

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

M.C., Appellant	)	
	)	
and	)	<b>Docket No. 18-0951</b>
	)	<b>Issued: January 7, 2019</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Ronkonkoma, NY,	)	
Employer	)	
	)	

*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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 6, 2018 appellant, through counsel, filed a timely appeal from a March 8, 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 her burden of proof to establish that her right shoulder conditions were causally related to the accepted June 6, 2016 employment incident.

## FACTUAL HISTORY

On June 26, 2016 appellant, then a 64-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that, on June 6, 2016, she felt a pull in her right shoulder and arm while attempting to lift a bag from a belt at work. She did not stop work.

The record contains the first page of an authorization for examination and/or treatment (Form CA-16) dated June 30, 2016 from the employing establishment, which indicated that appellant was authorized to seek medical treatment for her June 6, 2016 right shoulder injury.

In a June 30, 2016 form report, Dr. Lawrence Goldman, an internist, noted that appellant was seen that day for complaints of right shoulder stiffness and pain. He reported that on June 6, 2016, the date of injury, appellant was working in the screening area working on baggage. Appellant related hearing her right shoulder pop and then developed pain after lifting baggage on June 6, 2016. Physical examination findings included reduced right shoulder range of motion and pain/tenderness. Diagnoses included right shoulder unspecified rotator cuff tendon and muscle injury.

In a July 31, 2016 report, Dr. Bruce Campbell, a Board-certified diagnostic radiologist, noted a June 6, 2016 injury involving the right shoulder due to lifting and a diagnosis of sprain/strain. He reviewed a magnetic resonance imaging (MRI) scan and diagnosed mild-to-moderate subacromial subdeltoid bursitis/peritendinitis, supraspinatus anterior fibers attachment focal intrasubstance tear, not tendon retraction, and posterior fibers tendinopathy.

In an August 4, 2016 report, Dr. Brian Kincaid, a treating Board-certified orthopedic surgeon, noted that appellant was seen for complaints of right shoulder pain following lifting heavy luggage at work on June 6, 2016. He reviewed a right shoulder MRI scan which revealed moderate subacromial bursitis, intact biceps, and small intrasubstance tearing of the supraspinatus attachment without evidence of any tendon retraction or focal full-thickness tear. Dr. Kincaid diagnosed right shoulder impingement and indicated that appellant was able to work with restrictions.

Dr. Kincaid, in an August 30, 2016 report, noted an injury date of June 6, 2016 and diagnosed right shoulder impingement and bicipital tenosynovitis. Physical examination findings included tenderness over the bicipital groove, pain with Neer's and Yergason's testing, decreased range of motion, and positive Hawkins test.

By development letter dated September 9, 2016, OWCP advised appellant of the deficiencies of her claim. It noted that additional factual and medical evidence was necessary to establish her claim. OWCP afforded appellant 30 days to submit additional evidence.

Dr. Kincaid, in an October 3, 2016 report, diagnosed right shoulder impingement and bicipital tenosynovitis. He reported that appellant continued to have a right shoulder pain and was working light duty.

By decision dated October 17, 2016, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between the accepted June 6, 2016 employment incident and the diagnosed medical conditions.

On December 12, 2016, appellant requested reconsideration and submitted reports from Dr. Kincaid dated July 11, August 4 and 30, October 31, and November 28, 2016 in support of her request.

Dr. Kincaid's July 11 and October 31, 2016 reports detailed a June 6, 2016 injury history and provided physical examination findings. In his July 11, 2016 report, he detailed findings from an x-ray interpretation he reviewed, which included normal bony anatomy without evidence of injury, well-maintained joint spaces, and no other acute findings. Dr. Kincaid, in both reports, diagnosed right shoulder impingement syndrome.

In a November 28, 2016 report, Dr. Kincaid diagnosed right shoulder impingement, rotator cuff tendinitis/bursitis, and bicipital tendinitis, which he attributed to the accepted June 6, 2016 employment incident. Physical examination findings were also noted.

By decision dated January 17, 2017, OWCP denied modification of the October 17, 2016 decision finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed right shoulder conditions and the accepted June 6, 2016 employment incident.

On December 12, 2017 counsel requested reconsideration and submitted an October 6, 2017 report by Dr. Kincaid in support of the request.

Dr. Kincaid, in an October 6, 2017 report, provided an injury history, detailed physical examination findings, a history of medical treatment, and noted medical records including diagnostic tests he reviewed. He diagnosed right shoulder tear of the attachment of the supraspinatus muscle and subacromial bursitis, which he opined was likely due to the accepted June 6, 2016 employment incident. In support of this conclusion, Dr. Kincaid noted that appellant felt a sharp pain after lifting heavy luggage and she had no history of right shoulder problems or prior injuries.

By decision dated March 8, 2018, OWCP denied modification of its prior decision, finding the medical evidence of record was insufficient to establish causal relationship between the diagnosed right shoulder conditions and the accepted June 6, 2016 employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</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 filed within the applicable time limitation of FECA, that an injury was sustained 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. 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>4</sup>

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.<sup>5</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>7</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 supporting such causal relationship.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background, 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 factors or incident identified by the claimant.<sup>9</sup> The weight of 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>10</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right shoulder conditions were causally related to her accepted June 6, 2016 employment incident.

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<sup>3</sup> *Id.*

<sup>4</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</sup> *A.D.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *A.D.*, *supra* note 4; *T.H.*, 59 ECAB 408 (2008); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *A.G.*, Docket No. 17-1093 (issued June 5, 2018); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>8</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>9</sup> *A.D.*, *supra* note 4; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

In support of her claim, appellant submitted medical evidence from Dr. Kincaid who detailed physical examination findings in his October 6 and November 28, 2017 reports, and reviewed appellant's medical history and diagnostic tests. In his October 6, 2017 report, Dr. Kincaid diagnosed right shoulder tear of the attachment of the supraspinatus muscle and subacromial bursitis. His opinion that the diagnosis was likely due to the accepted June 6, 2016 employment incident was speculative in nature.<sup>11</sup> An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>12</sup> Therefore these reports are insufficient to establish appellant's claim.

In the November 28, 2016 report, Dr. Kincaid diagnosed right shoulder impingement syndrome, rotator cuff tendinitis/bursitis, and bicipital tendinitis, which he opined was due to the accepted June 6, 2016 employment incident. The Board finds that this opinion was not well rationalized. While Dr. Kincaid opined that appellant's diagnosed right shoulder conditions were caused by the accepted June 6, 2016 employment incident, he failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely how lifting heavy luggage would cause or aggravate appellant's shoulder condition.<sup>13</sup> Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>14</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>15</sup> Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Kincaid's opinion on causal relationship is equivocal in nature and of limited probative value.<sup>16</sup>

In reports dated July 11, August 4, and October 31, 2016, Dr. Kincaid diagnosed right shoulder impingement and in reports dated August 30 and October 3, 2016, he diagnosed right shoulder impingement and bicipital tenosynovitis. He, however, offered no opinion as to the cause of the diagnosed right shoulder conditions in any of these reports. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

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<sup>11</sup> See *A.B.*, Docket No. 18-0577 (issued October 10, 2018).

<sup>12</sup> See *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

<sup>13</sup> *S.H.*, *supra* note 10; *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

<sup>14</sup> *S.H.*, *supra* note 10; *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>15</sup> *S.H.*, *supra* note 10; *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>16</sup> *S.H.*, *supra* note 10; *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

probative value on the issue of causal relationship.<sup>17</sup> Thus, these reports are insufficient to meet appellant's burden of proof regarding causal relationship.

Similarly, appellant submitted a June 30, 2016 report from Dr. Goldman. Dr. Goldman related appellant's history of injury and diagnosed right shoulder unspecified rotator cuff tendon and muscle injury. However, he also did not provide a medical opinion explaining causal relationship.<sup>18</sup> Likewise, Dr. Campbell in his report dated July 31, 2016 noted appellant's history of lifting on June 6, 2017, reviewed a right shoulder MRI scan, and diagnosed mild-to-moderate subacromial subdeltoid bursitis/peritendinitis, supraspinatus anterior fibers tear, and posterior fibers tendinopathy. Again, he offered no medical opinion regarding the cause of these conditions.<sup>19</sup> As such these reports are insufficient to meet appellant's burden of proof.

On appeal counsel asserts that the words of causation need not be used by a physician when the meaning is otherwise clear. Contrary to counsel's assertion, causation in the instant case has not been clearly rationalized by a physician as none of the medical evidence appellant submitted explained how the diagnosed conditions had been caused or aggravated by the accepted June 6, 2016 employment incident.

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 her burden of proof to establish that her right shoulder conditions were causally related to the accepted June 6, 2016 employment incident.<sup>20</sup>

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<sup>17</sup> See *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> The Board notes that the employing establishment issued a Form CA-16. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 8, 2018 is affirmed.

Issued: January 7, 2019  
Washington, DC

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

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

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