

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

M.M., Appellant)	
)	
and)	Docket No. 19-0267
)	Issued: July 8, 2019
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, Brooklyn, NY,)	
Employer)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2018 appellant, through counsel, filed a timely appeal from an October 19, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).²

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 The Board notes that appellant submitted additional evidence on appeal. 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.*

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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 October 15, 2015 employment incident.

FACTUAL HISTORY

On October 20, 2015 appellant, then a 45-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2015 he injured his left arm when pulling a door open while in the performance of duty. He explained that he felt a pop in the biceps of his left arm.

On October 15, 2015 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16).

In a note dated October 19, 2015, Dr. Franklin Chen, a Board-certified orthopedic surgeon, diagnosed tear/rupture of the rotator cuff.

By development letter dated October 27, 2015, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence. OWCP afforded appellant 30 days to respond.

In an October 15, 2015 emergency room notes, Dr. Aruna Chhabria, a Board-certified family practitioner, examined appellant and noted that he opened a heavy steel door at work and felt a "pop." Appellant's left arm was painful with limited movement. Dr. Chhabria diagnosed muscle strain.

On October 19, 2015 Dr. Chen noted appellant's history of injury as opening a door to enter a prison unit and experiencing immediate pain in his left arm. He again diagnosed tear/rupture of the left rotator cuff. Dr. Chen opined that it was within medical probability that appellant's current condition was causally related to his work injury. He again examined appellant on October 26, 2015 and reviewed appellant's October 21, 2015 magnetic resonance imaging (MRI) scan. Dr. Chen diagnosed superior and anterior labral tears, partial tear of the inferior glenohumeral ligament, and supraspinatus tendinosis. He again opined that appellant's left shoulder condition was "probably causally" related to his work injury.

By decision dated December 2, 2015, OWCP denied appellant's claim finding that the medical evidence did not establish that his diagnosed condition was causally related to his accepted October 15, 2015 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

³ 5 U.S.C. § 8101 *et seq.*

On December 29, 2015 appellant requested reconsideration of the December 2, 2015 OWCP decision. He provided a narrative statement and asserted that his work in the employing establishment required him to open steel doors weighing approximately 300 pounds. Appellant noted that he opened these doors more than 50 times a day. On October 15, 2015 he pulled open a steel door and felt a pop and instant pain in his shoulder.

In support of his December 29, 2015 request for reconsideration, appellant also submitted additional medical evidence. On November 9, 2015 Dr. Chen examined appellant and diagnosed instability, subluxation of the left shoulder joint with internal derangement. He opined that based on appellant's history and examination it was within medical probability that appellant's current left shoulder condition was causally related to his work injury. Dr. Chen found that it was medically probable that appellant either sustained a traumatic labral tear from pulling the heavy door suddenly, when he felt a pop in his shoulder, or sustained an exacerbation of preexisting labral tears. He noted that appellant initially reported pulling a heavy door and feeling a pop, which was consistent with a labral tear injury. On December 1 and 22, 2015 Dr. Chen repeated his findings and conclusions.

In a narrative report dated December 22, 2015, Dr. Chen noted that appellant attributed his left shoulder condition to a work injury sustained while opening a prison door. Appellant felt a pop and then immediate left shoulder pain. Dr. Chen reviewed appellant's MRI scan and opined that appellant's history of injury was consistent with a labral tear injury.

On January 5, 2016 Dr. Chen found that appellant's left shoulder symptoms had worsened. He diagnosed left shoulder instability and injury of the brachial plexus. Dr. Chen repeated his opinion that it was within medical probability that appellant's current conditions were causally related to his work injury. He noted that it was medically probable that appellant either sustained a traumatic labral tear from pulling the heavy door when he suddenly felt a pop in his shoulder or that he sustained an exacerbation of preexisting labral tears.

By decision dated March 14, 2016, OWCP denied modification of its prior decision.

On April 27, 2016 appellant, through counsel requested reconsideration of the March 14, 2016 decision. In a narrative report dated April 21, 2016, Dr. Chen noted that appellant had no previous shoulder problems prior to October 19, 2015. He reported appellant's history of pulling a heavy prison door and experiencing a sudden pop and pain in his left shoulder. Dr. Chen reviewed appellant's MRI scan and opined that given the weight of the door and the mechanism of injury it was within medical probability that appellant's current shoulder injuries were a direct result of his October 15, 2015 work accident. He recommended surgery.

By decision dated July 26, 2016, OWCP denied modification of its prior decisions.

On September 9, 2016 appellant, through counsel requested reconsideration of the July 26, 2016 OWCP decision. He submitted a September 1, 2016 report from Dr. Chen, opining that, as appellant was opening a door that weighed over 300 pounds when he felt a pop in his left arm, he experienced superior and anterior labral tears as a result of pulling the door.

By decision dated October 19, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

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 sufficient to establish such causal relationship.⁷ 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 identified by the claimant.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted October 15, 2015 employment incident.

An October 15, 2015 emergency room record from Dr. Chhabria, provided a history of the accepted employment incident and a diagnosis of muscle strain. However, Dr. Chhabria did not offer an opinion regarding the causal relationship between the employment incident and appellant's diagnosed left shoulder condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on

⁴ *Id.*

⁵ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

⁶ *A.D.*, *id.*; *T.H.*, 59 ECAB 388 (2008).

⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

⁸ *A.D.*, *supra* note 5; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

the issue of causal relationship.⁹ This report, therefore, is insufficient to establish appellant's claim.

Dr. Chen provided a series of notes dated from October 19, 2015 through April 21, 2016 describing appellant's employment incident and diagnosing left rotator cuff tear. He opined that it was within medical probability that appellant's left shoulder condition was causally related to his accepted October 15, 2015 work incident. These notes are of limited probative value as Dr. Chen's opinions are couched in speculative terms. Dr. Chen did not offer a clear opinion that he believed that appellant's diagnosed condition was causally related to his accepted employment incident. The Board has previously held that generalized and speculative statements are insufficient to establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the specific physical activity actually caused the diagnosed conditions.¹⁰ As Dr. Chen did not explain how pushing open the door would have physiologically caused, aggravated, or accelerated appellant's left shoulder conditions, his opinion is of limited probative value.¹¹ As he did not explain, with medical rationale, how the accepted employment incident caused the diagnosed conditions, his opinions are of limited probative value.¹²

Dr. Chen completed a December 22, 2015 narrative and noted that appellant attributed his left shoulder condition to a work injury sustained while opening a prison door. He reviewed appellant's MRI scan and opined that his history of injury was consistent with a labral tear injury. Dr. Chen again did not offer medical reasoning explaining how the accepted employment incident resulted in the diagnosed condition. Likewise, in his September 1, 2016 report, he noted that as appellant was opening a door that weighed over 300 pounds he felt a pop in his left arm. Dr. Chen opined that appellant experienced superior and anterior labral tears as a result of pulling the door. These reports are of limited probative value as he did not explain how or why, physiologically, appellant's accepted employment incident caused or aggravated his diagnosed left shoulder conditions.¹³

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.¹⁴ Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.¹⁵ Herein, the record lacks rationalized medical evidence based on an accurate factual background establishing causal relationship between the accepted October 15, 2015

⁹ *K.E.*, Docket No. 18-1357 (issued March 26, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *R.V.*, Docket No. 18-1037 (issued March 26, 2019); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹¹ *R.V.*, *id.*; *D.M.*, Docket No. 18-1434 (issued February 22, 2019); *John W. Montoya*, 54 ECAB 306 (2003).

¹² *R.V.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹³ *K.E.*, *supra* note 9; *M.F.*, Docket No. 17-1973 (issued December 31, 2018).

¹⁴ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁵ *M.H.*, *id.*; *D.D.*, 57 ECAB 734 (2006).

employment incident and appellant's diagnosed left shoulder conditions.¹⁶ Thus, 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(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 October 15, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁶ See *M.H., id.; J.S.*, Docket No. 17-0507 (issued August 11, 2017).

¹⁷ The record contains a Form CA-16 signed by an employing establishment official. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).