

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

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<b>J.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0702</b>
	)	<b>Issued: August 23, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Cedar Grove, NJ, Employer</b>	)	
_____	)	

*Appearances:*  
*James D. Muirhead, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 13, 2018 appellant, through counsel, filed a timely appeal from a June 20, 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.

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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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted November 25, 2016 employment incident.

## FACTUAL HISTORY

On November 26, 2016 appellant, then a 53-year-old sales associate, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left shoulder injury on November 25, 2016 when he lifted his left arm to adjust some stamps attached to a bulletin board while in the performance of duty.<sup>3</sup> He stopped work on November 26, 2016.<sup>4</sup>

Appellant submitted December 8 and 22, 2016 notes from Dr. Kent S. Lerner, a Board-certified orthopedic surgeon, who advised that appellant was totally disabled from work from November 26 to January 5, 2017.

In a development letter dated January 3, 2017, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported November 25, 2016 employment incident caused or aggravated a medical condition. It provided a questionnaire for his completion which requested that he indicate whether he had similar symptoms/disability related to his left shoulder prior to the claimed November 25, 2016 injury. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a December 8, 2016 attending physician's report (Form CA-20) from Dr. Lerner who noted that appellant reported feeling a pop in his left shoulder after reaching over his head at work on November 25, 2016. Dr. Lerner diagnosed subacromial impingement syndrome of the left shoulder and checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity. He determined that appellant was partially disabled from work commencing November 25, 2016. In a December 8, 2016 duty status report (Form CA-17), Dr. Lerner advised that appellant was totally disabled from work, but noted that appellant could return to work on December 23, 2016.<sup>5</sup>

The findings of a December 29, 2016 magnetic resonance imaging (MRI) scan of appellant's left shoulder contained an impression of rotator cuff tendinosis without evidence of discrete tear, biceps tendinosis/tenosynovitis without evidence of rupture or dislocation, degenerative signal in the superior labrum with an associated superior labral tear, glenohumeral

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<sup>3</sup> Appellant claimed that, he felt sharp pain when he lifted his arm, and when he lifted his left arm a second time, he felt increased pain and had limited mobility of his left arm.

<sup>4</sup> Appellant returned to light-duty work in March 2017.

<sup>5</sup> It is unclear from the record whether appellant returned to work in December 2016. He also submitted a December 8, 2016 narrative report which was unsigned. The report indicated that appellant reported feeling a pop in his left shoulder and developing severe left shoulder pain after lifting his left arm to hang something at work on November 25, 2016. It contained a diagnosis of shoulder joint pain and noted that he was unable to work.

joint effusion, glenoid cartilage wear with suspected osteochondral body in the axillary recess, and acromioclavicular (AC) joint osteoarthritis.

In a disability certificate dated January 5, 2017 and Form CA-17 dated January 20, 2017, Dr. Lerner advised that appellant was disabled from work from January 5 to February 3, 2017.<sup>6</sup>

By decision dated February 21, 2017, OWCP accepted that on November 25, 2016 appellant felt a sharp pain in his left shoulder while lifting his left arm to adjust some stamps attached to a bulletin board at work, as alleged. However, it denied his claim as he had not submitted medical evidence establishing a diagnosed medical condition causally related to the accepted November 25, 2016 employment incident. OWCP concluded that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

On March 31, 2017 appellant requested reconsideration of the February 21, 2017 decision. In an accompanying February 27, 2017 letter, he asserted that he had no left shoulder problems prior to the November 25, 2016 incident.

Appellant subsequently submitted an amended copy of the previously submitted January 5, 2017 narrative report which now contained Dr. Lerner's signature. In handwritten notations, Dr. Lerner provided "corrected codes" for appellant's diagnoses, including those for the following left shoulder conditions: impingement syndrome, other shoulder lesions, and pain.<sup>7</sup>

In a March 13, 2017 report, Dr. Lerner advised that he saw appellant for a work-related injury to his left shoulder. He asserted that appellant had never had a previous injury to his left shoulder and noted that he had been off work since November 26, 2016. Dr. Lerner indicated, "[Appellant's] injury is a result of the work-related injury and not a preexisting injury." In a March 16, 2017 work capacity evaluation form (Form OWCP-5c), he maintained that appellant was totally disabled.

By decision dated June 21, 2017, OWCP denied modification of the February 21, 2017 decision. It determined that Dr. Lerner's reports did not contain a well-rationalized opinion relative to causal relationship.

On March 22, 2018 appellant, through counsel, requested reconsideration of the June 21, 2017 decision.

Appellant submitted a March 22, 2018 report from Dr. Lerner who indicated that he first saw appellant on December 8, 2016 at which time he reported that he was hanging something on a wall at work on November 25, 2016 and felt a pop in his left shoulder followed by severe left shoulder pain. He further reported that he repeatedly engaged in overhead reaching to hang items

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<sup>6</sup> Appellant also submitted a January 5, 2017 narrative report which was unsigned. The report contained a diagnosis of shoulder joint pain and recommended that appellant undergo left shoulder surgery.

<sup>7</sup> Appellant also submitted two additional copies of the previously submitted December 8, 2016 report which was unsigned. One of the copies contained handwritten notations regarding his diagnoses, but both copies of the report remained unsigned.

on the wall. Dr. Lerner indicated that appellant's left shoulder physical examination findings included 130 degrees of abduction motion with painful motion from 90 degrees upward, full internal and external rotation motion, and tenderness over his bicipital groove. He advised that his initial impression of appellant's left shoulder conditions included subacromial impingement, biceps tendinopathy, and possible rotator cuff tear. Dr. Lerner opined that, a December 29, 2016 MRI scan of the left shoulder was consistent with biceps tendinopathy, superior labral tear, joint effusion, and suspected loose body measuring nine millimeters long. The scan also showed AC joint osteoarthritis. He opined that appellant's repetitive overhead activity of hanging items on a wall on November 25, 2016 was responsible for his left shoulder problems, including his biceps tendinopathy and superior labral tear.<sup>8</sup>

By decision dated June 20, 2018, OWCP denied modification of its June 21, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>9</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>10</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>11</sup>

To determine if an employee has 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 in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>12</sup> The second component is whether the employment incident caused a personal injury.<sup>13</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be

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<sup>8</sup> Dr. Lerner actually referred to appellant's right shoulder, but the content and context of his report show that he meant to refer to appellant's left shoulder.

<sup>9</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>10</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>11</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>12</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>13</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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.<sup>14</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>15</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted November 25, 2016 employment incident.

In a December 8, 2016 Form CA-20 report, Dr. Lerner noted that appellant reported feeling a pop in his left shoulder after reaching over his head at work on November 25, 2016. He diagnosed subacromial impingement syndrome of the left shoulder and checked a box marked “Yes” indicating that appellant’s condition was caused or aggravated by an employment activity. 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.<sup>16</sup> Dr. Lerner provided no rationale for his opinion on causal relationship. The Board has held that when a physician’s opinion on causal relationship consists only of checking “Yes” to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.<sup>17</sup> As such, Dr. Lerner’s December 8, 2016 report is insufficient to discharge appellant’s burden of proof.

In a March 13, 2017 report, Dr. Lerner advised that he saw appellant for a work-related injury to his left shoulder and asserted that appellant had never sustained an injury to his left shoulder. He indicated, “[appellant’s] injury is a result of the work-related injury and not a preexisting injury.” This report is of limited probative value on the underlying issue of the present case because Dr. Lerner did not provide a rationalized medical opinion explaining how the accepted November 25, 2016 employment incident was causally related to a diagnosed 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.<sup>18</sup> Dr. Lerner suggested that causal relationship was established because appellant reported having no prior left shoulder problems. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of

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<sup>14</sup> S.S., Docket No. 18-1488 (issued March 11, 2019).

<sup>15</sup> J.L., Docket No. 18-1804 (issued April 12, 2019).

<sup>16</sup> J.A., Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

<sup>17</sup> *Id.*

<sup>18</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

causal relationship between a claimed condition and employment factors.<sup>19</sup> For these reasons, Dr. Lerner's March 13, 2017 report is insufficient to establish appellant's claim.

In a March 22, 2018 report, Dr. Lerner indicated that he first saw appellant on December 8, 2016 at which time he reported that appellant was hanging something on a wall at work on November 25, 2016 and felt a pop in his left shoulder followed by severe left shoulder pain. He advised that his initial impression of appellant's left shoulder conditions included subacromial impingement, biceps tendinopathy, and possible rotator cuff tear, and noted that a December 29, 2016 MRI scan of the left shoulder was consistent with biceps tendinopathy, superior labral tear, joint effusion, suspected loose body, and AC joint osteoarthritis. Dr. Lerner opined that appellant's repetitive overhead activity of hanging items on a wall on November 25, 2016 was responsible for his left shoulder problems, including his biceps tendinopathy and superior labral tear. The Board notes that Dr. Lerner's March 22, 2018 report contains a mere conclusory opinion without the necessary rationale explaining how and why the November 25, 2016 employment incident was sufficient to result in the diagnosed medical conditions. The Board has held that such an opinion is insufficient to meet a claimant's burden of proof to establish a claim and, therefore, Dr. Lerner's March 22, 2018 report does not establish appellant's claim for a November 25, 2016 employment injury.<sup>20</sup>

Appellant also submitted notes dated December 8, 2016 to February 3, 2017 in which Dr. Lerner advised that appellant was disabled from work from November 26, 2016 to February 3, 2017. In a January 5, 2017 narrative report, Dr. Lerner diagnosed several left shoulder conditions, including impingement syndrome, other shoulder lesions, and pain.<sup>21</sup> In December 8, 2016 and March 16, 2017 reports, he maintained that appellant was totally disabled. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>22</sup> As such, these reports are of no probative value.<sup>23</sup>

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's diagnosed conditions and the accepted November 25, 2016 employment incident, the Board finds that he has not met his burden of proof.

On appeal counsel argues that Dr. Lerner's reports establish appellant's claim for a November 25, 2016 employment injury. As explained above, however, the record does not contain a rationalized opinion on causal relationship between a diagnosed medical condition and the

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<sup>19</sup> *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

<sup>20</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>21</sup> Appellant also submitted a December 8, 2016 narrative report which contained a signature block of Dr. Lerner but was unsigned. This report does not constitute probative medical evidence. The Board has held that a report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence. *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>22</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>23</sup> *Id.*

accepted November 25, 2016 employment incident. The Board thus finds that appellant 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 met his burden of proof to establish a left shoulder condition causally related to the accepted November 25, 2016 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board