

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

A.T., Appellant)	
)	
and)	Docket No. 18-0221
)	Issued: June 7, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Cartersville, GA, Employer)	
)	

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 March 17, 2017¹ appellant filed a timely appeal from a February 14, 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 to consider the merits of the case.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred and eighty days from February 14, 2017, the date of OWCP's most recent merit decision, was August 13, 2017. Since using November 8, 2017, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 17, 2017, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish degenerative cuff tear of the right shoulder causally related to the accepted October 22, 2016 employment incident.

FACTUAL HISTORY

On November 7, 2016 appellant, then a 65-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2016 he injured his right shoulder while repetitively pulling on mailboxes and lifting mail and parcels while in the performance of duty. He stopped work on October 24, 2016. In support of his claim, appellant provided an October 26, 2016 note from Susan E. Deguia, a nurse practitioner.

In a November 23, 2016 development letter, OWCP requested additional factual and medical evidence in support of appellant's claim and provided him with a questionnaire. It informed appellant that evidence from a physician assistant or nurse practitioner was insufficient to establish his claim. OWCP afforded appellant 30 days for a response.

Appellant provided additional documentation from Ms. Deguia including a November 4, 2016 authorization for examination and/or treatment (Form CA-16). He completed OWCP's questionnaire on December 6, 2016 and described his work duties on October 22, 2016, including opening and closing mailbox lids to deposit mail into the boxes. Appellant noted that his route included over 600 mailboxes and that some lids could be stuck and harder to open requiring a tug to pull the lid open.

On December 13, 2016 Dr. Leverett Neville, a radiologist, conducted a magnetic resonance imaging (MRI) scan of appellant's right shoulder. He found a near full-thickness tear of the anterior margin of the supraspinatus involving the bursal and articular surface, moderate degenerative changes of the acromioclavicular joint, and edema.

By decision dated December 28, 2016, OWCP denied appellant's traumatic injury claim, finding that appellant had not provided medical evidence establishing that a medical diagnosis was causally related to the accepted employment incident.

On February 1, 2017 appellant requested reconsideration and provided additional medical evidence. In a report dated January 15, 2017, Dr. Jayson Fields, a Board-certified family practitioner, explained that he had first examined appellant on October 27, 2016 due to shoulder pain with limited range of motion. Appellant informed him that on October 22, 2016, partway through his delivery route, he had felt a pull in his shoulder while putting mail in one of the boxes. Dr. Fields noted that, as there was no history of acute trauma, appellant's condition was most consistent with completion of a degenerative cuff tear. He concluded, "[d]egenerative tears most often are related to work habits and rather indolent until the sudden completion of the tear. The final tear may occur while doing regular daily activities." Dr. Fields completed a form report on December 23, 2016 and diagnosed supraspinatus tear and degenerative acromioclavicular joint bursitis.

By decision dated February 14, 2017, OWCP modified its December 28, 2016 decision to reflect that appellant had established the medically-diagnosed condition of right shoulder degenerative cuff tear. However, the claim remained denied as appellant had not submitted sufficient reasoned medical evidence to establish causal relationship between his accepted employment incident on October 22, 2016 and his diagnosed right shoulder degenerative cuff tear.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is generally 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 factors identified by the claimant.⁶ 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.⁷

³ *Supra* note 1.

⁴ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *A.D.*, *id.*; *T.H.*, 59 ECAB 388 (2008).

⁶ *A.D.*, *supra* note 4; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish degenerative cuff tear of the right shoulder causally related to the accepted October 22, 2016 employment incident.

It is undisputed that on October 22, 2016 appellant performed his work duties of repetitively pulling on mailboxes as well as lifting mail and parcels. However, the Board finds that he failed to submit sufficient medical evidence to establish that this work incident caused or aggravated his right shoulder condition.⁸

In support of his claim, appellant submitted medical evidence from Dr. Fields dated December 23, 2016 and January 15, 2017. Dr. Fields described appellant's employment activities on October 22, 2016 and noted that appellant felt a pull in his shoulder while putting mail in one of the boxes. He indicated that he first examined appellant on October 27, 2016 due to shoulder pain and diagnosed completion of a degenerative cuff tear at the supraspinatus tendon as well as degenerative acromioclavicular joint bursitis. Dr. Fields opined that the completion of a rotator cuff tear could occur while performing regular daily activities. The Board finds that the opinion of Dr. Fields is not well rationalized. While Dr. Fields suggested that appellant's injuries were caused by the October 22, 2016 employment incident, he failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how putting mail into boxes would cause or aggravate appellant's shoulder condition.⁹ Dr. Fields noted that completion of a rotator cuff tear can occur with daily activities. The Board finds this statement to be vague and generalized without sufficient detail explaining how appellant's work activities caused his injury.¹⁰ Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹¹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹² Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Fields' opinion on causal relationship is equivocal in nature and of limited probative value.¹³

⁸ *M.E.*, Docket No. 17-1857 (issued February 2, 2018).

⁹ *S.H.*, *supra* note 7; *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

¹⁰ *Id.*

¹¹ *S.H.*, *supra* note 7; *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹² *S.H.*, *id.*; *Lee R. Haywood*, 48 ECAB 145 (1996).

¹³ *S.H.*, *supra* note 7; *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).

Appellant also submitted a December 13, 2016 right shoulder MRI scan. Medical evidence of diagnostic testing is of limited probative value as it fails to provide a physician's opinion on causal relationship between appellant's work incident and the diagnosed conditions.¹⁴

Appellant submitted reports from a nurse practitioner. However, the Board has held that reports by a nurse practitioner are not considered medical evidence as this care provider is not considered a physician under FECA.¹⁵

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁶ Appellant's honest belief that the October 22, 2016 employment incident caused his medical conditions, however, sincerely held, does not constitute the medical evidence to establish causal relationship.¹⁷

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 10.607.¹⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish degenerative cuff tear of the right shoulder causally related to the accepted October 22, 2016 employment incident.

¹⁴ See *M.S.*, Docket No. 17-1044 (issued February 2, 2018).

¹⁵ See *F.M.*, Docket No. 16-1848 (issued March 16, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁶ *G.E.*, Docket No. 17-1719 (issued February 6, 2018); *D.D.*, 57 ECAB 734 (2006).

¹⁷ *G.E. id.*; *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

¹⁸ The Board notes that the employing establishment executed a Form CA-16 on November 4, 2016 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. See *S.H.*, *supra* note 7; *I.S.*, Docket No. 16-1813 (issued March 16, 2015).

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 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