

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

M.O., Appellant)	
)	
and)	Docket No. 18-1056
)	Issued: November 6, 2018
U.S. POSTAL SERVICE, AKRON HUB, Akron, OH, Employer)	
)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 30, 2018 appellant, through counsel, filed a timely appeal from a March 26, 2018 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 over the merits of this case.

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.*

ISSUE

The issue is whether appellant has established a left shoulder condition causally related to factors of his federal employment.

FACTUAL HISTORY

On March 11, 2016 appellant, then a 67-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained a left shoulder condition causally related to factors of his federal employment. He advised that he performed repetitive movements turning the steering wheel on a forklift. Appellant stopped work on March 6, 2016.

In a March 11, 2016 statement, appellant related that he started having difficulties with his shoulders in 2002, worse on the left since 2005. He attributed his condition to repetitively lifting mail trays and driving a forklift. Appellant indicated that he underwent surgery on his left rotator cuff in 2005.

Dr. Richard Gradisek, Board-certified in emergency medicine, treated appellant on March 6, 2016 for shoulder pain of an uncertain etiology. He diagnosed shoulder strain.

By development letter dated April 6, 2016, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed report from his attending physician addressing causal relationship between any diagnosed condition and the implicated employment factors. It afforded him 30 days to submit the necessary evidence.

In a report dated April 11, 2016, Dr. Michael R. Magoline, a Board-certified orthopedic surgeon, evaluated appellant for pain in his left shoulder. He noted that appellant had a history of a rotator cuff repair some years earlier and that his current complaints were due to a work injury. Dr. Magoline indicated that appellant experienced sharp pain with repetitive driving of a forklift. He diagnosed a complete left shoulder rotator cuff tear.

An April 27, 2016 magnetic resonance imaging (MRI) scan study of the left shoulder revealed complete tears of the supraspinatus and infraspinatus tendons with profound atrophy of the muscle, moderate tendinosis of the subscapularis tendon, and moderate glenohumeral osteoarthritis.

The employing establishment controverted the claim on May 2, 2016. It maintained that appellant had not complained of an injury while performing his work duties using the forklift or pushing or pulling equipment.

On May 2, 2016 Dr. Magoline diagnosed a complete rotator cuff tear of the left shoulder and recommended surgery.

In a May 4, 2016 duty status report (Form CA-17), Dr. Magoline diagnosed a complete rotator cuff tear and rotator cuff arthropathy and found that appellant was disabled from employment. In a separate May 4, 2016 attending physician's report (Form CA-20), he diagnosed a complete rotator cuff tear and rotator cuff arthropathy based on the results of an MRI scan study. Dr. Magoline noted that appellant had a history of rotator cuff surgery years earlier. He checked

a box marked “yes” that the condition was caused or aggravated by the described employment activity of a sharp pain in the left shoulder with repeated driving of a forklift. Dr. Magoline found that appellant was totally disabled.

By decision dated May 23, 2016, OWCP denied appellant’s occupational disease claim. It found that the medical evidence was insufficient to show that he sustained a diagnosed medical condition causally related to the accepted employment factors.

In a report dated May 25, 2016, Dr. Magoline indicated that appellant had been “managed for an extended period of time with regards to his work-related injury that [appellant] suffered to his left shoulder.” He related, “It is my opinion that [appellant’s] left shoulder problem [is] related to the rotator cuff tear that he suffered as [a] result of a work-related injury while working in his position. [Appellant] suffered a rotator cuff tear. The tear failed to heal after surgical intervention and [he] went on to develop rotator cuff arthropathy of the left shoulder as a direct result of this work-related injury.” Dr. Magoline requested authorization for a reverse total shoulder arthroplasty and attributed appellant’s need for surgery to his employment duties.

Appellant, on May 31, 2016, requested reconsideration.

On July 11, 2016 Dr. Magoline noted that appellant had previously experienced a left rotator cuff tear that was repaired by a prior surgery. Appellant resumed his usual employment. Dr. Magoline related that appellant reinjured his left shoulder repetitively lifting bins. Appellant’s shoulder did not improve with conservative management and he “continued to complain of left shoulder pain and [appellant] reinjured his rotator cuff and developed rotator cuff arthropathy of the left shoulder.” Dr. Magoline advised that, due to appellant’s repetitive work duties, he reinjured his rotator cuff and developed rotator cuff arthropathy. He recommended a reverse total shoulder arthroplasty. In a July 11, 2016 return to work, Dr. Magoline found that appellant was totally disabled from employment.

In an August 1, 2016 progress report, Dr. Magoline discussed appellant’s history of experiencing sharp pain while operating a forklift. He diagnosed rotator cuff arthropathy and hypertension.

Dr. Magoline, on August 2, 2016, advised, “It is my medical opinion that [appellant’s] left shoulder problems are related to the rotator cuff tear that he suffered as [a] result of repetitive turning of the steering wheel of the forklift in his work-related injury while working in his position. [He] suffered a rotator cuff tear. The tear failed to heal after surgical intervention and [he] went on to develop rotator cuff arthropathy of the left shoulder as a direct result of this work-related injury.” He opined that the requested reverse total shoulder arthroplasty was to treat the condition which “occurred as a direct result of continuous and repetitive rotation of the forklift steering wheel in his work as a federal employee.”

In a January 5, 2017 progress report, Dr. Magoline advised that appellant had a “clear cut case of rotator cuff arthropathy which was created and caused by [appellant’s] original work[-]related rotator cuff tear.” He advised that the tear failed to heal and resulted in arthritis and rotator cuff arthropathy, which he advised should be an accepted condition.

On January 19, 2017 Dr. Magoline requested that OWCP expand the acceptance of appellant's claim to include rotator cuff arthropathy of the left shoulder.

On June 7, 2017 appellant, through counsel, requested reconsideration.

In a January 18, 2018 CA-17 form, Dr. Magoline found that appellant was totally disabled from employment.³

By decision dated March 26, 2018, OWCP denied modification of its May 23, 2016 decision. It found that the reports from Dr. Magoline were insufficient to show that the accepted work factors caused the rotator cuff tear and rotator cuff arthropathy.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

The medical evidence 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 employee, must be one of reasonable certainty, and must be supported by

³ Dr. Magoline submitted progress reports dated August 28, 2017 and January 11, 2018 diagnosing rotator cuff arthropathy and a complete left shoulder rotator cuff tear.

⁴ *Supra* note 2.

⁵ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a left shoulder condition causally related to the accepted factors of his federal employment.

On March 6, 2016 Dr. Gradisek evaluated appellant for shoulder pain of unknown etiology and diagnosed shoulder strain. As he did not relate a diagnosed condition to the identified work factors, his opinion is of no probative value.¹¹

On April 11, 2016 Dr. Magoline discussed appellant's history of a prior rotator cuff tear years prior and noted that appellant currently complained of a work injury. Appellant related that he experienced sharp pain while driving a forklift. Dr. Magoline diagnosed a complete left shoulder rotator cuff tear. While he indicated that appellant related that he had a work injury and complained of pain driving a forklift, he had not made an independent finding regarding causation. A physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgment.¹²

Dr. Magoline, in a May 2, 2016 report, diagnosed a complete left rotator cuff tear and recommended surgery. He did not, however, address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³

In a Form CA-20 dated May 4, 2016, Dr. Magoline diagnosed a complete rotator cuff tear and rotator cuff arthropathy. He checked a box marked "yes" indicating that the condition was caused or aggravated by the described employment activity of a sharp pain in the left shoulder with repeated driving of a forklift. In a May 4, 2016 Form CA-17, Dr. Magoline opined that appellant was totally disabled from work. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁴

Dr. Magoline, on May 25, 2016, attributed appellant's current condition to a prior employment-related rotator cuff tear. He noted that the tear failed to properly heal after surgery and he developed rotator cuff arthropathy due to the work injury. Dr. Magoline recommended a reverse total shoulder arthroplasty. It is unclear, however, whether he attributed appellant's current

¹⁰ See *J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Earl David Seale*, 49 ECAB 152 (1997).

¹³ See *supra* note 11.

¹⁴ See *Deborah L. Beatty*, 54 ECAB 3234 (2003).

left shoulder condition to the factors of federal employment he identified as causing his condition, turning a steering wheel on a forklift and lifting trays, or to a preexisting rotator cuff tear repaired by surgery. The Board has held that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and employment factors.¹⁵ Dr. Magoline did not specify whether appellant's current complaints resulted from a preexisting condition or the identified work factors and thus his reports are of limited probative value.¹⁶

Dr. Magoline, on July 11, 2016, discussed appellant's history of a prior rotator cuff tear of the left shoulder operated on by another physician. He advised that appellant returned to his employment duties after the surgery, but again injured his shoulder lifting bins. Appellant's condition progressed and he developed left shoulder rotator cuff arthropathy. Dr. Magoline opined that appellant was totally disabled from employment and recommended surgery. He did not, however, explain why factors of appellant's federal employment caused his left shoulder injury. Medical opinions unsupported by rationale are of little probative value.¹⁷ Such rationale is particularly necessary given appellant's history of a preexisting left shoulder condition.¹⁸

In an August 1, 2016 progress report, Dr. Magoline again noted that appellant had experienced sharp pain operating a forklift and diagnosed rotator cuff arthropathy. On August 2, 2016 he attributed appellant's left shoulder condition to a rotator cuff tear sustained from repetitive turning of a steering wheel. Dr. Magoline advised that the tear did not heal following surgery. He related that appellant developed left shoulder rotator cuff arthropathy of the left shoulder as a consequence of the prior employment injury. Dr. Magoline attributed appellant's current condition to an employment-related rotator cuff tear for which he underwent surgery. The record does not indicate that OWCP accepted his 2005 left rotator cuff repair as employment related. Medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history of injury are of little probative value.¹⁹

On January 5, 2017 progress report, Dr. Magoline found that appellant's original employment injury of a rotator cuff tear caused his rotator cuff arthropathy, noting that the tear did not properly heal and resulted in arthritis and arthropathy. The issue, however, is whether appellant sustained an employment-related left shoulder condition. He has the burden of proof to establish that he sustained a rotator cuff tear as a result of the identified work factor of repetitive turning of a steering wheel on a forklift through the submission of rationalized medical evidence based on a

¹⁵ See *William Nimitz, Jr.*, 30 ECAB 567 (1979).

¹⁶ See *C.K.*, Docket No. 17-1853 (issued August 27, 2018).

¹⁷ See *M.P.*, Docket No. 14-1289 (issued September 26, 2014).

¹⁸ See *S.F.*, Docket No. 17-1427 (issued May 16, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017).

¹⁹ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018).

complete and accurate factual and medical history.²⁰ Appellant has not submitted such evidence and thus 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.

CONCLUSION

The Board finds that appellant has not established a left shoulder condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 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

²⁰ *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).