

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

M.S., Appellant)	
)	
and)	Docket No. 19-0587
)	Issued: July 22, 2019
U.S. POSTAL SERVICE, NEW JERSEY)	
INTERNATIONAL & NATIONAL)	
DISTRIBUTION CENTER, Jersey City, NJ,)	
Employer)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
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 January 17, 2019 appellant, through counsel, filed a timely appeal from an October 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted March 31, 2014 employment incident.

FACTUAL HISTORY

On March 31, 2014 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that day, he injured his right shoulder when he picked up a foot locker while in the performance of duty. He stopped work on the date of injury.

In support of his claim, appellant submitted a return to work and follow-up instructions report dated April 1, 2014 from Dr. Norman Penner, a Board-certified internist. Dr. Penner diagnosed right shoulder strain. He advised that appellant was unable to work in any capacity at that time.

OWCP, in a development letter dated April 25, 2014, advised appellant that the evidence submitted was insufficient 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 respond.

OWCP subsequently received a right shoulder magnetic resonance imaging (MRI) scan report dated April 4, 2014 by Dr. Jonathan Smith, a Board-certified diagnostic radiologist. Dr. Smith provided impressions of degenerative changes of the acromioclavicular (AC) joint, and extensive thickening and abnormal signal within the supraspinatus, subscapularis, and biceps tendons. He advised that the findings were consistent with mucoid degeneration. Dr. Smith also provided an impression of probable focal full-thickness tear of the distal supraspinous tendon.

OWCP also received an April 22, 2014 medical report by Dr. Faisal Mahmood, an attending Board-certified orthopedic surgeon. Dr. Mahmood noted that appellant reported a right shoulder injury that occurred at work on March 31, 2014 and that subsequently he had an inability to lift heavy objects overhead. He discussed findings on physical examination and reviewed the April 4, 2014 MRI scan results. Dr. Mahmood advised that appellant suffered from a right shoulder full-thickness supraspinatus rotator cuff tear with subacromial impingement. He also had bursitis, AC joint hypertrophy/arthritis, biceps tendinitis, and labial fraying. Based on these findings, Dr. Mahmood recommended arthroscopic surgery, which included rotator cuff repair, subacromial decompression, partial excision of the distal clavicle, and debridement of the labrum and bursitis as appellant was unable to function with his upper extremity.

In a letter dated April 22, 2014, Dr. Mahmood noted that appellant was under his care for a right shoulder rotator cuff condition. He requested that appellant be excused from work until June 22, 2014.

In a letter dated May 5, 2014, appellant responded to OWCP's development questionnaire. He related that he injured his right shoulder at work on March 31, 2014 while lifting a foot locker weighing 65 to 70 pounds. Appellant noted that just after the incident he was unable to move his

right hand. He immediately notified his supervisor about his injury. Appellant maintained that he never had any symptoms or disability prior to March 31, 2014.

Appellant submitted a referral order dated April 9, 2014 from Dr. Penera who diagnosed a full-thickness supraspinatus rotator cuff tear.

By decision dated May 28, 2014, OWCP accepted that the March 31, 2014 employment incident occurred as alleged. However, it denied the claim finding that the medical evidence then of record was insufficient to establish that appellant's diagnosed right shoulder conditions were causally related to the accepted March 31, 2014 employment incident.

OWCP thereafter received additional reports dated April 1 and 9, 2014 by Dr. Penera who continued to examine appellant. Dr. Penera diagnosed right shoulder strain of the rotator cuff capsule and reiterated his prior diagnosis of right shoulder full-thickness rotator cuff tear.

On June 6, 2014 appellant requested a review of the written record by a representative of OWCP's Branch and Hearings Review regarding the May 28, 2014 decision. He provided a letter dated June 2, 2014 from Dr. Mahmood who noted a history of his own treatment of appellant and appellant's injury. Dr. Mahmood indicated that appellant reported that on March 31, 2014 he injured his right shoulder while lifting heaving objects overhead. He reiterated his prior assessments of full-thickness rotator cuff tear involving the supraspinatus tendon, AC joint hypertrophy/arthritis, subacromial impingement, and bursitis of the subacromial region. Dr. Mahmood advised that appellant's injury pattern was consistent with an injury sustained while lifting an overhead object or repetitive use of the rotator cuff musculature leading to a full-thickness tear and, as such, he opined that the injury appellant sustained was causally related to the employment incident on March 31, 2014. He concluded that, given these findings, appellant was unable to perform his work activities, which required overhead use of both upper extremities, due to significant pain and an inability to fully abduct his right shoulder.

OWCP subsequently received an attending physician's report (Form CA-20) dated May 20, 2014 in which Dr. Mahmood again noted a history that appellant sustained a right shoulder injury on March 31, 2014. Dr. Mahmood continued to diagnose rotator cuff tear and AC joint hypertrophy/subacromial impingement and checked a box marked "yes" indicating that these conditions had been caused or aggravated by an employment activity of lifting overhead. He indicated that appellant had not been advised to return to work.

On October 24, 2014 appellant appealed OWCP's May 28, 2014 decision to the Board.

OWCP thereafter received a medical note dated November 11, 2014 by Dr. Mahmood who related appellant's continued complaints of right shoulder pain and inability to obtain relief from pain despite conservative modalities. He reiterated his recommendation for right shoulder arthroscopic rotator cuff repair, subacromial decompression, and partial excision of the distal clavicle based on appellant's full-thickness rotator cuff tear, AC joint arthritis, and bursitis in the subacromial region. Dr. Mahmood also recommended that he avoid heavy lifting.

In a letter dated December 28, 2014, appellant advised the Board that he wished to withdraw his appeal and, by order dated January 22, 2015, the Board dismissed his appeal as requested.³

On March 17, 2015 appellant requested a review of the written record by a representative of OWCP's Branch and Hearings Review regarding the May 28, 2014 decision.

OWCP received additional medical notes dated March 3 and July 28, 2015 from Dr. Mahmood who related that appellant's physical examination was unchanged. Dr. Mahmood again recommended right shoulder surgery and restricted appellant from heavy lifting at work. Meanwhile, pending authorization for surgery, he recommended physical therapy.⁴

By decision dated August 19, 2015, an OWCP hearing representative affirmed the May 28, 2014 decision. She found that the report dated June 2, 2014 from Dr. Mahmood offered alternative mechanisms of injury, including that appellant's diagnosed right shoulder conditions possibly developed over time due to his repetitive work duties rather than by his accepted March 31, 2014 employment incident. The hearing representative further found that he had not provided medical rationale explaining the significance of appellant's underlying degenerative condition and ruling out a degenerative cause of his current injuries.

On November 5, 2015 appellant, through counsel, requested reconsideration of the August 19, 2015 decision and submitted a letter dated November 3, 2015 from Dr. Mahmood. Dr. Mahmood advised that appellant's MRI scan results and examination findings were consistent with a full-thickness tear of the rotator cuff along with AC joint arthropathy and subacromial impingement/bursitis. He noted that appellant reported that lifting a foot locker weighing approximately 65 to 70 pounds at work on March 31, 2014 led to his inability to fully abduct his left shoulder. Dr. Mahmood further noted that appellant related that prior to this incident he had full range of motion of the shoulder. He related that while MRI scan findings showed some degenerative signs consistent with regular use, including AC joint arthropathy, appellant also had a full-thickness tear of the rotator cuff muscle, which was not a preexisting condition as appellant was able to abduct his shoulder prior to the incident at work. Dr. Mahmood, however, related that since the incident, appellant had been unable to do so. As such, he again found that appellant's full-thickness rotator cuff tear was consistent with a traumatic injury sustained while at work on the previously mentioned date. Dr. Mahmood further advised that the standard of care for this type of injury in a young patient or a patient who had failed conservative modalities included the surgical procedures he had previously recommended.

On February 2, 2016 Dr. Mahmood examined appellant for complaints of continued right shoulder pain without relief from conservative modalities. He continued to recommend surgery and note his lifting restriction.

³ *Order Dismissing Appeal*, Docket No. 15-0133 (issued January 22, 2015).

⁴ A medical bill dated September 16, 2015 indicated that appellant received physical therapy on intermittent dates from March 12 through 26, 2015.

By decision dated May 13, 2016, OWCP denied modification of the August 19, 2015 decision.

On July 5, 2016 appellant, through counsel, requested reconsideration. He submitted an additional letter dated June 14, 2016 from Dr. Mahmood who continued to opine that appellant sustained a work-related right shoulder injury. Dr. Mahmood agreed that AC joint arthropathy was a preexisting condition as it could not be an acute event and was most likely present before the work-related injury. He, however, again noted that as appellant had full range of motion of his shoulder prior to the injury, and did not have full range of motion regarding abduction and forward flexion along with positive MRI scan findings consistent with a full-thickness rotator cuff tear, there was a causal relationship with his injury. Dr. Mahmood indicated that no imaging evidence prior to the right shoulder injury was available as there was never a need to perform such testing. He further indicated that, if appellant did in fact have preexisting rotator cuff tearing of the shoulder, then appellant would have been unable to move his shoulder and a previous issue at work. As such, Dr. Mahmood concluded that appellant had no preexisting rotator cuff tear. The only preexisting condition was AC joint arthropathy of the right shoulder. Dr. Mahmood therefore opined that the injuries sustained by appellant on March 31, 2014 were directly and causally related to the rotator cuff tear of the right shoulder. He determined that while appellant had preexisting AC joint arthropathy it led to pain only on the anterior aspect of the shoulder and not with forward flexion and abduction range of motion as this was due to the acute rotator cuff tear.

OWCP, by decision dated March 17, 2017, denied modification of its May 13, 2016 decision.

On September 13, 2017 appellant, through counsel, requested reconsideration and submitted a letter dated August 18, 2017 from Dr. Mahmood who continued to opine that appellant sustained a work-related right shoulder injury. Dr. Mahmood related a history of appellant's medical treatment, including his own treatment commencing on April 22, 2014 for a right shoulder injury he sustained while lifting a heavy object overhead at work on March 31, 2014. He again noted his prior right shoulder impressions. Dr. Mahmood also noted that appellant had failed conservative treatment modalities included physical therapy and anti-inflammatories. He opined that appellant's diagnosed conditions and exacerbation of his preexisting AC joint arthropathy and subacromial impingement were directly and causally related to lifting a heavy object overhead at work. Dr. Mahmood again noted that appellant was asymptomatic prior to his injury and that following his injury he was unable to fully abduct his right shoulder and had significant complaints of pain with overhead activities. He also reiterated that this correlated with MRI scan results and clinical examination findings consistent with a tear of the rotator cuff muscle. Dr. Mahmood advised that lifting a heavy object overhead created significant strain and stress on the rotator cuff muscles and an additional lever arm put the cuff muscles at risk for tearing. He continued to recommend surgical intervention to address appellant's injury.

By decision dated December 11, 2017, OWCP again denied modification of its prior decision.

On July 18, 2018 appellant, through counsel, requested reconsideration and submitted an addendum note dated July 11, 2018 from Dr. Mahmood who reiterated his prior opinion that appellant's right shoulder injuries were work related. Dr. Mahmood noted that overhead activities

involving repetitive lifting or lifting heavy objects made a patient susceptible to rotator cuff tearing and inflammation along with bicep tendinitis. Additionally, he noted that repetitive work with the upper extremity also led to AC joint arthropathy all of which had been demonstrated both radiographically and clinically.

OWCP, by decision dated October 16, 2018, denied modification of its December 11, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ and 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.⁷ 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.⁸

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁹ There are two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be

⁵ *Supra* note 2.

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹² *S.S.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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 incident.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted March 31, 2014 employment incident.

In support of his claim appellant submitted medical reports and findings from Dr. Mahmood. In reports dated June 2, 2014, November 3, 2015, June 14, 2016, and August 18, 2017, and an addendum note dated July 11, 2018, Dr. Mahmood noted a history that appellant injured his right shoulder while lifting a heavy object overhead at work on March 31, 2014. He discussed examination findings which indicated that appellant did not have full range of motion of his right shoulder. Dr. Mahmood provided assessments of a full-thickness rotator cuff tear involving the supraspinatus tendon, AC joint hypertrophy/arthritis, subacromial impingement, and bursitis of the subacromial region of the right shoulder. He advised that appellant's AC joint hypertrophy preexisted the accepted employment incident. Dr. Mahmood recommended arthroscopic surgery to treat the diagnosed conditions. He opined that the accepted March 31, 2014 employment incident directly caused appellant's right shoulder rotator cuff tear and inability to perform overhead lifting at work, and exacerbated his preexisting AC joint arthropathy. Dr. Mahmood initially determined that appellant was totally disabled from work, but subsequently found that he could work with a lifting restriction. He explained that appellant's injury pattern, findings upon physical examination, and diagnostic test results were consistent with the type of injuries sustained as a result of an accepted March 31, 2014 employment incident. Dr. Mahmood further explained that lifting a heavy object overhead made him susceptible to rotator cuff tearing and inflammation along with bicep tendinitis as it caused significant strain and stress on the rotator cuff muscles and an additional lever arm put the cuff muscles at risk for tearing.

The Board finds that the opinions on causal relationship by Dr. Mahmood are conclusory in nature. A mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the employment incident was sufficient to result in the diagnosed medical conditions, is insufficient to meet a claimant's burden of proof to establish a claim.¹⁵ Further, while Dr. Mahmood noted that appellant had full range of motion of his right shoulder prior to the accepted work incident, the Board has held that an opinion that the claimant was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹⁶ For these reasons, the Board finds that these reports of Dr. Mahmood are insufficient to establish appellant's claim.

Dr. Mahmood, on May 20, 2014, provided an opinion on the causal relationship between appellant's right shoulder rotator cuff tear and AC joint hypertrophy/subacromial impingement,

¹⁴ *Id.*

¹⁵ *See B.C.*, Docket No. 18-1735 (issued April 23, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

¹⁶ *See M.M.*, Docket No. 18-1522 (issued April 22, 2019); *K.P.*, Docket No. 17-1145 (issued November 15, 2017).

which consisted merely of a checkmark on a form report next to a box marked “yes.” The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁷ Dr. Mahmood did not specifically explain how appellant’s March 31, 2014 employment incident physiologically caused the diagnosed conditions. Instead, he merely provided a conclusory statement regarding causal relationship which is of limited probative value.¹⁸ Thus, this report is insufficient to establish appellant’s claim.

In his remaining reports and medical notes, Dr. Mahmood reiterated the history of the accepted March 31, 2014 employment incident, his prior right shoulder diagnoses and surgery recommendation, and appellant’s work restrictions as to lifting. He also provided an additional diagnosis of labial fraying of the right shoulder. These additional reports do not contain a specific opinion as to the cause of the diagnosed conditions, resultant need for surgery, and work restrictions. 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 the issue of causal relationship.¹⁹ These reports, therefore, are insufficient to establish appellant’s claim.

Likewise, the referral order and reports dated April 1 and 9, 2014 from Dr. Pendera, which diagnosed strain of the rotator cuff capsule and full-thickness supraspinatus rotator cuff tear of the right shoulder and found appellant totally disabled from work commencing April 1, 2014, also are deficient as these reports do not contain an opinion regarding causal relationship.²⁰

Appellant also submitted a diagnostic test report from Dr. Smith. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²¹ Such reports are therefore insufficient to establish appellant’s claim.

As there is no well-reasoned medical opinion establishing appellant’s claim for compensation the Board finds that he has not met his burden of proof.²²

On appeal counsel contends that the reports of Dr. Mahmood provided a rationalized opinion on causal relationship. For the reasons set forth above, Dr. Mahmood has not explained, with the necessary medical rationale, how appellant’s preexisting and current right shoulder conditions and work restrictions and the resultant need for surgery were caused or aggravated by the accepted March 31, 2014 employment incident.

¹⁷ *K.M.*, Docket No. 18-1740 (issued May 10, 2019); *L.M.*, Docket No. 18-1274 (issued February 6, 2019).

¹⁸ See *B.C.*, *supra* note 15.

¹⁹ See *B.C.*, *supra* note 15; *A.L.*, Docket No. 18-1756 (issued April 15, 2019); *K.E.*, Docket No. 18-1357 (issued March 26, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

²⁰ *Id.*

²¹ See *B.C.*, *supra* note 15; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²² *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 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 and 20 C.F.R. §§ 10.605 through 10.607.²³

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted March 31, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 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

²³ The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300 and 10.304; *R. W.*, Docket No. 18-0894 (issued December 4, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).