

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

T.C., Appellant)	
)	
and)	Docket No. 18-1767
)	Issued: March 15, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Union, NJ, 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 September 19, 2018 appellant filed a timely appeal from a July 12, 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 over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On March 24, 2018 appellant, then a 57-year-old transportation security explosives specialist, filed an occupational disease claim (Form CA-2), alleging that he developed

¹ 5 U.S.C. § 8101 *et seq.*

“occupational duties stress caused extensive medical issues” due to factors of his federal employment. He indicated that he first became aware of his condition and first realized it was caused or aggravated by his federal employment on February 17, 2017. Appellant did not stop work.

By development letter dated May 25, 2018, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted medical reports dated March 28, April 16, and May 8, 2018 from Dr. David R. Gentile, a Board-certified orthopedic surgeon, who diagnosed left shoulder pain, left shoulder osteoarthritis, left radial neuritis, left cervical radiculopathy, and left cubital tunnel syndrome. Dr. Gentile indicated that appellant had a preexisting history of cervical symptoms which were unchanged with his onset of shoulder pain and also noted that he had previously undergone left shoulder surgeries in 1994 and 2013 and was status post left shoulder rotator cuff repair, glenohumeral debridement, and subacromial decompression. He related that appellant’s left shoulder symptoms had been present since October 2016 and became worse in October 2017 after “moving equipment at work.” Appellant reported difficulty with overhead activity and weakness with gripping and lifting, which caused him to shake. He was experiencing constant numbness over the back of his thumb and hand during the day. Physical examination findings showed that appellant did shake with range of motion (ROM) exercises and muscle testing. Appellant had incomplete active ROM and demonstrated a painful arc from 90 through 120 degrees with forward flexion. He had positive impingement and reinforcement signs and there was increased tenderness on resisted rotator cuff activity without weakness. Dr. Gentile opined that, at this point, appellant had shoulder symptoms on the basis of glenohumeral arthritis following rotator cuff surgery with an intact rotator cuff with some associated atrophy. He further opined that appellant’s history of C5-6 radiculopathy “may be contributing to his arm symptoms.”

In a narrative statement dated June 7, 2018, appellant alleged that his injury was caused over a long period of time, the extent of which was not discovered until March 2018. He indicated that over a period of years he was required to lift and move large and heavy Pelican cases onto high shelves which damaged his shoulder. Appellant stated that, when he was initially injured in 2013, he was told by his supervisor, M.W., that since he had been wounded in military service, he could not file a claim for FECA benefits. He asserted that when he was injured again, he had been out of the Navy for 14 years. Appellant stated that he first noticed problems with his left shoulder in April 2016 and that his condition was consistent and ongoing.

On June 11, 2018 the employing establishment controverted appellant’s claim, arguing that appellant had exhibited a lack of candor in statements made to his supervisor on numerous occasions and submitted no corroborative statements in regard to his claim. It reported that in April 2017, appellant was reassigned to administrative duties, provided with a private office, and daytime Monday to Friday work hours. All of appellant’s leave requests during his administrative-duty assignment through his retirement were approved as requested. The employing establishment also submitted copies of appellant’s position description.

By decision dated July 12, 2018, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and factors of his federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing 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 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 specific condition or disability for which compensation is claimed is causally related to the employment injury.² 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.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

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

Appellant identified the factors of employment that he believed caused his conditions, including lifting and moving large and heavy Pelican cases at work, which OWCP accepted as factual. However, in order to establish a claim that he sustained an employment-related injury, he

² 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

must also submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.⁸

In his reports, Dr. Gentile diagnosed left shoulder pain, left shoulder osteoarthritis, left radial neuritis, left cervical radiculopathy, and left cubital tunnel syndrome. He related that appellant had preexisting left shoulder symptoms which had been present since October 2016 and became worse in October 2017 after “moving equipment at work.” Dr. Gentile noted that appellant had previously undergone left shoulder surgeries in 1994 and 2013 and opined that appellant’s current left shoulder symptoms were due to his glenohumeral arthritis following rotator cuff surgery, with an intact rotator cuff with some associated atrophy. He further opined that appellant had a prior history of cervical symptoms which were unchanged with his onset of shoulder pain and his history of C5-6 radiculopathy “may be contributing to his arm symptoms.” It remains unclear whether appellant’s left upper extremity condition was the result of a preexisting condition or caused by his occupational employment duties. A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.⁹ The Board finds that Dr. Gentile failed to provide sufficient medical rationale explaining how lifting and moving Pelican cases at work either caused or contributed to appellant’s diagnosed conditions and therefore, is of limited probative value.¹⁰

Dr. Gentile’s opinion was based on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹ Dr. Gentile did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that appellant’s employment factors caused or contributed to the diagnosed conditions. Moreover, the Board finds that the diagnosis of “left shoulder pain” is a description of a symptom rather than a clear diagnosis of the medical condition.¹² Thus, the reports from Dr. Gentile are insufficient to establish that appellant sustained an employment-related injury.

As appellant has not submitted rationalized medical evidence to sufficient support his claim that he sustained an injury causally related to the accepted employment factors, he has failed to meet his burden of proof.

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.

⁸ A.C., Docket No. 08-1453 (issued November 18, 2008).

⁹ T.M., Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ See *James Mack*, 43 ECAB 321 (1991).

¹¹ E.J., Docket No. 09-1481 (issued February 19, 2010).

¹² P.S., Docket No. 12-1601 (issued January 2, 2013); C.F., Docket No. 08-1102 (issued October 10, 2008).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 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