United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 18-1633**
	)	**Issued: December 30, 2019**
U.S. POSTAL SERVICE, SUBURBAN PROCESSING & DISTRIBUTION CENTER, Gaithersburg, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 28, 2018 appellant, through counsel, filed a timely appeal from a June 11, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted January 11, 2017 employment incident.

FACTUAL HISTORY

On February 7, 2017 appellant, then a 52-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2017 he sprained his shoulder when he was struck by an object while in the performance of duty. He stopped work on June 11, 2017. The employing establishment controverted the claim, alleging that appellant had not timely reported the incident.

A physician assistant, Elizabeth L. Putnam, evaluated appellant at the emergency department on January 11, 2017 for right shoulder pain/strain.

On February 6, 2017 a nurse, Michael Clipp, advised that appellant had been treated on January 11, 2017 for "a right shoulder injury that he sustained at work" and had subsequently received follow up care. He indicated that appellant was unable to work until February 7, 2017, when he could resume work with limitations.

In a development letter dated February 13, 2017, OWCP advised appellant of the deficiencies in his claim. It requested that he submit additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a February 14, 2017 progress report, Dr. Stephen J. Ilario, a Board-certified orthopedic surgeon, diagnosed right rotator cuff syndrome and referred appellant for a magnetic resonance imaging (MRI) scan.

By decision dated March 21, 2017, OWCP denied appellant's traumatic injury claim. It found that he had established the occurrence of the January 11, 2017 employment incident, but had not submitted any medical evidence containing a diagnosed condition in connection with the accepted work incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Thereafter, OWCP received a February 10, 2017 emergency department report from Dr. Adae O. Amoako, Board-certified in family medicine. Dr. Amoako obtained a history of appellant experiencing right shoulder pain for the past four weeks after he was hit by "1,450 pounds [of] equipment." He found that appellant's history, symptoms, and the examination findings were consistent with right shoulder rotator cuff tear/strain and less likely shoulder instability, acromioclavicular (AC) joint separation, and calcific tendinitis.

In a progress report dated February 14, 2017, Dr. Ilario discussed appellant's history of shoulder pain for the past four weeks after a lateral hit with a "1,000-pound object." He diagnosed a possible cuff injury. In a duty status report (Form CA-17) of even date, Dr. Ilario diagnosed a possible rotator cuff injury and checked a box marked "yes" that the history of injury given corresponded to that on the form of an object striking appellant's shoulder. He provided work restrictions.

A February 21, 2017 MRI scan of appellant's right shoulder revealed a massive rotator cuff tendon tear and degenerative osteoarthritic changes of the AC joint with a synovial cyst.

In duty status reports (Form CA-17) dated March 9, 15, and 16, 2017, Dr. Ilario diagnosed right shoulder joint pain, checked a box marked "yes" on the form that the history of injury provided by appellant corresponded to that on the form, and provided work restrictions.

On April 19, 2017 OWCP issued a "correction" to its March 21, 2017 decision, again finding that the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted employment incident of January 11, 2017. It concluded that the requirements had not been met to establish an injury as defined by FECA.

On May 23, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 15, 2017, OWCP's hearing representative denied appellant's request for a telephonic hearing as untimely pursuant to 5 U.S.C. § 8124(b).

Thereafter, OWCP received a May 11, 2017 attending physician's report (Form CA-20) from Dr. Leonard F. Tassy, a Board-certified orthopedic surgeon. Dr. Tassy diagnosed right rotator cuff syndrome and checked a box marked "yes" that the condition was caused or aggravated by the described employment injury of a right rotator cuff injury. He noted that appellant was scheduled for surgery on May 17, 2017. In a progress report dated May 31, 2017, Dr. Tassy provided work restrictions and referred appellant for physical therapy.

In duty status reports (Form CA-17) dated May 2017 through February 2018, an orthopedist whose signature is illegible, found that appellant was unable to work.

On March 13, 2018 appellant, through counsel, requested reconsideration.

By decision dated June 11, 2018, OWCP denied modification of its April 19, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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

[3] 5 U.S.C. § 8101 *et seq.*

employment injury.[4] 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.[5]

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.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence 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 incident identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted January 11, 2017 employment incident.

In support of his claim, appellant submitted a January 11, 2017 report from a physician assistant, Ms. Putnam, who treated him at the emergency department for right shoulder pain and strain. In a February 6, 2017 report, a nurse, Mr. Clipp, advised that appellant had been evaluated for an employment-related right shoulder injury on January 11, 2017 and had also received follow-up care. Neither a nurse nor a physician assistant, however, is considered a physician as defined under FECA, and thus the reports of Ms. Putnam and Mr. Clipp are of no probative value.[9]

On February 10, 2017 Dr. Amoako discussed appellant's history of right shoulder pain for the last four weeks after he was struck by heavy equipment. He diagnosed a likely rotator cuff tear/strain of the right shoulder versus shoulder instability or AC joint separation. While Dr. Amoako discussed the January 11, 2017 employment incident, he did not specifically address

[4] *See E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[5] *See P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *See V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[7] *Id*.

[8] *See H.B.*, Docket No. 18-0781 (issued September 5, 2018).

[9] 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); 20 C.F.R. § 10.5(t). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *K.S.*, Docket No. 18-0954 (issued February 26, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

the cause of the diagnosed conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10]

In a February 14, 2017 report, Dr. Ilario reviewed appellant's history of shoulder pain for the last four weeks after he sustained a lateral hit by a heavy object and diagnosed a possible cuff injury. Again, however, while Dr. Ilario noted a history of the accepted employment incident, he failed to specifically address causation, and thus his opinion is of no probative value regarding the cause of the diagnosed shoulder condition.[11]

In an attending physician's report (Form CA-20) dated May 11, 2017, Dr. Tassy diagnosed right rotator cuff syndrome and checked a box marked "yes" that the condition was caused or aggravated by the described employment injury of a right rotator cuff injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[12]

On May 31, 2017 Dr. Tassy provided work restrictions. He did not, however, address causal relationship and thus his opinion is of no probative value regarding causation.[13]

The MRI scan of the right shoulder is insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests lack probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.[14]

The duty status reports (Form CA-17) dated February 14, 2017 through February 1, 2018, are of no probative value as they contain an illegible signature and the author cannot be identified as a physician.[15] Moreover, they fail to provide a physician's opinion on a causal relationship between the accepted employment incident and appellant's diagnosed conditions they only contain an affirmative check mark to establish causal relationship. Consequently, this evidence is insufficient to establish the claim.[16]

[10] *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019).

[11] *Id.*; *see also B.P.*, Docket No. 19-0777 (issued October 8, 2019).

[12] *V.G.*, Docket No. 19-0908 (issued October 25, 2019).

[13] *See supra* note 10.

[14] *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

[15] *See C.S.*, Docket No. 19-0999 (issued October 10, 2019); *J.B.*, Docket No. 19-0568 (issued August 19, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[16] *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *see also M.O.*, Docket No. 18-0229 (issued September 23, 2019).

As appellant has not submitted rationalized medical evidence establishing that his medical condition is causally related to the accepted January 11, 2017 employment incident, the Board finds that he has not met his burden of proof.[17]

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 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 causally related to the accepted January 11, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 30, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[17] *See K.K.*, Docket No. 19-1193 (issued October 21, 2019).