

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

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**L.P., Appellant**

**and**

**DEPARTMENT OF THE ARMY, PINE BLUFF  
ARSENAL, Pine Bluff, AK, Employer**

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**Docket No. 18-0928  
Issued: October 15, 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 April 3, 2018 appellant filed a timely appeal from a December 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 causally related to an accepted July 31, 2017 employment incident.

**FACTUAL HISTORY**

On September 14, 2017 appellant, then a 64-year-old munitions inspector, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury while at work on July 31, 2017 when he lifted a lid over his head and placed it on a round pallet. He asserted that he experienced sharp

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

pain in his right shoulder which radiated all the way down to his right elbow. Appellant did not stop work, but began performing limited-duty work shortly thereafter.

In a September 18, 2017 development letter, OWCP advised appellant that he had not submitted a report signed by a physician which contained a diagnosis and a rationalized medical opinion as to how the reported July 31, 2017 employment incident resulted in the diagnosis. It requested that he submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported July 31, 2017 employment incident caused or aggravated a specific medical condition. OWCP afforded appellant 30 days to submit a response.

Appellant submitted an August 2, 2017 report from Dr. Arthur C. Okwesili, an attending Board-certified preventive medicine physician, who indicated that appellant presented that day for evaluation of right shoulder pain that began at work the prior day after lifting ammunition lids above shoulder height and placing them on top of a box.<sup>2</sup> Dr. Okwesili noted that, upon physical examination of the right shoulder, appellant did not have joint instability or pain upon palpation, but he did have pain upon range of motion testing of the shoulder. He diagnosed right shoulder pain and released appellant to limited-duty work.

In a September 5, 2017 report, Joseph L. Steele, an attending physician assistant, noted appellant's continued complaints of right shoulder pain, diagnosed right shoulder pain, and recommended that appellant continue working without using his right arm. A September 13, 2017 referral form also noted his diagnosis of right upper arm/shoulder pain.

In a September 13, 2017 report, Dr. Craig Anderson, an attending Board-certified occupational medicine physician, noted that appellant reported that appellant's right shoulder condition had not changed. He diagnosed right upper arm pain and recommended limited-duty work. On September 28, 2017 Dr. Anderson released appellant to work without limitations.

In an attending physician's report (Form CA-20) dated October 11, 2017, Dr. Anderson listed the history of injury as "pain in shoulder while lifting [ammunition] can lids," noted that appellant's examination was limited due to pain, and diagnosed right shoulder pain. He advised that appellant's medical history and x-ray test results demonstrated preexisting degenerative changes of the right shoulder.<sup>3</sup> In response to a question regarding whether the observed condition was related to an employment activity, Dr. Anderson noted, "Unclear at this time -- awaiting referral." He indicated that appellant could perform work that did not require lifting his right arm.

Dr. Anderson referred appellant to Dr. Stephen A. Hudson, a Board-certified orthopedic surgeon, and on October 12, 2017 Dr. Hudson noted that appellant reported suffering a right shoulder injury at work on July 31, 2017 when he lifted some lids over his head and he heard and felt a pop in his right shoulder. Dr. Hudson indicated that appellant's right shoulder x-rays showed

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<sup>2</sup> The Board notes that the date of injury noted on appellant's traumatic injury claim form was July 31, 2017, not August 1, 2017.

<sup>3</sup> The findings of September 28, 2017 x-ray testing of appellant's right shoulder contained an impression of degenerative changes in the right acromioclavicular joint with no signs of fractures or dislocations.

mild arthritic changes of the acromioclavicular joint with no signs of fracture/dislocation, but expressed his concern that appellant might have a rotator cuff tear of his right shoulder due to the weakness exhibited upon range of motion testing and the history of hearing and feeling a pop in his right shoulder. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan of his right shoulder in order to evaluate his right rotator cuff. Dr. Hudson diagnosed right shoulder pain with possible rotator cuff tear.

By decision dated October 24, 2017, OWCP denied appellant's claim. It determined that he had established a July 31, 2017 employment incident in the form of lifting an ammunition lid over his head and placing it on top of a pallet. However, OWCP found that appellant had not established the medical aspect of the fact of injury because he failed to submit a medical report containing a diagnosis of a specific medical condition related to the July 31, 2017 employment incident. It indicated that some of the submitted medical reports contained a diagnosis of pain, but noted that pain was a symptom and was not a diagnosis of a medical condition. Although one report referenced a possible right rotator cuff tear, it did not contain a firm diagnosis of such a medical condition.

On November 30, 2017 appellant requested reconsideration of OWCP's October 24, 2017 decision. In accompanying statements, he asserted that he sustained an injury within the scope of his work as a munitions inspector.

Appellant on October 12, 2017 submitted a duty status report (Form CA-17) from Dr. Hudson who listed the date of injury as July 31, 2017 and the history of injury as "installing pallet tops on pallets of projectiles." Dr. Hudson diagnosed right shoulder pain and indicated that appellant could work in a full-time job that did not require reaching or lifting.<sup>4</sup>

In an October 20, 2017 Form CA-20, Dr. Hudson listed the date of injury as July 31, 2017 and the history of injury as "lifting lids overhead when [appellant] heard and felt a pop in his [right] shoulder." In the portion of the form for providing a diagnosis, he indicated, "MRI [scan] to confirm [rotator cuff] tear." Dr. Hudson found that, as of October 12, 2017, appellant could perform work which did not require lifting or overhead activities with his right arm.

By decision dated December 8, 2017, OWCP denied modification of its October 24, 2017 decision. It determined that appellant had not established the medical aspect of the fact of injury because he failed to submit a medical report containing a diagnosis of a medical condition related to the accepted July 31, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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

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<sup>4</sup> Appellant also resubmitted copies of Dr. Hudson's October 12, 2017 narrative report. One of the copies detailing the October 12, 2017 visit was formatted differently than the previously submitted document, but contained the same information in a different order.

<sup>5</sup> See *supra* note 1.

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.<sup>6</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

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.<sup>8</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury due to the accepted July 31, 2017 employment incident.

Appellant submitted an August 2, 2017 report from Dr. Okwesili who indicated that appellant presented for evaluation of right shoulder pain that began at work on August 1, 2017 after lifting an ammunition lid. Dr. Okwesili noted that, upon physical examination of the right shoulder, appellant did not have joint instability or pain upon palpation, but he did have pain upon range of motion testing of the shoulder. He diagnosed right shoulder pain and released appellant to limited-duty work. The Board finds that the submission of this report does not establish appellant's claim for a July 31, 2017 employment injury, because Dr. Okwesili did not provide a clear diagnosis of appellant's right arm condition or otherwise provide a rationalized medical opinion relating a specific diagnosed medical condition to the accepted July 31, 2017 employment incident. The Board has consistently held that pain alone is a symptom and not a compensable

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

<sup>7</sup> *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).

<sup>8</sup> *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

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

medical diagnosis.<sup>11</sup> Moreover, 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.<sup>12</sup>

In a September 13, 2017 report, Dr. Anderson diagnosed right upper arm pain and recommended limited-duty work. On September 28, 2017 he released appellant to work without limitations. In an October 11, 2017 attending physician's report, Dr. Anderson listed the history of injury as "pain in shoulder while lifting [ammunition] can lids," and diagnosed right shoulder pain. In response to a question regarding whether the observed condition was related to an employment activity, he noted, "Unclear at this time -- awaiting referral." Dr. Anderson's reports also are of no probative value with respect to appellant's claim for a July 31, 2017 employment injury because he failed to provide a clear diagnosis of appellant's right arm condition or a rationalized medical opinion relating a specific diagnosed medical condition to the accepted July 31, 2017 employment incident.<sup>13</sup>

In an October 12, 2017 report, Dr. Hudson noted that appellant reported suffering a right shoulder injury at work on July 31, 2017 when he lifted a lid over his head and he heard and felt a pop in his right shoulder. He expressed his concern that appellant might have a rotator cuff tear of his right shoulder due to the weakness exhibited upon range of motion testing and the history of hearing and feeling a pop in his right shoulder. Dr. Hudson recommended that appellant undergo a right shoulder MRI scan to evaluate his right rotator cuff and he diagnosed right shoulder pain with possible rotator cuff tear. In an October 12, 2017 form report, he described the July 31, 2017 employment incident as reported by appellant and diagnosed right shoulder pain. In an October 20, 2017 form report, Dr. Hudson again described the July 31, 2017 employment incident. In the portion of the form for providing a diagnosis, he indicated, "MRI [scan] to confirm [rotator cuff] tear."

The Board finds that, although Dr. Hudson suspected that appellant might have a right rotator cuff tear, he did not provide a clear diagnosis of such a condition supported by diagnostic testing. Dr. Hudson diagnosed right shoulder pain. However, the Board has held that pain alone is a symptom, not a specific compensable diagnosis.<sup>14</sup> Thus Dr. Hudson's reports are insufficient to establish a July 31, 2017 employment injury given their lack of a clear diagnosis of appellant's right arm condition.<sup>15</sup>

In a September 5, 2017 report, Mr. Steele, an attending physician assistant, noted appellant's continued complaints of right shoulder pain, diagnosed right shoulder pain, and recommended that appellant continue working without using his right arm. In a September 13,

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<sup>11</sup> *C.L.*, Docket No. 18-0363 (issued July 19, 2018); *B.P.*, Docket No. 12-1345 (issued November 13, 2012).

<sup>12</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>13</sup> See *supra* notes 11 and 12.

<sup>14</sup> See *supra* note 11.

<sup>15</sup> *D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining the relationship between a given employment activity and a diagnosed medical condition).

2017 referral form, he repeated his diagnosis of right upper arm/shoulder pain. The Board has held, however, that physician assistants are not considered physicians under FECA. Thus, their reports have no probative value.<sup>16</sup>

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 injury due to the accepted July 31, 2017 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 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

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<sup>16</sup> *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-829 (issued August 20, 2013). See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).