

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

R.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Louisville, KY, Employer**

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**Docket No. 17-2008
Issued: March 22, 2018**

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 September 25, 2017 appellant filed a timely appeal from a March 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from March 28, 2017, the date of OWCP's last decision was September 24, 2017. As this fell on a Sunday, the appeal would have been due the following business day, which was Monday, September 25, 2017. See 20 C.F.R. § 501.3(f)(2). Since using September 27, 2017, the date the appeal was received by the Clerk of the Appellate Boards 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 September 25, 2017, rendering 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 met his burden of proof to establish a right shoulder condition causally related to the accepted April 30, 2015 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as presented in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On May 2, 2015 appellant, then a 56-year-old manager of distribution operations, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2015 he sustained a right shoulder strain in the performance of duty as a result of tripping over a nut and bolt protruding from the base of a pole. He did not stop work.

On August 7, 2015 OWCP received a notice of recurrence of medical treatment (Form CA-2A). The form noted that the date of injury was April 30, 2015 and that appellant required right shoulder surgery.

In a development letter dated August 10, 2015, appellant was informed that when his claim was received it appeared to be for a minor injury that resulted in minimal medical expense and wage loss, which was administratively approved. However, since appellant had requested surgery, the case was reopened for merit review. Appellant was advised that the medical evidence of record was insufficient to establish that his right humerus fracture was caused or aggravated by the claimed employment injury. He was afforded 30 days to submit additional evidence in support of his claim, but did not respond with additional evidence.

In a September 18, 2015 decision, OWCP denied appellant's traumatic injury claim as the medical evidence failed to establish that his diagnosed condition was causally related to the accepted April 30, 2015 employment-related incident.

In an appeal request form dated December 12, 2015, postmarked December 16, 2015, and received by OWCP's Branch of Hearings and Review on December 21, 2015, appellant requested a review of the written record by an OWCP hearing representative. In an accompanying letter dated December 12, 2015, he asserted that he sustained a right shoulder injury due to the April 30, 2015 employment incident based on his physicians' opinions.

In a June 8, 2015 progress note, Dr. Hugh B. Foshee, an attending internist, related appellant's history which included a fractured right shoulder he sustained at work, five weeks prior.

In a June 9, 2015 progress note, Dr. Barton Reutlinger, a Board-certified orthopedic surgeon, related a history that appellant sustained a right shoulder injury on the job six weeks ago. He noted that appellant had a dislocation and a magnetic resonance imaging (MRI) scan showed Hill-Sachs and Bankart lesions and a superior labral tear from anterior to posterior (SLAP) tear.

³ Docket No. 16-0857 (issued August 8, 2016).

Dr. Reutlinger also noted appellant's medical history and medications. He discussed clinical observations and advised appellant to see a shoulder specialist for surgical repair.

By decision dated January 19, 2016, the Branch of Hearings and Review denied appellant's request for a review of the written record as it was untimely filed. It found that the request was not postmarked within 30 days of the issuance of the September 18, 2015 OWCP merit decision. After exercising its discretion, the Branch of Hearings and Review further found that the issue in the case could equally well be addressed through the reconsideration process.

On March 14, 2016 appellant filed a timely appeal of both OWCP decisions with the Board.

While the case was on appeal to the Board, OWCP received a March 7, 2016 letter from Dr. Foshee who related that on June 8, 2015 appellant first told him about his right shoulder injury that occurred on his job about five weeks earlier. Appellant reported that he had been walking in the employing establishment plant where he was working when he tripped over a metal bolt that was protruding slightly from the floor, lost his balance and fell forward. He further reported that metal or concrete posts set into the floor to partially block a doorway entry were ahead of him. Appellant reached out with his left hand to grab one of the posts, but lost his grip. He spun and lost his balance more and continued to fall forward into the next post. Appellant's right shoulder took the full force of the fall, slamming into the post. He reported that initial plain x-rays did not reveal the extent of his injury. An MRI scan that was performed on May 14, 2015 for continuing pain showed a large Bankart fracture of the glenoid, a Hill-Sachs impaction fracture, a labral tear, tears of the bicep and supraspinatus tendons, and subcoracoid bursitis. Dr. Foshee noted appellant's medical history, which included right shoulder surgery performed on August 27, 2015 that was described as arthroscopy with reduction and fixation of the glenoid fracture, labral repair/capsulorrhaphy, superior labral tear from anterior to posterior repair, subacromial decompression, acromioplasty, biceps tenotomy, rotator cuff debridement, and chondroplasty. He related that on February 10, 2016 appellant informed him that he had returned to work. Dr. Foshee opined that the job-related incident as reported by appellant was the direct cause of his shoulder conditions.

In an August 8, 2016 decision, the Board affirmed OWCP's September 18, 2015 merit decision. The Board found that the medical evidence of record was insufficient to establish that appellant sustained a right shoulder condition causally related to the accepted April 30, 2015 employment incident. The Board also affirmed OWCP's January 19, 2016 nonmerit decision. The Board found that it properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

On January 27, 2017 appellant requested reconsideration before OWCP regarding its September 18, 2015 decision.

By decision dated March 28, 2017, OWCP denied modification of its September 18, 2015 decision. It found that Dr. Foshee's reports did not provide a sufficiently rationalized medical opinion explaining how the accepted April 30, 2015 work incident caused or contributed to appellant's right shoulder conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁵

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.⁶ 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 and place, and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish his right shoulder conditions were causally related to the accepted April 30, 2015 employment incident.

The Board affirmed the September 18, 2015 denial of appellant's claim by decision dated August 8, 2016. The Board's review of the previously submitted medical evidence of record is *res judicata* and therefore need not be addressed again in this decision.¹¹

OWCP continued to receive medical evidence following its September 18, 2015 denial of the claim.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *see supra* note 2 at § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ *See M.A.*, Docket No. 17-0352 (issued June 16, 2017).

In his June 8, 2015 progress note, Dr. Foshee related a history that appellant sustained a fractured right shoulder five weeks ago at work. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related.¹² To the extent that Dr. Foshee is providing his own opinion, he failed to provide a rationalized opinion based on objective findings regarding the causal relationship between appellant's fractured right shoulder and the accepted work incident.¹³

Dr. Reutlinger's June 9, 2015 progress note is similarly flawed. He related a history that appellant sustained a right shoulder injury six weeks ago at work and noted his diagnoses. Dr. Reutlinger described his clinical findings and recommended that appellant see a shoulder specialist for surgical repair. However, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's conditions were work related.¹⁴ Dr. Reutlinger failed to provide a rationalized opinion addressing the causal relationship between appellant's right shoulder conditions and the accepted employment incident.¹⁵

Dr. Foshee's March 7, 2016 report related a history of the accepted April 30, 2015 employment incident and noted right shoulder MRI scan diagnoses and appellant's August 27, 2015 right shoulder arthroscopic surgery. He opined that the work-related incident was the direct cause of appellant's shoulder injury. Although Dr. Foshee provided an opinion on causal relationship, the Board finds that he did not provide any medical rationale to support his opinion. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁶ Dr. Foshee did not adequately explain how the accepted work incident physiologically caused or aggravated appellant's right shoulder conditions for which he underwent surgery.¹⁷ The Board finds that the lack of medical rationale diminishes the probative value of Dr. Foshee's opinion.¹⁸

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish that his right shoulder condition was causally related to the accepted April 30, 2015 employment incident. Appellant has, therefore, not met his burden of proof.

¹² *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).

¹³ *See T.M.*, Docket No. 16-1456 (issued January 10, 2017); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *A.D.*, 58 ECAB 149 (2006) (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).

¹⁴ *Supra* note 13.

¹⁵ *Supra* note 14.

¹⁶ *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁷ *See M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her 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 failed to meet his burden of proof to establish a right shoulder condition causally related to the April 30, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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