

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

C.M., Appellant)	
)	
and)	Docket No. 18-0997
)	Issued: November 1, 2018
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. IMMIGRATION & CUSTOMS)	
ENFORCEMENT, Florence, AZ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 16, 2018 appellant filed a timely appeal from a March 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish injury due to the accepted October 4, 2016 employment incident.

FACTUAL HISTORY

On June 26, 2017 appellant, then a 39-year-old deportation officer, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury at work on October 4, 2016 during

¹ 5 U.S.C. § 8101 *et seq.*

a training session on new handcuffing techniques. He asserted that he felt pain and a burning sensation in his right shoulder when his right arm was being placed behind his back to be handcuffed. Appellant did not stop work.²

In a supporting statement, appellant indicated that, on October 4, 2016, he immediately told the trainer to stop when he felt the pain and burning sensation in his right shoulder as his right arm was being placed behind his back. He noted that he did not perform any more handcuffing exercises for the remainder of the class. Appellant asserted that he had not suffered any shoulder pain or injury prior to October 4, 2016.

By a July 18, 2017 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported October 4, 2016 employment incident caused or aggravated a specific medical condition. It requested that he complete and return an attached questionnaire which posed various questions regarding the nature of his claimed October 4, 2016 employment injury. OWCP afforded appellant 30 days to submit a response. Appellant did not respond within the allotted period.

By decision dated September 19, 2017, OWCP denied appellant's claim for an October 4, 2016 employment injury.³ It determined that he established an October 4, 2016 employment incident in the form of having his right arm being placed behind his back to be handcuffed. However, OWCP further found that appellant failed to establish the medical component of the fact of injury because he failed to submit a medical report containing an opinion that a specific medical condition was diagnosed in connection with the October 4, 2016 employment incident.

On February 2, 2018 appellant requested reconsideration of OWCP's September 19, 2017 decision. In a January 19, 2018 letter, he discussed his efforts to obtain medical evidence in support of his claim. Appellant indicated that he still had pain in his right shoulder from the October 4, 2016 incident when his right arm was "cranked" behind his back.

Appellant submitted a July 28, 2017 report from Dr. William D. Prickett, an attending orthopedic surgeon, who indicated that appellant presented for an initial visit with a chief complaint of right shoulder pain. He reported that the pain had been present for about 10 months since an injury occurring at work when he was practicing handcuffing technique and his right arm was cranked behind his back, resulting in a sharp right shoulder pain. Dr. Prickett discussed the findings of the physical examination he conducted on July 28, 2017, noting positive right shoulder impingement testing and motor/sensory testing with no focal isolated deficits. He diagnosed right shoulder possible superior labral tear and recommended appellant undergo a magnetic resonance

² Although he filed an occupational disease claim, appellant claimed that he sustained an employment injury due to an incident occurring in a single workday/work shift on October 4, 2016. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

³ OWCP noted that appellant filed an occupational disease claim, but found that he was actually claiming a traumatic employment injury due to an incident occurring in a single workday/work shift on October 4, 2016. *See supra* note 2.

imaging (MRI) scan of his right shoulder. Dr. Prickett indicated that appellant could continue to full-duty work.

The findings of an August 11, 2017 MRI scan of appellant's right shoulder contained an impression of superior labrum anterior and posterior (SLAP) tear involving the 12:00 and 5:00 o'clock positions without bony Bankart or Hill-Sachs lesion, intact mild superior subscapularis tendinitis, and moderate supraspinatus tendinosis with a superimposed nonretracted delaminated tear in the posterior/mid insertion and an area (10 times 5 millimeters) of partial-thickness undersurface fraying of insertional fibers.

In an August 14, 2017 report, Dr. Prickett indicated that appellant presented for follow-up of his right shoulder condition. He noted that, during the last visit, he felt that appellant's signs and symptoms were consistent with a possible labral tear. Appellant reported that he had sharp pain in the lateral aspect of his right shoulder and that his symptoms had been present since approximately 10 months prior when his right arm was cranked behind his back during handcuff training at work. Dr. Prickett indicated that appellant had a positive right shoulder impingement test and mild right rotator weakness upon physical examination. He discussed the August 11, 2017 MRI scan and diagnosed the right shoulder conditions of rotator cuff tendinitis with articular-sided partial-thickness supraspinatus tear and SLAP tear. Dr. Prickett described his application of a corticosteroid injection in appellant's right shoulder during the visit.

In a September 12, 2017 report, Dr. Prickett noted that, during the last visit, he felt that appellant's signs and symptoms were consistent with a SLAP tear and articular-sided partial-thickness supraspinatus tear of his right shoulder. He advised that appellant reported that his right shoulder pain had resolved apart from occasional very mild twinges of soreness at extremes of right shoulder motion. Appellant reported that his right shoulder injury began after a hyper internal rotation injury at work and that he currently was not taking any pain medication. Dr. Prickett detailed physical examination findings and diagnosed resolved right rotator cuff tendinitis with partial-thickness supraspinatus tear and superior labral tear. Appellant was at maximum medical improvement and could perform full-duty work without restrictions.

In a September 12, 2017 report, Dr. Prickett determined that appellant had two percent permanent impairment of his right upper extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*.⁴ At the beginning of the report, Dr. Prickett noted, "Patient sustained a work-related injury. The injury resulted in superior labral tear and partial-thickness rotator cuff tear."

On February 21, 2018 Dr. Prickett noted that, during the last visit, he felt that appellant's signs and symptoms were consistent with right rotator cuff tendinitis with articular-sided partial-thickness supraspinatus tear and superior labral tear. Appellant reported that his right shoulder symptoms had been present for approximately 16 months since an injury at work when his right arm was cranked behind him. Dr. Prickett indicated that appellant further reported that his right shoulder symptoms had returned and that, since the September 12, 2017 visit, he was involved in a nonwork-related motor vehicle accident for which he received treatment for neck problems. He diagnosed right rotator cuff tendinitis with articular-sided partial-thickness supraspinatus tear and

⁴ A.M.A., *Guides* (6th ed. 2009).

superior labral tear, as well as recent cervical spine injury after motor vehicle accident. Dr. Prickett indicated that appellant could continue with full-duty work.

On February 22, 2018 OWCP referred appellant's case to Dr. Todd Fellars, a Board-certified orthopedic surgeon and OWCP medical adviser. It requested that he review the medical evidence of record and provide an opinion regarding whether the October 4, 2016 employment incident was competent to cause the right shoulder conditions diagnosed by Dr. Prickett.

In a March 1, 2018 report, Dr. Fellars indicated that he did not believe that the diagnosed right shoulder conditions, including partial right rotator cuff tear and right SLAP tear, were consistent with the October 4, 2016 "injury mechanism." He noted that a SLAP tear typically occurs when there is forced hyperflexion, but that appellant's right arm underwent internal rotation behind his back on October 4, 2016. Dr. Fellars also noted that most of appellant's findings were degenerative in nature and indicated, "He had significant tendinosis and a partial[-]thickness tear as well as a degenerative SLAP tear. These conditions are typically a result of a degenerative process and not a single inciting incident." He also noted, "One can never say with 100 percent certainty that the claimed shoulder injury did not occur as reported. However, when the medical facts that are available are reviewed, it is not medically probable that the pathology identified on the MRI [scan] was caused by the reported incident."

By decision dated March 5, 2018, OWCP denied modification of its September 19, 2017 decision. It noted that appellant failed to submit a medical report containing a clear opinion that a specific diagnosed medical condition was due to the accepted October 4, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 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.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident

⁵ See *supra* note 1.

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 claimant.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish injury due to the accepted October 4, 2016 employment incident.

Appellant claimed that, during a handcuffing training session on October 4, 2016, he sustained a right shoulder injury when his right arm was cranked behind his back to be handcuffed. OWCP determined that he established an October 4, 2016 employment incident as described. It further found, however, that appellant failed to establish the medical component of fact of injury because he failed to submit a medical report containing an opinion that a medical condition was diagnosed in connection with the accepted October 4, 2016 employment incident.

The Board finds that OWCP properly accepted the occurrence of the October 4, 2016 employment incident in the form of appellant having his right arm cranked behind his back to be handcuffed. However, appellant has not submitted a rationalized medical report providing a clear opinion that a diagnosed medical condition was causally related to the October 4, 2016 employment incident.

Appellant submitted several reports from August 2017 and February 2017, in which Dr. Prickett, an attending physician, diagnosed appellant as having right shoulder rotator cuff tendinitis with articular-sided partial-thickness supraspinatus tear and superior labral tear (also known as SLAP tear). In these reports, Dr. Prickett noted that appellant had reported that his right shoulder pain had been present since an injury occurring at work when he was practicing handcuffing technique and his right arm was cranked behind his back, resulting in a sharp right shoulder pain.¹¹ The Board finds that the submission of these reports would not establish appellant's claim for the October 4, 2016 employment injury. The reports are of no probative

⁸ *Julie B. Hawkins*, 38 ECAB 393 (1987).

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹¹ The report provided no indication that appellant ever reported the actual date of the handcuffing incident to Dr. Pickett. However, in the July 28, 2017 initial visit report, appellant reported that his right shoulder pain had been present for about 10 months since the handcuffing incident occurred. In the July 28, 2017 report, Dr. Prickett diagnosed right shoulder with possible superior labral tear. He obtained a right shoulder MRI scan on August 11, 2017 which he later indicated confirmed his diagnosis of right rotator cuff tendinitis with articular-sided partial-thickness supraspinatus tear and superior labral tear.

value regarding this matter because Dr. Prickett did not provide a clear opinion relating appellant's right shoulder/arm condition to the accepted October 4, 2016 employment incident. Although Dr. Prickett reported that appellant associated his right shoulder problems to the handcuffing incident, he did not provide his own opinion in these reports on the cause of the observed right shoulder conditions. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹²

In a September 12, 2017 report, Dr. Prickett noted, "Patient sustained a work-related injury. The injury resulted in superior labral tear and partial-thickness rotator cuff tear." The Board notes that it is unclear whether this comment represents Dr. Prickett's own opinion on causal relationship or whether it simply memorializes appellant's belief that his right shoulder condition was employment related. Even if it constitutes Dr. Prickett's own opinion that appellant sustained an employment-related injury, it is of limited probative value due to its lack of supporting medical rationale. He did not provide any notable discussion of the October 4, 2016 employment incident or explain how it could have been competent to cause the diagnosed right shoulder conditions. Dr. Prickett did not treat appellant until more than nine months after the October 4, 2016 employment incident and he did not discuss any medical evidence that supported the occurrence of an employment injury on that date. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹³

In a March 1, 2018 report, Dr. Fellars, an OWCP medical adviser, indicated that he did not believe that the diagnosed right shoulder conditions, including partial right rotator cuff tear and right SLAP tear, were consistent with the October 4, 2016 "injury mechanism." He noted that a SLAP tear typically occurs when there is forced hyperflexion, but that appellant's right arm underwent internal rotation behind his back on October 4, 2016. Dr. Fellars posited that appellant's right shoulder tendinosis, partial right rotator cuff tear, and SLAP tear were likely due to a nonwork-related progressive degenerative process. Therefore the Board finds that as Dr. Fellars' opinion negates causal relationship between the accepted October 4, 2016 incident and the diagnosed conditions, it is insufficient to establish appellant's claim."

The Board thus finds that appellant has not met 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.

¹² See *Charles H. Tomaszewski*, 39 ECAB 461 (1988); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish injury due to the accepted October 4, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 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