



## **FACTUAL HISTORY**

On July 1, 2015 appellant, then a 67-year-old project leader, filed a traumatic injury claim (Form CA-1) alleging that on June 14, 2015, while in an authorized travel status, he injured his right shoulder when a passenger on a shuttle train lost his balance and fell on him. No evidence was provided with the claim.

By development letter dated July 13, 2015, OWCP informed appellant of the type of factual and medical evidence needed to establish his claim. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a copy of his travel itinerary. In an August 4, 2015 statement, the employing establishment confirmed appellant's authorized travel status and that he was on the most direct route from his last official duty point to the next expected official duty point when the incident occurred.

By decision dated August 19, 2015, OWCP denied the claim as the medical component of fact of injury had not been established. Specifically, appellant had not submitted medical evidence of a diagnosed medical condition causally related to the accepted June 14, 2015 employment incident.

On September 4, 2015 OWCP received appellant's September 1, 2015 request for reconsideration along with a September 1, 2015 letter from appellant explaining why he did not seek immediate medical treatment. A September 1, 2015 patient registration and medical script was also received.

In a September 1, 2015 attending physician's report (Form CA-20), Dr. John Specca, an orthopedic surgeon, diagnosed shoulder impingement. He opined, by checking a box marked "yes," that the diagnosed condition was caused or aggravated by an employment injury as "described in report." Dr. Specca also reported that appellant had a prior workers' compensation injury to the same shoulder.

A September 1, 2015 x-ray report of appellant's right shoulder indicated acromioclavicular (AC) joint degenerative findings and a small inferior acromial enthesophyte which could be associated with rotator cuff pathology and/or clinical diagnosis of impingement.

By decision dated October 22, 2015, OWCP modified the previous decision to reflect that appellant had submitted medical evidence which provided a diagnosis of his alleged right shoulder condition. However, it denied the claim as appellant had not submitted medical evidence substantiating that the diagnosed condition was causally related to the accepted employment incident.

In a December 7, 2015 letter, appellant requested reconsideration. He also provided additional details surrounding the circumstances of his injury and the difficulty in obtaining treatment.

A December 4, 2015 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed a large rotator cuff tear; probable superior labral tear from anterior to posterior (SLAP) tear; AC joint arthrosis and synovial hypertrophy; and biceps tendinosis.

By decision dated January 4, 2016, OWCP denied modification of its prior decision. It found that appellant had not submitted medical evidence which demonstrates that the diagnosed medical condition, a right rotator cuff tear, was caused or aggravated by the June 14, 2015 work incident.

On November 22, 2016 appellant requested reconsideration.

In a September 1, 2015 report, Dr. Specca noted the history of the June 14, 2015 employment incident on the train and provided examination findings of the right shoulder. He assessed partial tear of right rotator cuff tendon.

In a November 18, 2016 report, Dr. Specca reviewed appellant's old chart and the December 2015 MRI scan of both shoulders. He noted that there was no evidence of fatty degeneration of the right shoulder and that the opposite (left) shoulder appeared to have had a previous rotator cuff repair, which appellant confirmed. Dr. Specca noted that the MRI scan showed a large right rotator cuff tear, but opined that a new MRI scan was needed to better evaluate the current shoulder condition.

By decision dated December 1, 2016, OWCP denied modification of its previous decision. It found that the medical evidence of record was insufficient to establish how the June 14, 2015 employment incident contributed by direct cause, aggravation, acceleration, or precipitation to the diagnosed shoulder condition.

On December 20, 2016 appellant again requested reconsideration.

In a December 13, 2016 report, Dr. Specca repeated the history of the June 14, 2015 employment incident. He noted that, when he initially saw appellant on September 1, 2015, he felt that appellant had at least a partial tear of the rotator cuff. A right shoulder MRI scan was performed which revealed a completely torn rotator cuff. Dr. Specca noted that, on further investigation of old x-rays, appellant has had previous tears of the rotator cuff in both shoulders in 2007, but only the left shoulder had been surgically repaired. He indicated that subsequent MRI scans on the right shoulder have shown that the rotator cuff was consistently torn and retracting more. Dr. Specca noted that, when he saw appellant on November 18, 2016, appellant had indicated that the pain had not improved since the previous visit 14 months prior. He opined that there was a direct causal relationship between appellant's complaints of shoulder pain and the injury on the train. Dr. Specca indicated that appellant had a preexisting tear of the rotator cuff and that the mechanism of injury and appellant's description of pain was consistent to produce a painful shoulder.

By decision dated January 19, 2017, OWCP denied modification of its prior decision as Dr. Specca's December 13, 2016 report was not of sufficient probative value to modify the December 1, 2016 decision.

On April 19, 2017 appellant again requested reconsideration. In an April 14, 2017 statement, he argued that Dr. Specca's December 13, 2016 report was sufficient to establish his claim. Appellant noted that OWCP did not request clarification or additional information from Dr. Specca regarding his opinion on causal relationship. He also advised that his preexisting right rotator cuff tear was an OWCP approved work-related injury under OWCP File No. xxxxxx461 and requested that OWCP reopen his prior claim if the current claim was not approved.

A December 30, 2016 MRI scan of appellant's right shoulder revealed a large full-thickness tear of the supraspinatus tendon with further degeneration and/or tear involving the anterior fibers adjacent to the rotator cuff interval and a SLAP tear with involvement of the biceps labral complex.

By decision dated July 5, 2017, OWCP denied modification of its previous decision as the medical evidence of record was still insufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>4</sup> including that he or she is an employee of the United States within the meaning of FECA and that the claim was filed within the applicable time limitation.<sup>5</sup> The employee must also establish that he or she sustained an injury in the performance of duty as alleged, and that disability from work, if any, was causally related to the employment injury.<sup>6</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 and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007).

<sup>5</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>6</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(ee). OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>7</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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 employee.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his right shoulder conditions were causally related to the accepted June 14, 2015 employment incident.

The reports from Dr. Speca do not include a discussion of a causal relationship, if any, between appellant's diagnosed conditions and the June 14, 2015 employment incident or offer a conclusion on causal relationship without the benefit of any medical rationale. In his September 1, 2015 report, Dr. Speca noted the history of the June 14, 2015 employment incident and assessed partial tear of the right rotator cuff tendon. Dr. Speca, however, did not offer an opinion on the diagnosed right shoulder condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value.<sup>11</sup> Dr. Speca completed a Form CA-20 the same day and diagnosed right shoulder impingement. He also reported that appellant had a prior workers' compensation injury in the same shoulder. While Dr. Speca opined, by checking a box marked "yes," that appellant's right shoulder condition was caused or aggravated by the employment activity, he provided no further explanation as to how such causal relationship existed. The Board has held that a physician's form report which merely checks a box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.<sup>12</sup> A well-rationalized opinion is particularly warranted, as is the case here, when there is a history of a preexisting condition.<sup>13</sup>

In his December 13, 2016 report, Dr. Speca opined, without explanation, that there was a direct causal relationship between appellant's complaints of shoulder pain and the injury on the train. He indicated that appellant had a preexisting tear of the rotator cuff and that appellant's mechanism of injury and appellant's description of pain was consistent to produce a painful shoulder. However this opinion merely related appellant's painful shoulder to the accepted June 14, 2015 employment incident. Pain is a description of a symptom rather than a firm diagnosis of a compensable medical condition.<sup>14</sup>

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<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> *See M.S.*, Docket No. 16-1907 (issued August 29, 2017).

<sup>12</sup> *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>13</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>14</sup> The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

Dr. Speca failed to provide a rationalized medical opinion which differentiated between the effects of the June 14, 2015 employment incident and appellant's preexisting right shoulder condition.<sup>15</sup> He did not provide a medically sound explanation of how the accepted June 14, 2015 incident caused or aggravated appellant's diagnosed right shoulder conditions. This is especially important because appellant had evidence of a preexisting condition.<sup>16</sup> Accordingly, the reports from Dr. Speca are insufficient to establish appellant's claim.

The diagnostic test reports of record, including a September 1, 2015 x-ray and December 4, 2015 and December 30, 2016 MRI scans, do not provide an opinion regarding cause of any diagnosed conditions. 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.<sup>17</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.<sup>18</sup> Appellant failed to submit such evidence, and therefore failed to meet his burden of proof.

On appeal appellant reiterates the arguments he presented in his April 14, 2017 reconsideration request before OWCP. The Board notes that OWCP addressed those arguments in its decision. It is appellant's burden to provide rationalized medical opinion evidence explaining how or why the accepted June 14, 2015 employment incident either caused or contributed to his diagnosed right shoulder conditions. He has failed to do so in this case.

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 that his right shoulder conditions were causally related to the accepted June 14, 2015 employment incident.

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<sup>15</sup> See *A.W.*, Docket No. 17-0285 (issued May 25, 2018).

<sup>16</sup> See *S.D.*, Docket No. 16-0999 (issued October 16, 2017).

<sup>17</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>18</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 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