United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 18-0950**
	)	**Issued: October 23, 2018**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, St. Albans, VT, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2018 appellant filed a timely appeal from October 10, 2017 and January 23, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 a right shoulder condition due to the accepted factors of his federal employment.

FACTUAL HISTORY

On June 9, 2017 appellant, then a 42-year-old supervisory customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he sustained right shoulder

[1] 5 U.S.C. § 8101 *et seq.*

pain due to engaging in a baton training demonstration on November 15, 2016 as well as engaging in training activities on later occasions.[2] On June 26, 2017 he also filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury at work on June 8, 2017. Appellant asserted that he began to feel right shoulder pain after pushing and lifting barricades that were flipped over and interlocked, and that he had sustained the employment-related conditions of right shoulder tendinitis and subacromial bursitis. He did not stop work.

Appellant submitted an attending physician's report (Form CA-20), dated July 20, 2017, from Dr. Jeff Haddock, an attending Board-certified family practitioner. Dr. Haddock listed the date of injury as June 8, 2017 and the history of injury as modest right shoulder pain for more than six months with escalation two months ago. He diagnosed overuse syndrome, right biceps tendinitis, and subacromial bursitis, and checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "Minor injury exacerbated by repeated heavy use." Dr. Haddock did not find any period of disability.

In an August 18, 2017 attending physician's report, Dr. Haddock listed the date of injury as June 8, 2017 and the history of injury as escalating right shoulder pain with use/overuse. He diagnosed right shoulder pain and checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "Overuse/repetitive use injury." Dr. Haddock again did not find any period of disability.[3]

In a September 8, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence, including a physician's opinion supported by a medical explanation of the causal relationship between the claimed condition and the implicated employment factor or factors. It requested that he complete and return an attached questionnaire which posed various questions regarding the employment factor or factors he believed had caused or aggravated his claimed condition. OWCP requested that appellant clarify whether he was claiming a traumatic injury or occupational injury.[4] It afforded him 30 days to submit the requested evidence.

In his response, received on September 25, 2017, appellant asserted that he sustained an occupational condition of his right shoulder due to engaging in various work activities, including baton training, defensive tactics, control arrest techniques, and firearms training, as well as

[2] Appellant indicated that he noticed right shoulder soreness on November 15, 2016. He advised that he first realized on June 2, 2017 that his claimed condition was caused or aggravated by his federal employment.

[3] Appellant also submitted a physical therapy report produced on June 28, 2017 by Caitlin Thornton, an attending physical therapist. Ms. Thornton indicated that appellant reported first experiencing right shoulder pain in February 2017.

[4] OWCP informed appellant that 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 work shift. *See* 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

removing range barricades. He advised that he first noticed having right shoulder pain on November 15, 2016 after he had been engaged in firearms training for almost two weeks.[5]

Appellant submitted a June 15, 2017 authorization for examination and/or treatment form (Form CA-16), signed by the Assistant Director E.C. on June 9, 2017, in which Dr. Haddock listed the history of injury as progressive right anterior shoulder pain and diagnosed right biceps tendinitis and subacromial bursitis. Dr. Haddock checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "repeated use/overuse injury." He indicated that appellant was able to resume regular work on June 15, 2017.[6]

In an August 18, 2017 report, Dr. Haddock noted that appellant presented for follow-up "on his right shoulder overuse injury." Appellant reported that he had "distant injuries, but doesn't quite remember the exact nature of it." Dr. Haddock advised that the apprehension test of appellant's right shoulder was mildly positive and he diagnosed right shoulder pain, noting that there was some concern about instability of the right shoulder.

In a September 15, 2017 attending physician's report and a September 15, 2017 narrative report, Edwin Cowey, an attending physician assistant, noted appellant's complaints of right shoulder pain and diagnosed right shoulder adhesive capsulitis.

By decision dated October 10, 2017, OWCP denied appellant's claim, finding that he had effectively claimed an occupational condition of his right shoulder because he had implicated federal employment factors occurring over the course of more than one workday/work shift. It accepted employment factors in the form of engaging in baton training, defensive tactics, control arrest techniques, and firearms training, as well as removing range barricades. OWCP further found, however, that appellant failed to submit rationalized medical evidence sufficient to establish a diagnosed condition causally related to the accepted employment factors.

On December 22, 2017 appellant requested reconsideration of OWCP's October 10, 2017 decision.

Appellant submitted the findings of September 15, 2017 right shoulder x-rays which contained an impression of mild acromioclavicular joint degenerative changes with no evidence of fracture or dislocation.

In a November 7, 2017 report, Dr. Haddock advised that appellant returned for follow-up of "his right shoulder worker[s'] compensation injury." He noted that it was clear that appellant's right shoulder injury was an overuse injury, due to chronic use rather than a single event. Dr. Haddock noted, "There is no other reasonable explanation for [appellant's] symptoms than the combination of repetitive use during his firearm and 'less-lethal' teaching sessions mixed with prolonged periods of computer use with suboptimal ergonomics." He diagnosed right shoulder

[5] Appellant noticed increased right shoulder pain after engaging in firearms training on June 2, 2017 and handling barricades on June 8, 2017.

[6] In a June 15, 2017 narrative report, Dr. Haddock reported physical examination findings and diagnosed right shoulder pain. It is noted that portions of the report are redacted out.

adhesive capsulitis which he felt was almost certainly due to appellant's earlier subacromial bursitis and biceps tendinitis. Dr. Haddock indicated, "These injuries, in turn, are almost certainly due to cumulative repetitive and poor ergonomics in the workplace." He recommended that appellant undergo a magnetic resonance imaging (MRI) scan to confirm his diagnosis and rule out other pathologies such as labral tear or rotator cuff tear.

In a November 7, 2017 attending physician's report, Dr. Haddock listed the date of injury as June 8, 2017 and the history of injury as "escalating right shoulder pain with firearm/less lethal training, exacerbated by prolonged computer use." He diagnosed right biceps tendinitis, subacromial bursitis, and adhesive capsulitis, and checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "repetitive use injury from firearm/less lethal training, exacerbated by prolonged computer work/poor ergonomics." Again, Dr. Haddock did not find any period of disability.

A November 8, 2017 MRI scan of appellant's right shoulder contained an impression of fluid undermining the anterior superior chondral labral junction favored as representing a sublabral foramen over an anterior superior labral tear, moderate acromioclavicular joint degenerative changes with subchondral cystic changes in the distal clavicle, and mild tendinosis of the supraspinatus and infraspinatus with cystic changes at the insertion of the infraspinatus. There was no discrete rotator cuff tearing.

In a November 17, 2017 attending physician's report and a November 17, 2017 narrative report, Mr. Cowey diagnosed right shoulder adhesive capsulitis.

By decision dated January 23, 2018, OWCP denied modification of its October 10, 2017 decision. It determined that appellant failed to submit rationalized medical evidence sufficient to establish a diagnosed condition causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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 the 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.[8] To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.[9] An employee must also establish that such event, incident, or exposure caused an injury.[10] These are the essential elements of each and every

[7] *Supra* note 1.

[8] 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

[10] *Id.*

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[11]

OWCP's regulations define the term "[o]ccupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or work shift.[12] To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[13]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.[14] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 established employment factors.[15]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition due to factors of his federal employment.

Appellant claimed an occupational condition of his right shoulder and OWCP accepted his claimed employment factors in the form of engaging in baton training, defensive tactics, control arrest techniques, and shooting drills, as well as removing range barricades. The Board finds, however, that he failed to submit rationalized medical evidence sufficient to establish a diagnosed condition causally related to the accepted employment factors.

Appellant submitted a June 15, 2017 authorization for examination and/or treatment form (Form CA-16) in which Dr. Haddock listed the history of injury as progressive right anterior shoulder pain and diagnosed right biceps tendinitis and subacromial bursitis. Dr. Haddock checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "repeated use/overuse injury." He indicated that appellant was able to resume regular work on June 15, 2017.

[11] *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

[12] 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

[13] *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[14] *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

[15] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

The Board finds that this report is of limited probative value with respect to appellant's claim for an occupational right shoulder injury caused by his work duties. The Board has held that when a physician's opinion on causal relationship consists only checked a box marked "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[16] Dr. Haddock did not provide any description of appellant's work duties, nor did he provide medical rationale explaining how the diagnosed conditions could have been caused or aggravated by specific employment factors. As he did no more than check a box marked "Yes" to a form question, Dr. Haddock's opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof.[17]

Dr. Haddock's July 20 and August 18, 2017 attending physician's reports have limited probative value on appellant's occupational claim for similar reasons. In the July 20, 2017 report, he listed the date of injury as June 8, 2017 and the history of injury as modest right shoulder pain for more than six months with escalation two months ago. Dr. Haddock diagnosed overuse syndrome, right biceps tendinitis, and subacromial bursitis, and checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "Minor injury exacerbated by repeated heavy use." In the August 18, 2017 report, he listed the date of injury as June 8, 2017 and the history of injury as escalating right shoulder pain with use/overuse. Dr. Haddock diagnosed right shoulder pain and checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "Overuse/repetitive use injury." However, he again failed to provide medical rationale in support of his opinion on causal relationship which was only effectuated by box checks.[18] While he generally referred to "overuse" of appellant's right shoulder, Dr. Haddock did not provide any description of appellant's specific work duties or explain how they could have caused or aggravated the diagnosed conditions.

In a November 7, 2017 report, Dr. Haddock opined that appellant's right shoulder condition was due to chronic use rather than a single event and noted, "There is no other reasonable explanation for [appellant's] symptoms than the combination of repetitive use during his firearm and 'less-lethal' teaching sessions mixed with prolonged periods of computer use with suboptimal ergonomics." He diagnosed right shoulder adhesive capsulitis which he felt was almost certainly due to appellant's earlier subacromial bursitis and biceps tendinitis. Dr. Haddock indicated,

[16] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[17] Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

[18] *See supra* note 16. In a June 15, 2017 narrative report, Dr. Haddock diagnosed right shoulder pain and, in an August 18, 2017 narrative report, he also diagnosed right shoulder pain, noting that there was some concern about instability of the right shoulder. These reports contain no opinion on the cause of the diagnosed conditions and therefore have no probative value on the underlying issue of this case. 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. *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

"These injuries, in turn, are almost certainly due to cumulative repetitive and poor ergonomics in the workplace." While he generally mentioned accepted employment factors, including firearms and less lethal forms of training, he did not provide any detailed discussion of the frequency with which appellant performed work tasks or describe the medical process through which they would have been responsible for the diagnosed right shoulder conditions. In addition, Dr. Haddock did not provide any substantive discussion of objective findings on physical examination and diagnostic testing, or explain how they supported his opinion on causal relationship. Given this lack of medical rationale, his report is of limited probative value with respect to appellant's claim for an occupational right shoulder condition. 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.[19]

A November 7, 2017 attending physician's report of Dr. Haddock contains similar deficiencies. Dr. Haddock listed the date of injury as June 8, 2017 and the history of injury as "escalating right shoulder pain with firearm/less lethal training, exacerbated by prolonged computer use." He diagnosed right biceps tendinitis, subacromial bursitis, and adhesive capsulitis, and checked a box marked "Yes" to denote that the diagnosed conditions were related to appellant's employment, adding the notation, "repetitive use injury from firearm/less lethal training, exacerbated by prolonged computer work/poor ergonomics." However, Dr. Haddock again failed to provide any detailed discussion of the frequency with which appellant performed work tasks that have been accepted as employment factors or to provide medical rationale explaining how the diagnosed right shoulder condition was related to such accepted factors.[20]

Appellant also submitted a June 28, 2017 report produced by Ms. Thornton, an attending physical therapist, and September 15 and November 17, 2017 reports of Mr. Cowey, an attending physician assistant. However, these reports are of no probative value on establishing appellant's occupational condition claim because, under FECA, the report of a nonphysician, including a physical therapist or physician assistant, does not constitute probative medical evidence.[21]

[19] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017). The Board further notes that Dr. Haddock's November 7, 2017 report is of limited probative value for the further reason that it is not based on a complete and accurate factual history. Dr. Haddock asserted that appellant's condition was partially related to factors that have not been accepted as employment factors, including extensive computer use and a nonergonomic work setting. *See E.R.*, Docket No. 15-1046 (issued November 12, 2015) (finding that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history).

[20] *See 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).

[21] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants are not considered physicians under FECA); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists are not considered physicians under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

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 condition due to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2018 and October 10, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 23, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board