United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 17-1928**
	)	**Issued: March 9, 2018**
DEPARTMENT OF THE ARMY, FORT KNOX, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 12, 2017 appellant, through counsel, filed a timely appeal from a July 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder injury causally related to the accepted October 15, 2010 employment incident.

[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.*

On appeal counsel contends that the medical evidence is sufficient to meet appellant's burden of proof.

FACTUAL HISTORY

On October 20, 2010 appellant, then a 54-year-old mobile equipment servicer, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2010 he was flipped into the air by a tanker bar when trying to stand a Bradley track on its side to change track pads. He listed his injuries as scuffs and bruises to the right side of his chest with muscle tears. Appellant sought treatment from Dr. Marie A. Arringdale, a Board-certified emergency physician, on October 15 and 19, 2010 for chest contusions and abrasions.[3] He returned to work on October 20, 2010 and to full duty on October 26, 2010.

On October 29, 2012 appellant sought medical treatment for right shoulder pain from Dr. William C. Nash, an orthopedic surgeon, as a result of trying to pick up a track with a lever-type mechanism. The lever hit appellant under the right shoulder and threw him across the floor. He previously had a right shoulder arthroscopy in 2007 with resection of the acromioclavicular (AC) joint and debridement of a partial rotator cuff tear. Appellant underwent a right shoulder magnetic resonance imaging (MRI) scan on November 1, 2012 which demonstrated tendinopathy and tear of the supraspinatus. In a note dated November 13, 2012, Dr. Nash listed appellant's date of injury as March 2010 when he was hit by "some type of metal object" which threw him into the air, landing on his right shoulder. He diagnosed partial tear of the right shoulder rotator cuff based on MRI scan.

In a letter dated April 9, 2013, OWCP noted that when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. It administratively handled the claim to allow for payment of a limited amount of medical expenses, without formally considering the merits of the claim. OWCP further noted that the claim "will remain administratively closed due to inactivity including no medical treatment since 2010."

Dr. Nash completed a report on July 15, 2013 relating that he first examined appellant on April 13, 2007 due to a work-related fall resulting in partial tear of the right rotator cuff. Appellant underwent arthroscopy on May 10, 2007 to debride the partial tear of his labrum, biceps tendon, and 50 percent thickness tear of the rotator cuff. He also had arthroscopic resection of the right AC joint. Dr. Nash noted that appellant sustained a second right shoulder injury on October 15, 2010 when a tanker bar reinjured his shoulder. He recommended a second right shoulder surgery.

In a letter dated October 5, 2016, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It afforded him 30 days for a response. No response was received.

By decision dated November 8, 2016, OWCP denied appellant's claim finding that he had not established that the employment incident occurred as alleged. In a letter dated

[3] These records are largely illegible.

November 18, 2016, counsel requested an oral hearing from OWCP's Branch of Hearings and Review.

Appellant testified at the oral hearing on June 9, 2017. He noted that he initially lost three or four days from work due to the claimed October 15, 2010 work incident. Appellant also noted that he had a prior work-related injury to his right shoulder on April 13, 2007. He testified that he was a mechanic for the M1 Abrams tank and the Bradley tank. On October 15, 2010 appellant was changing the tracks on a Bradley vehicle, which weighed 26 tons. He explained that to change the track on a tank, you unbuckled it like a belt, rolled the vehicle off the track, and left the 35 to 40 foot track lying flat on the shop floor. Six mechanics were then required to each use a five foot tanker bar to raise the track, which weighed between three and four tons, like pencils in belt holes to pry the track to its edge. The mechanics near the ends of the track were supposed to curl the track so that it would remain standing. One of the mechanics failed to curl the track, but the remaining five mechanics pulled their tanker bars out, leaving appellant with the last bar in the track when the track fell flat again. When the track fell, appellant's tanker bar struck him under his arm in his armpit, flipped him and threw him into the air about eight feet and he landed between 10 and 15 feet away. Appellant retired in 2011 following heart surgery. Counsel submitted a photograph of a tanker bar to the hearing representative.

By decision dated July 13, 2017, OWCP's hearing representative found that appellant established that the October 15, 2010 employment incident occurred as alleged, but determined that the medical evidence of record did not establish a causal relationship between appellant's diagnosed shoulder condition and his employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period 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.[5]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[6] 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 another. The first

[4] *Supra* note 1.

[5] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[6] 20 C.F.R. § 10.5(ee).

component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] 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.[9]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] 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 employee.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

ANALYSIS

It is undisputed that the October 15, 2010 incident occurred as alleged; however, the Board finds that the medical evidence submitted by appellant is insufficient to establish that this incident resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[13] The Board finds that no physician did so in this case.

Dr. Arringdale's treatment notes dated October 15 and 19, 2010 do not contain a legible history of injury for the diagnoses of chest contusions and abrasions. The Board is also unable to find a statement of causation in her report. As her report does not provide an opinion on the cause of appellant's condition, the report is insufficient to establish causal relationship.[14]

Dr. Nash submitted reports dated October 29, and November 13, 2012, and July 15, 2013 noting appellant's history of a prior employment-related shoulder injury in April 2007 with

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Id.*; *M.P.*, Docket No. 17-1221 (issued August 21, 2017).

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *M.P., id*.

[10] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *Supra* note 11.

[14] *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

resulting arthroscopy on May 10, 2007. He also noted that appellant had reinjured his right shoulder injury on October 15, 2010 when a tanker bar reinjured his shoulder as a result of trying to pick up a track with a lever. Dr. Nash indicated that appellant was hit by a metal object which threw him into the air, and that he landed on his right shoulder. He diagnosed partial tear of the right shoulder rotator cuff based on MRI scan. Dr. Nash did not provide bridging evidence regarding appellant's right shoulder condition from October 15, 2010 until he examined him on October 29, 2012.[15] Furthermore, he did not explain how appellant's October 15, 2010 employment incident resulted in right rotator cuff tear. A mere conclusion without the necessary rationale explaining how and why Dr. Nash believes that an incident resulted in a diagnosed condition is insufficient to meet appellant's burden of proof.[16]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[17] The Board disagrees with counsel's contentions on appeal regarding the weight of the medical evidence and finds that the medical evidence does not meet appellant's burden of proof to establish a traumatic injury claim.

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 a right shoulder injury causally related to the accepted October 15, 2010 employment incident.

[15] *P.J.*, Docket No. 17-0722 (issued August 1, 2017).

[16] *Supra* note 14.

[17] *Supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 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