United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 19-0375**
	)	**Issued: July 3, 2019**
DEPARTMENT OF THE NAVY, TRAINING COMMAND, Quantico, VA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 10, 2018 appellant filed a timely appeal from an October 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish right elbow and shoulder injuries causally related to the accepted September 12, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 25, 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.*

FACTUAL HISTORY

On September 17, 2018 appellant, then a 57-year-old maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2018 he injured his right shoulder when he pulled a door open while in the performance of duty. He stopped work on September 13, 2018.

A September 13, 2018 ultrasound study of the right upper extremity demonstrated a high-grade partial thickness tear of the distal biceps tendon with surrounding soft tissue edema or hemorrhage.

September 14, 2018 magnetic resonance imaging scan studies of the right elbow demonstrated a full-thickness distal biceps tendon tear with retraction, and degeneration or a partial tear of the common extensor tendon origin.

In a report dated September 20, 2018, Dr. Kenneth J. Accousti, a Board-certified orthopedic surgeon, noted that appellant had closed a door while at work on September 13, 2018 and felt a tearing sensation in his right elbow and the onset of right shoulder pain shortly afterward. A primary care physician had prescribed medication. Dr. Accousti diagnosed right shoulder bursitis and a distal biceps tendon rupture.

By development letter dated September 21, 2018, OWCP informed appellant that he had not submitted sufficient factual or medical evidence to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary information.

In a statement received by OWCP on September 25, 2018, appellant contended that a supervisor had misstated on his claim form that the injury occurred when appellant had opened a door. He asserted that on September 12, 2018 he experienced sudden counter pressure as he pulled the mechanical room door shut and strained his right shoulder and elbow.

Kimberly McCue, a physician assistant, submitted reports dated September 13, 2018.

In an attending physician's report (Form CA-20) dated September 14, 2018, Dr. Accousti diagnosed a right distal biceps tendon rupture due to closing a door at work on September 12, 2018. He responded "yes" to a question which asked if the diagnosed condition was due to the employment incident described. Dr. Accousti held appellant off work through October 15, 2018.

In a September 17, 2018 duty status report (Form CA-17), Dr. Rafael O. Hernandez, a Board-certified family practitioner, held appellant off work due to a right biceps tendon rupture. He responded "yes" to a question which asked if the diagnosed condition was due to the claimed September 12, 2018 employment incident.

In a September 20, 2018 report, Dr. Accousti diagnosed a right distal biceps tendon rupture and right shoulder bursitis. On September 28, 2018 he performed a right distal biceps tendon repair.

In a duty status report (Form CA-17) dated October 11, 2018, Dr. Accousti diagnosed a right "Popeye deformity" (long biceps tendon head rupture). He held appellant off work through November 8, 2018.

Appellant also submitted an October 11, 2018 report from Joy R. Shewbridge, a physician assistant.

By decision dated October 25, 2018, OWCP accepted that the September 12, 2018 employment incident occurred, but denied appellant's claim as the medical evidence of record was insufficient to establish causal relationship, as it did not include sufficient medical rationale from a physician explaining how his diagnosed conditions were causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an employment-related injury or medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period of FECA,[3] 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.[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 determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[6] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8]

[3] *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (issued 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *C.B.*, *supra* note 3; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[7] *C.B.*, *supra* note 3; *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.[10] 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 incident identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish right elbow and shoulder injuries causally related to the accepted September 12, 2018 employment incident.

Appellant submitted a series of reports from Dr. Accousti, noting the accepted September 12, 2018 employment incident and diagnosing right shoulder bursitis and a right distal biceps tendon rupture. In a September 14, 2018 attending physician's report (Form CA-20), Dr. Accousti responded "yes" to a question indicating his support for a causal relationship between the September 12, 2018 employment incident and the diagnosed right distal biceps tendon rupture. Appellant also submitted a duty status report (Form CA-17) from Dr. Hernandez, who responded "yes" to a form question on causal relationship. The Board has held that a medical report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment factors.[12] When a physician's opinion on causal relationship consists only of checking a box "yes" in response to a form question, without explanation or rationale, that opinion has limited probative value and is insufficient to establish a claim.[13] As appellant's physicians did not provide medical rationale as to the cause of appellant's diagnosed conditions, their reports are insufficient to establish his claim.

Appellant also submitted reports signed solely by Ms. McCue or Ms. Shewbridge, both physician assistants. These reports do not constitute competent medical evidence because a physician assistant is not considered a "physician" as defined under FECA.[14] Under FECA the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law.[15] Consequently, the medical findings and/or opinions of a physician assistant

[9] *C.B.*, *supra* note 3; *Y.J.*, Docket No. 18-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-156 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[11] *C.B.*, *supra* note 3; *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *C.B.*, *supra* note 3; *see Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *K.M.*, Docket No. 18-1740 (issued May 10, 2019); *L.M.*, Docket No. 18-1274 (issued February 6, 2019).

[14] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[15] 5 U.S.C. § 8101(2).

are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits[16]

Finally, appellant has submitted diagnostic imaging studies in support of his claim. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[17] These reports are therefore also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to support his allegation that he sustained right shoulder and right elbow injuries causally related to the accepted employment incident of September 12, 2018, the Board finds that he has not met his burden of proof to establish a claim.[18]

On appeal appellant argues that he sustained an injury work on September 12, 2018. For the reasons set forth above, appellant has not met his burden of proof to establish his 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 right shoulder and elbow injuries causally related to the accepted September 12, 2018 employment incident.

[16] *C.B.*, Docket No. 18-0040 (issued May 7, 2019); *K.W.*, *supra* note 14.

[17] *C.B.*, *supra* note 3; *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[18] *C.B.*, *id*.

ORDER

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

Issued: July 3, 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