

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

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<b>Y.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0018</b>
	)	<b>Issued: April 16, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>New York, NY, Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 2, 2018 appellant, through counsel, filed a timely appeal from an August 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the August 3, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish that his right shoulder conditions were causally related to the accepted November 20, 2017 employment incident.

## **FACTUAL HISTORY**

On December 1, 2017 appellant, then a 64-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on November 20, 2017, he sprained his right shoulder while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he stopped work on that day.

In support of his claim, appellant submitted reports dated November 20, 21, 24, and 28, and December 5, 2017 from Dr. Carlisle St. Martin, a neurologist, who indicated that appellant sustained an injury to his right shoulder when he tripped on a piece of plastic and braced his fall. Dr. St. Martin diagnosed right shoulder derangement, and opined that appellant was totally disabled.

In a magnetic resonance imaging (MRI) scan report dated November 21, 2017, Dr. Glenn Schwartz, Board-certified in diagnostic radiology, indicated impressions of full-thickness tear distal supraspinatus tendon with retraction, full-thickness tear distal infraspinatus tendon with retraction, subscapularis tendinitis with high-grade partial articular surface tear, intra-articular medial dislocation tendon of long head of biceps, bicep tendinosis and/or partial tear, subacromial/subdeltoid bursitis, large glenohumeral joint effusion extending to subcoracoid recess, mild atrophic changed of the supraspinatus and infraspinatus muscles, and narrowing subacromial space.

In a development letter dated December 18, 2017, OWCP informed appellant that, initially, his claim was administratively handled to allow payment of a limited amount of medical expenses as it appeared to be for a minor injury that resulted in minimal or no lost time from work and continuation of pay was not controverted by the employing establishment. However, appellant's claim was now being reopened for adjudication because he had not returned to work in a full-time capacity. OWCP requested that he respond to a questionnaire describing the immediate effects of his injury, history of any other injury, and medical treatment received. It also requested that appellant submit a medical report from his attending physician which included a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the employment incident caused or aggravated his medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted two attending physician reports (Form CA-20) dated November 20 and 28, 2017 from Dr. Leon M. Bernstein, Board-certified in orthopedic surgery. Dr. Bernstein checked a box marked "yes" in response to a question as to whether appellant's condition was caused or aggravated by an employment activity. He diagnosed a biceps tendon tear. Appellant also submitted two duty status reports (Form CA-17) dated November 20 and 28, 2017 from Dr. Bernstein. Dr. Bernstein indicated that appellant was totally disabled and unable to resume work.

In reports dated December 13, and 19, 2017, and January 15, 2018, Dr. St. Martin again diagnosed right shoulder derangement and opined that appellant was totally disabled.

In a report dated December 20, 2017, Dr. Steven Touliopoulos, Board-certified in orthopedic surgery, diagnosed right shoulder post-traumatic impingement/instability/massive full-thickness rotator cuff tendon tearing/labral tearing suspicious for chondral injury. He requested authorization for surgery.

In a Form CA-17 dated January 2, 2018, Dr. Bernstein again indicated that appellant was totally disabled and unable to return to work. In a Form CA-20 dated January 2, 2018, he updated appellant's period of total disability to include the period November 20, 2017 to February 6, 2018. Dr. Bernstein diagnosed a right shoulder strain and biceps tendon tear.

By decision dated January 25, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence submitted was insufficient to establish that the incident occurred, as he had not responded to the development questionnaire or provided an explanation as to how his alleged incident had occurred. It also noted that he had not submitted any medical evidence to establish that a diagnosed medical condition was causally related to the alleged employment incident.

In a report dated February 8, 2018, Dr. St. Martin again diagnosed right shoulder derangement and indicated that appellant was totally disabled.

On February 21, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a postoperative report dated April 18, 2018, Dr. Arnold Goldman, Board-certified in orthopedic surgery, indicated that he had performed arthroscopic surgery that day for appellant's right shoulder impingement and rotator cuff arthropathy. Appellant's postsurgical diagnoses were listed as massive retracted right shoulder rotator cuff tear, right shoulder impingement, multiple loose bodies, ruptured biceps tendon, adhesive capsulitis, and multiple compartment hypertrophic synovitis.

On June 20, 2018 an OWCP hearing representative held a telephonic hearing. At the hearing appellant testified that on November 20, 2017 he stepped on a loose magazine strap, tripped and fell, striking his right shoulder.

By decision dated August 3, 2018, an OWCP hearing representative affirmed, as modified, the January 25, 2018 decision finding that appellant had established fact of injury. However, he also found that the claim remained denied as appellant had not met his burden of proof to establish causal relationship between his diagnosed medical conditions and the accepted November 20, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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> *Supra* note 2.

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.<sup>5</sup> 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.<sup>6</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment incident. 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 incident identified by the claimant.<sup>9</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 November 20, 2017 employment incident.

In support of his claim, appellant submitted a series of medical reports dated November 20, 21, 24, and 28, and December 5, 13, and 19, 2017, and January 22, 2018 from Dr. St. Martin. Dr. St Martin indicated that appellant injured his right shoulder when he tripped on a piece of plastic and braced his fall, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the incident actually caused the diagnosed conditions. The Board has held that the mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>10</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed

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<sup>5</sup> S.S., Docket No. 17-1106 (issued June 5, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.R.*, Docket No. 18-1609 (issued March 7, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> S.S., *supra* note 5; *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *R.C.*, Docket No. 18-1639 (issued February 26, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>9</sup> *See L.D.*, Docket No. 18-1468 (issued February 11, 2019); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>10</sup> *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

conditions, the physician's reports are of limited probative value.<sup>11</sup> Thus, Dr. St. Martin's reports are of limited probative value and are insufficient to establish that appellant sustained an employment-related injury on November 20, 2017.<sup>12</sup>

OWCP also received several reports from Dr. Bernstein who diagnosed a biceps tendon tear. While in Form CA-20 reports he checked a box marked "yes," that appellant's diagnosed condition was caused or aggravated by employment activity, the Board has held that an opinion consisting only of a checkmark notation supporting causation, without supporting medical rationale, is of limited probative value and insufficient to establish causal relationship.<sup>13</sup>

Appellant also submitted reports from Dr. Touliopoulos and Dr. Goldman, which noted diagnoses of appellant's right shoulder condition and referenced his arthroscopic repair. These reports do not contain rationalized medical opinion evidence regarding how appellant's diagnosed conditions were causally related to the accepted November 20, 2017 employment incident. A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>14</sup> Without medical reasoning explaining how the accepted employment incident caused or contributed to the diagnosed conditions, Drs. Touliopoulos' and Goldman's reports are insufficient to establish the claim.<sup>15</sup>

A diagnostic testing report similarly noted impressions of multiple right shoulder conditions. The Board has held that diagnostic testing reports lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.<sup>16</sup> As such, this report is insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 November 20, 2017 employment incident.

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<sup>11</sup> See *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>12</sup> *A.M.*, Docket No. 14-1399 (issued September 23, 2014).

<sup>13</sup> *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *J.R.*, *supra* note 6.

<sup>14</sup> *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

<sup>15</sup> *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

<sup>16</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2019  
Washington, DC

Christopher J. Godfrey, 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