

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

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<b>J.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0216</b>
	)	<b>Issued: December 13, 2019</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Buffalo, NY, Employer</b>	)	
_____	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant<sup>1</sup></i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 7, 2018 appellant, through counsel, filed a timely appeal from an August 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.<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 20, 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 a right shoulder condition causally related to the accepted December 7, 2017 employment incident.

## FACTUAL HISTORY

On December 7, 2017 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sprained his right shoulder on that date when he reached to unlock the wheel of an all-purpose container (APC) while in the performance of duty. He indicated that he felt a pop in his shoulder and was immediately in a great deal of pain. Appellant stopped work on that day.

In hospital records dated December 7, 2017, Dr. David Levine, Board-certified in emergency medicine, reported that appellant complained of right shoulder pain that began about one hour ago when he was doing his usual activity of back and forth movement of his right arm and suddenly felt a pop in his right outer shoulder area. He reported that examination of appellant's right shoulder was positive for decreased range of motion (ROM) and moderate tenderness in the outer aspect of the upper area of the bicipital area. Dr. Levine diagnosed rotator cuff injury.

A December 7, 2017 right shoulder diagnostic imaging report revealed advanced degenerative joint disease (DJD) and moderate DJD of the glenohumeral joint.

In a report dated December 18, 2017, Dr. Andrew L. Ohara, an osteopath Board-certified in orthopedic surgery, indicated that appellant was treated for right shoulder pain. He recounted that on December 7, 2017 appellant was moving a box of heavy mail at work when he felt a snap in the right shoulder. Upon examination of appellant's right shoulder, Dr. Ohara observed no tenderness and positive Neer and Hawkins' impingement syndrome. He provided ROM findings and indicated that x-rays showed moderate acromioclavicular (AC) joint arthritis and mild glenohumeral joint arthritis. Dr. Ohara diagnosed right shoulder pain. He responded "yes" indicating that the incident described was the competent medical cause of the injury.

Appellant underwent a right shoulder magnetic resonance imaging (MRI) scan on December 19, 2017, which revealed a retracted, complex supraspinatus tear and complex partial tearing of the infraspinatus, moderate tendinopathy, partial tearing of the subscapularis, moderate degenerative changes, and marked active arthropathy of the AC joint.

In a December 22, 2017 report, Dr. Ohara discussed appellant's right shoulder MRI scan and indicated that appellant suffered a full-thickness retracted rotator cuff tear. He recommended surgical arthroscopy of the right shoulder with rotator cuff repair. Dr. Ohara noted examination findings of 3/5 strength in flexion and abduction and positive Neer and Hawkins' impingement. He again responded "yes" indicating that the incident that the patient described was the competent medical cause of the injury.

In a January 11, 2018 development letter, OWCP informed appellant that his claim was initially accepted as a minor injury, but was now being reopened to formally consider the merits of the claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary evidence.

On January 25, 2018 OWCP received an undated letter by Dr. Ohara. Dr. Ohara recounted that he was currently treating appellant for a right shoulder work-related injury that occurred on December 7, 2017. He explained that the injury was a result of moving work-related equipment from a postal truck. Dr. Ohara noted that appellant had no similar injury to the right shoulder. He reported that the injury required surgical treatment.

By decision dated February 28, 2018, OWCP denied appellant's claim. It accepted that the December 7, 2017 incident occurred as alleged. However, OWCP found that the evidence of record was insufficient to establish causal relationship between appellant's right shoulder condition and the accepted December 7, 2017 employment incident.

On March 22, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a March 9, 2018 addendum report, Dr. Ohara noted diagnoses of right shoulder full-thickness, rotator cuff tear, biceps tendinopathy tearing, subscapularis tendinopathy, and glenohumeral and AC joint degenerative changes. He related that appellant clearly stated that he heard a sharp pull/snap in his shoulder subsequent to his work-related injury. Dr. Ohara recounted that appellant was moving an APC, which could be in excess of 500 pounds. He indicated that appellant was a relatively active person so some degenerative changes within the shoulder would be expected. Dr. Ohara noted that, prior to the work-related injury, appellant was able to range the shoulder without issue. He explained: "with his ability to fully range the shoulder with adequate strength prior to date of injury, leads me to have the opinion that a work-related injury led to a full-thickness, rotator cuff tear." Dr. Ohara requested that they proceed with scheduling appellant for surgery.

Appellant submitted a statement dated March 14, 2018. He indicated that he worked the night shift and was required to load and unload APCs and bulk mail containers (BMCs) from approximately 22 tractor trailers. Appellant described that on the night of the incident he was unloading APCs and BMCs, which were incorrectly loaded sideways into a trailer. He explained that he was forced to pull the heavy containers towards him in order to get access to the brake. Appellant related that, while he was trying to maneuver the last APC in order to unlock the brake with his foot, he felt a pop in his shoulder and instant pain. He included several pictures and sketches of the loaded trailers.

In a March 21, 2018 letter, Dr. Ohara indicated that he was treating appellant for a work-related injury to the right shoulder that occurred on December 7, 2017. He opined that the injury was a result of moving equipment from a postal truck and now required surgical treatment. Dr. Ohara reported that appellant suffered a full-thickness retracted rotator cuff tear and had significant weakness and pain with attempted range of motion. He opined that, based on his clinical findings and MRI findings, he recommended moving forward with right shoulder surgery.

By decision dated August 20, 2018, an OWCP hearing representative affirmed the February 28, 2018 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's right shoulder condition and the accepted December 7, 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 United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</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>6</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>7</sup>

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>8</sup> There are two components involved in establishing fact of injury. First, whether the employee actually experienced the employment incident at the time, place, and in the manner alleged.<sup>9</sup> Second is whether the employment incident caused a personal injury.<sup>10</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.<sup>11</sup> 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 specific employment factor(s) identified by the employee.<sup>12</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>13</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

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<sup>4</sup> *Supra* note 2.

<sup>5</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>6</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>7</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>8</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>9</sup> *See D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>10</sup> *See B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *James Mack*, 43 ECAB 321 (1991).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted December 7, 2017 employment incident.

Appellant submitted medical reports dated December 18, 2017 to March 9, 2018 by Dr. Ohara. In the December 18, 2017 report, Dr. Ohara recounted that on December 7, 2017 appellant was moving a box of heavy mail at work when he felt a snap in his right shoulder. He noted right shoulder examination findings of positive Neer and Hawkins' impingement syndrome and provided ROM findings. In the subsequent reports, Dr. Ohara indicated that an MRI scan revealed that appellant suffered a full-thickness rotator cuff tear. He diagnosed right shoulder pain and right rotator cuff tear. Dr. Ohara responded "yes" indicating that the incident the patient described was the competent medical cause of the injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of an affirmative opinion without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>15</sup> Thus, the Board finds that these medical reports are insufficient to establish appellant's claim.

In a March 9, 2018 report, Dr. Ohara recounted that appellant was moving an APC, which could weigh in excess of 500 pounds. He noted that, prior to the work-related injury, appellant was able to range the shoulder without issue. Dr. Ohara reported: "with his ability to fully range the shoulder with adequate strength prior to date of injury, leads me to have the opinion that a work-related injury led to a full-thickness, rotator cuff tear." While Dr. Ohara provided an affirmative opinion on causal relationship, he did not provide adequate medical rationale explaining how appellant's right shoulder condition was causally related to the accepted employment incident. Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>16</sup> Furthermore, the need for rationalized medical opinion evidence is particularly important in this case because a December 7, 2017 right shoulder x-ray revealed advanced degenerative joint disease in the AC joint.<sup>17</sup> For these reasons, these medical reports are insufficient to establish appellant's claim.

The remaining medical evidence of record, including the December 7, 2017 hospital records, December 7, 2017 right shoulder x-ray, and December 19, 2017 right shoulder MRI scan

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<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>15</sup> *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>16</sup> *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006); *see also R.V.*, Docket No. 18-1037 (issued March 26, 2019); *M.R.*, Docket No. 14-0011 (issued August 27, 2014) (an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship).

<sup>17</sup> *Supra* note 14; *see also W.S.*, Docket No. 17-1769 (issued July 26, 2018); *B.R.*, Docket No. 16-0456 (issued April 25, 2016).

are also insufficient to establish appellant's claim. None of the reports contain an opinion or any discussion on the causal relationship between appellant's diagnosed right shoulder conditions and the accepted December 7, 2017 employment incident and, therefore, lack probative value.<sup>18</sup> These reports, therefore, are insufficient to establish appellant's claim.

On appeal counsel alleges that OWCP's decision was contrary to law and fact. As explained above, the medical evidence in the record was insufficient to establish that appellant sustained a right shoulder condition causally related to the accepted December 7, 2017 employment incident. As such, appellant has not met his burden of proof to establish his traumatic injury 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 a right shoulder condition causally related to the accepted December 7, 2017 employment incident.

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<sup>18</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); see also *A.B.*, Docket No. 17-0301 (issued May 19, 2017) (diagnostic tests, lack probative value as they fail to provide an opinion on the causal relationship).

**ORDER**

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

Issued: December 13, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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