the inferior glenohumeral ligament, and previous rotator cuff injury and surgical repair.

By decision dated January 6, 2017, OWCP found that appellant had established that the October 21, 2016 incident of "picking up a duffle bag" occurred as alleged, and that appellant had been diagnosed with a medical condition. However, it denied the claim, finding that the medical evidence of record was insufficient to establish that his diagnosed right shoulder conditions were causally related to the October 21, 2016 employment incident.

On January 31, 2017 appellant, through counsel, requested an oral hearing before and OWCP hearing representative, which was held on June 22, 2017.

In a June 15, 2017 report, Dr. Morris diagnosed right rotator cuff strain, superior labrum tear, history of previous rotator cuff injury and surgical repair, and exacerbation of preexisting condition. She reiterated appellant's October 21, 2016 history of injury, his prior right shoulder injury, as well as his physical examination and x-ray findings as previously reported on November 8, 2016. Dr. Morris additionally, noted the November 28, 2016 right shoulder MRI scan revealed mild chronic supraspinatus and infraspinatus tendinosis without acute tear, mild degeneration and tearing of the superior labrum, chronic appearing tear of the posterior-superior labrum, and mild thickening of the inferior glenohumeral ligament. She also reported that she had seen appellant in follow-up to discuss his MRI scan results, and that he had been referred for further evaluation and treatment. Lastly, Dr. Morris advised that he had been given work restrictions limiting the use of his "left" arm and shoulder.

By decision dated August 17, 2017, an OWCP hearing representative affirmed the January 6, 2017 decision. The hearing representative found, that Dr. Morris had not addressed the issue of causal relationship in her June 15, 2017 report.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</sup>

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury.<sup>6</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>7</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal

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<sup>3</sup> *Id.*

<sup>4</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>8</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> 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 factor(s).<sup>10</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

It is undisputed that on October 21, 2016 appellant was working as a nursing assistant and lifted a patient's duffle bag. There is medical evidence of a right rotator cuff strain and superior labrum tear. However, the Board finds that appellant failed to submit sufficient medical evidence to establish that his diagnosed right shoulder conditions are causally related to the accepted October 21, 2016 employment incident.

The October 21, 2016 x-ray of the right shoulder is of limited probative value as it fails to include a physician's opinion on a causal relationship between appellant's accepted employment incident and his diagnosed right shoulder condition.<sup>12</sup> For this reason, this evidence is insufficient to meet his burden of proof.

Appellant submitted a November 8, 2016 report from Dr. Morris who treated him for a right shoulder injury. He reported that he experienced a pull and pop in the right shoulder while lifting a patient's duffle bag on October 21, 2016. Dr. Morris noted that appellant had a previous right shoulder rotator cuff tear, and rotator cuff repairs in 1994 and 2013. She reported tenderness to palpation over the glenohumeral joint and decreased range of motion in all planes. In a November 8, 2016 report of employee's emergency treatment, Dr. Morris noted that appellant injured his right shoulder lifting a patient's duffle bag. She returned him to work on November 8, 2016 with restrictions. However, Dr. Morris merely repeated the history of injury as reported by appellant without providing her own opinion regarding whether his condition was work related. To the extent that she expressed her own opinion, she failed to provide a rationalized opinion regarding the causal relationship between his right shoulder injury and the accepted work incident.<sup>13</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

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<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>12</sup> *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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>13</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

Dr. Morris' December 1, 2016 orthopedic surgery referral included several current right shoulder diagnoses. She also noted a previous rotator cuff injury and surgical repair. However, Dr. Morris' note is insufficient to establish the claim as she did not provide a history of injury<sup>14</sup> or specifically address whether appellant's employment incident was sufficient to have caused or aggravated a diagnosed medical condition.<sup>15</sup>

Similarly, in a June 15, 2017 report, Dr. Morris diagnosed right rotator cuff strain, superior labrum tear, history of previous rotator cuff injury and surgical repair, and exacerbation of preexisting condition. Appellant reported injuring his right shoulder on October 21, 2016 when he lifted and pulled a patient's duffle bag. Dr. Morris noted an x-ray of the right shoulder revealed rotator cuff insertional calcific tendinosis and a right shoulder MRI scan revealed mild chronic supraspinatus and infraspinatus tendinosis without acute tear, mild degeneration and tearing of the superior labrum, chronic appearing tear of the posterior-superior labrum, and mild thickening of the inferior glenohumeral ligament. However, as noted above, she merely repeated the history of injury as reported by appellant without providing her own opinion regarding whether and how his condition was work related. To the extent that she is providing her own opinion, Dr. Morris failed to provide a rationalized opinion regarding the causal relationship between his right shoulder condition and the accepted work incident.<sup>16</sup> Medical rationale was particularly necessary given that appellant had a prior right shoulder injury and rotator cuff repairs in 1994 and 2003.<sup>17</sup> Therefore, this report is insufficient to meet his burden of proof.

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.<sup>18</sup> Temporal relationship alone will not suffice.<sup>19</sup> Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>20</sup> Causal relationship must be established by rationalized medical opinion evidence.<sup>21</sup> Appellant failed to submit such evidence, and therefore he has not met his burden of proof.

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<sup>14</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>15</sup> *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (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).

<sup>16</sup> *Id.*

<sup>17</sup> *See supra* note 11.

<sup>18</sup> 20 C.F.R. § 10.115(e).

<sup>19</sup> *See D.I.*, 59 ECAB 158, 162 (2007).

<sup>20</sup> *See M.H.*, Docket No. 16-0228 (issued June 8, 2016).

<sup>21</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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 conditions are causally related to the accepted October 21, 2016 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2018  
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