

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

M.L., Appellant)	
)	
and)	
)	Docket No. 18-1605
)	Issued: February 26, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
HUDSON VALLEY HEALTH CARE SYSTEM,)	
Wappinger Falls, NY, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 20, 2018 appellant filed a timely appeal from a July 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 5, 2018 appellant, then a 61-year-old supervisory diagnostic radiologic technologist, filed a recurrence claim (Form CA-2a) alleging that on February 17, 2017 he

¹ 5 U.S.C. § 8101 *et seq.*

sustained a recurrence of disability under OWCP File No. xxxxxx045.² He reported that he experienced severe left shoulder pain and difficulty lifting his left arm, which he believed was related to his December 28, 2015 employment injury. Appellant also attributed his left shoulder condition to constantly changing coils, moving patients, and changing nonambulatory patients while in the performance of duty.

In a note dated March 15, 2018, Dr. Monet A. France, an orthopedic surgeon, reported that appellant had experienced left shoulder pain for six months. She reported that he had an older work-related injury from 2015, but denied any new injury. On April 4, 2018 Dr. France diagnosed biceps tendinitis of the left, tendinitis of the left rotator cuff and noted that these were work-related injuries. She recommended a magnetic resonance imaging (MRI) scan.

By development letter dated May 10, 2018, OWCP informed appellant that his April 5, 2018 claim for recurrence was administratively converted into a new occupational disease claim, assigned OWCP File No. xxxxxx224, based on his statement indicating that his medical condition occurred due to constantly changing coils, moving patients, and changing nonambulatory patients and therefore constituted a new injury. It also informed him that the evidence of record was insufficient to establish his claim. OWCP advised appellant of the type of medical and factual evidence needed and provided a questionnaire for completion. By separate letter of even date, it requested that the employing establishment provide additional information pertaining to his occupational disease claim. OWCP afforded appellant 30 days for submission of the additional evidence.

On May 18, 2018 appellant responded to OWCP's development questionnaire. He described the employment activities he believed contributed to his condition, which included assisting to lift, move, and help patients for their MRI scan examinations. Appellant noted that, for MRI scan examinations, he could not use standard commercially available wheelchairs or stretchers, and therefore was required to transfer all wheelchair, stretcher, walker, *etc.*, patients onto the MRI scan safe equipment and then onto and off of the scanning table. He also attributed his condition to opening the large MRI equipment door with a special lever latching handle. Appellant noted that each patient required a radiofrequency coil which were up to 3 feet long, but weighed less than 30 pounds. He asserted that he performed these activities between 10 and 20 times a day, 5 days a week. Appellant noted that among the MRI scanners, only he was also required to vacuum and mop the floors in the scanner room. On May 31, 2018 the employing establishment responded to OWCP and confirmed his description of his day-to-day duties.

In a May 11, 2018 note, Dr. France reviewed appellant's May 8, 2018 MRI scan report and found a partial-thickness intrasubstance tear of the infraspinatus tendon, supraspinatus tendinopathy, and tears of the proximal biceps tendon as well as the superior glenoid labrum. She diagnosed bicep tendinitis, impingement syndrome of the left shoulder, and tendinitis of the left rotator cuff. Dr. France opined that these conditions were work related. She recommended arthroscopic left shoulder subacromial decompression.

² In OWCP File No. xxxxxx045, appellant filed a traumatic injury claim (Form CA-1) on December 29, 2015 alleging a work-related left elbow and shoulder injury on December 28, 2015 as a result of moving a heavy patient in the performance of duty. OWCP administratively accepted that claim for a limited amount of medical benefits.

In a statement dated June 25, 2018, Dr. France described appellant's claimed December 28, 2015 employment injury and noted his MRI scan findings. She indicated that based on those findings, left shoulder surgery was medically necessary.

By decision dated July 25, 2018, OWCP denied appellant's claim, finding that he had not established causal relationship between his diagnosed left shoulder condition and the accepted factors of his federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁹

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *see C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *M.B.*, Docket No. 17-1999 (issued November 13, 2018); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *C.D.*, *supra* note 4; *Victor J. Woodhams*, *id.*

⁷ *M.B.*, *supra* note 5; *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *Supra* note 6.

⁹ *Id.*

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.¹¹

OWCP accepted that appellant engaged in work activities which included assisting to lift, move, and help patients for their MRI scan examinations. The issue therefore is whether appellant submitted sufficient medical evidence to establish that the employment activities caused a left shoulder condition.¹² That is a medical issue which must be addressed by relevant medical evidence.¹³

The medical evidence received consists of a series of reports from Dr. France. On April 4 and May 11, 2018, Dr. France diagnosed biceps tendinitis of the left shoulder, impingement syndrome of the left shoulder, and tendinitis of the left rotator cuff. She concluded that these conditions were work related. The Board finds that Dr. France's reports are of diminished probative value as she failed to offer any medical reasoning in support of her conclusions.¹⁴ While Dr. France opined that appellant's left shoulder conditions were work related, she did not explain how or why the accepted work activities resulted in his current left shoulder conditions.¹⁵ She did not accurately describe his work duties and medically explain the physiological process by which these duties would have caused or aggravated his condition.¹⁶

Thus, the Board finds that, as appellant has not submitted a rationalized medical opinion supporting that his medical condition was causally related to the accepted factors of his federal employment, he has not met his burden of proof to establish his claim.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.D.*, *supra* note 4.

¹¹ *J.S.*, Docket No. 18-0726 (issued November 5, 2018).

¹² *Id.*; the Board notes that although appellant filed a notice of recurrence claiming disability, the evidence of record indicates an intervening incident negating causal relationship between his current left shoulder injury and his prior December 28, 2015 work-related injury.

¹³ *See supra* note 11; *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁴ *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹⁵ *R.T.*, Docket No. 17-1230 (issued May 3, 2018).

¹⁶ *M.M.*, Docket No. 17-1641 (issued February 15, 2018).

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 factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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