

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

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<b>T.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0972</b>
	)	<b>Issued: December 13, 2018</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION PLANT, Manchester, NH, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 11, 2018 appellant filed a timely appeal from a February 23, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish left shoulder conditions causally related to the accepted July 16, 2017 employment incident.

## FACTUAL HISTORY

On July 18, 2017 appellant, then a 60-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2017 he sustained a left shoulder injury while in the performance of duty. He stopped work on that day.

In support of his claim, appellant submitted state workers' compensation medical forms, dated July 16, 19, and 26, 2017, noting his injury date of July 16, 2017, describing how the injury occurred, and diagnosing left shoulder rotator cuff injury. The physician's signature on the July 16, 2017 form report was that of Dr. Marie Arringdale, an examining Board-certified emergency room physician. In form reports dated July 19 and 26, 2017, Dr. Jolene J. Shuman, an examining physician Board-certified in family medicine, signed the diagnosed a possible tear in addition to rotator cuff injury in the July 26, 2017 form report.

By development letter dated August 4, 2017, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received additional medical evidence. In reports dated July 19, 26, August 14 and 28, 2017, Dr. Shuman noted that appellant developed left shoulder pain on July 16, 2017 while lifting heavy trays and packages, and performing repetitive movements. A physical examination revealed limited left shoulder range of motion and significant pain. Diagnoses included left shoulder joint pain, left shoulder injury, and possible left rotator cuff tear.

In an August 14, 2017 narrative report, Dr. Shuman noted that appellant was injured at work on July 16, 2017 and had been unable to return to work. She observed that his left shoulder condition was not improving and that appellant continued to experience pain. Dr. Shuman completed August 28 and September 8, 2017 state workers' compensation medical form reports wherein she repeated her prior opinions.

On August 31, 2017 appellant was seen by Dr. Gavin R. Webb, an examining Board-certified orthopedic surgeon. Dr. Webb noted a history of appellant's July 16, 2017 employment incident. Physical examination findings included left shoulder tenderness on palpation, positive Hawkin's and Near's tests, negative Speed's and O'Brien's test, and pain with movement. Dr. Webb reviewed an August 31, 2017 x-ray interpretation of appellant's left shoulder which revealed moderate acromioclavicular joint changes and no significant fracture, bone lesion, or glenohumeral arthritis. He diagnosed left shoulder pain.

In an August 31, 2017 form report, Dr. Webb noted an injury date of July 16, 2017, described how the injury occurred and diagnosed suspected left shoulder rotator cuff tear.

By decision dated September 13, 2017, OWCP accepted that the July 16, 2017 incident occurred as alleged. However, it denied the claim because the medical evidence of record was insufficient to establish a firm medical diagnosis due to the accepted July 16, 2017 employment

incident. OWCP noted that pain is a symptom and not a medical diagnosis. It, therefore, concluded that he had not met the requirements to establish an injury as defined by FECA.

In a form dated and postmarked on October 13, 2017, appellant requested a review of the written record by an OWCP hearing representative.

On October 4, 2017 appellant was seen by Dr. Webb who provided examination findings. Dr. Webb related that review of appellant's magnetic resonance imaging (MRI) scan of the left shoulder revealed severe tendinopathy and partial subscapularis tendon partial thickness tearing. He also reviewed an x-ray performed that day with findings unchanged from the August 31, 2017 x-ray interpretation. Dr. Webb diagnosed left shoulder biceps tendinitis and left shoulder partial thickness rotator cuff tear. He noted that a left shoulder arthroscopy with subacromial decompression and acromioplasty had been performed.

Dr. Webb, in an October 23, 2017 report, noted that appellant was seen for a follow-up examination for a left shoulder injury sustained at work on July 16, 2017. Physical examination findings were unchanged. Appellant related that he had developed right shoulder problems which he attributed to compensation for his left shoulder. A review of the MRI scan of the left shoulder revealed severe tendinopathy and partial subscapularis tendon partial thickness tearing. Dr. Webb also reviewed an x-ray performed that day with findings unchanged from the August 31, 2017 x-ray interpretation. Diagnoses for the left shoulder included partial thickness rotator cuff tear and bicipital tendinitis.

By decision dated February 23, 2018, an OWCP hearing representative affirmed the September 13, 2017 decision, finding that the evidence of record was insufficient to establish that appellant's diagnosed left shoulder conditions were causally related to the accepted July 16, 2017 employment incident.

### **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, 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> First,

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> 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.<sup>8</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident identified by the claimant.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left shoulder conditions were causally related to the accepted July 16, 2017 employment incident.

A July 16, 2017 form report signed by Dr. Arringdale detailed a history of appellant's injury and diagnosed rotator cuff injury. While Dr. Arringdale diagnosed an injury, she provided no opinion regarding the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> While this form report reflects immediate treatment following the employment incident, it fails to relate any opinion regarding the cause of appellant's condition and is therefore insufficient to establish his traumatic injury claim.<sup>11</sup>

Appellant also submitted a number of state medical forms and narrative reports dated from July 19 through August 31, 2017 from Dr. Shuman noting appellant's July 16, 2017 employment incident. Dr. Shuman's diagnoses included rotator cuff injury, possible left rotator cuff tear, and left shoulder joint pain. The Board notes "rotator cuff injury" is not a specific diagnosis.<sup>12</sup> Dr. Shuman's diagnosis of left shoulder joint pain is a description of a symptom rather than a clear diagnosis of the medical condition.<sup>13</sup> For these reasons, Dr. Shuman's reports are insufficient to establish a medical diagnosis in connection with appellant's July 16, 2017 accepted work incident.

The record also contains reports dated August 31, October 4, and 23, 2017 and state form medical reports dated August 31, 2017 from Dr. Webb. Dr. Webb diagnosed left shoulder pain in

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<sup>7</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

<sup>9</sup> *M.L.*, Docket No. 17-1026 (issued April 20, 2018).

<sup>10</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *J.A.*, Docket No. 17-1936 (issued August 13, 2018); *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

<sup>12</sup> *See T.W.*, Docket No. 11-2109 (issued July 2, 2012).

<sup>13</sup> *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

his August 31, 2017 report and suspected left shoulder rotator cuff tear in the August 31, 2017 form report. As previously noted, these are not valid diagnoses of appellant's left shoulder condition.<sup>14</sup> Dr. Webb, in reports dated October 4 and 23, 2017, diagnosed left shoulder partial thickness rotator cuff tear and left shoulder bicipital tendinitis. While noting the July 16, 2017 injury history, he did not specifically address nor offer any opinion as to whether the diagnosed conditions had been caused or aggravated by the accepted July 16, 2017 employment incident.<sup>15</sup> Therefore, the Board finds that his reports are insufficient to establish that appellant's diagnosed left shoulder conditions were causally related to the accepted July 16, 2017 employment incident.

An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.<sup>16</sup> Appellant's honest belief that the July 16, 2017 employment incident caused his left shoulder conditions, however, sincerely held, does not constitute medical evidence necessary to establish causal relationship.<sup>17</sup>

The evidence of record lacks rationalized medical evidence establishing causal relationship between the accepted July 16, 2017 employment incident and appellant's left shoulder 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 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 left shoulder conditions causally related to the accepted July 16, 2017 employment incident.

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<sup>14</sup> *Supra* note 13 and 14.

<sup>15</sup> *See supra* note 10.

<sup>16</sup> *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

<sup>17</sup> *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 23, 2018 is affirmed.

Issued: December 13, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy 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