United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 18-1351**
	)	**Issued: May 9, 2019**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, East Elmhurst, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 28, 2018 appellant, through counsel, filed a timely appeal from a May 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 upper extremity condition causally related to the accepted November 21, 2016 employment incident.

FACTUAL HISTORY

On November 22, 2016 appellant, then a 40-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that, on November 21, 2016, he injured his right upper extremity while in the performance of duty. He indicated that he was reaching above his head with his right arm to remove an identifier box from a shelf when he felt a pop and pain to the front aspect of his right shoulder and upper aspect of his right arm. The claim form did not indicate whether appellant stopped work.

OWCP received an unsigned attending physician's report (Form CA-20), which noted a date of injury of November 21, 2016 and described the history of injury as "reach overhead." It also received a position description.

A December 14, 2016 right shoulder x-ray scan report revealed mild degenerative changes and lucency and sclerosis in the inferior aspect of the glenoid.

On December 15, 2016 Dr. Gabriel D. Brown, a Board-certified orthopedic surgeon, treated appellant for complaints of right shoulder pain. In an examination report, he described that on November 21, 2016 appellant reached overhead for a radiation detector at work and felt a pop in his shoulder. Dr. Brown related that appellant had chronic discomfort in his shoulder since then. Upon physical examination of appellant's right shoulder, he observed crepitation at the acromioclavicular (AC) joints and tenderness. O'Brien's test was positive. Dr. Brown indicated that radiographs of the right shoulder revealed type II acromion. He opined that appellant had possible right shoulder superior labral tear from anterior to posterior (SLAP) tear as well as aggravation of his prior AC joint injury, which had fully resolved. In reports dated January 18 and March 16, 2017, Dr. Brown continued to treat appellant for complaints of right shoulder pain. He provided similar examination findings and related that appellant was disabled from work.

Dr. Brown also completed attending physician's reports (CA-20 forms) dated March 21, May 25, and June 15, 2017. He noted a November 21, 2016 date of injury and described that appellant was "reaching overhead at work and felt a pop." Dr. Brown further indicated that a magnetic resonance arthrogram (MRA) was negative for SLAP tear and also showed right proximal biceps tendinitis and mild AC arthropathy. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described employment activity.

In a May 19, 2017 work status note, Dr. Brown authorized appellant to return to work on May 20, 2017 with restrictions of no overhead activity.

On March 30, 2017 the employing establishment provided a limited-duty job offer, effective March 27, 2017.

In a May 31, 2017 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the factual and medical evidence

necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

OWCP subsequently received a June 13, 2017 report by Dr. Brown who noted examination findings of tenderness over the AC joint and palpable catching with motion. Dr. Brown recommended that appellant consider procedures of an AC joint recession with debridement and decompression and possible open biceps tenodesis surgery.

By decision dated July 12, 2017, OWCP denied appellant's claim. It accepted that the November 21, 2016 incident occurred as alleged and that the medical condition of right bicep tendinitis had been diagnosed. However, OWCP found that appellant failed to establish that the November 21, 2016 employment incident caused or aggravated the diagnosed condition of right biceps tendinosis.

On July 30, 2017 appellant requested a telephonic hearing before an OWCP hearing representative. A hearing was held on January 16, 2018.

Appellant submitted additional medical evidence, including diagnostic testing from 2016. A December 30, 2016 right shoulder MRA report demonstrated rotator cuff tendinosis without evidence of cuff tear, truncation and blunting of the posterior inferior labrum suggesting remote prior tear with healing, and mild arthrosis of the AC joint. A December 14, 2016 right shoulder x-ray report also revealed mild degenerative changes and lucency and sclerosis in the inferior aspect of the glenoid.

In reports dated May 22 and August 3, 2017, Dr. Brown related that appellant had continued right shoulder pain after a work-related injury. His physical examination revealed tenderness over the AC joint and equivocal O'Brien tests. Speed and Yergason tests were positive.

In an August 10, 2017 Form CA-20, Dr. Brown noted a November 21, 2016 date of injury. He reported a history of injury of "reaching overhead [at] work felt pop [right] shoulder." Dr. Brown diagnosed mild AC arthropathy and right proximal bicep tendinitis. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by his employment activity. Dr. Brown noted that appellant was partially disabled.

In a November 21, 2017 narrative report, Dr. Brown noted a history of a right shoulder injury at work on November 21, 2016. He related that appellant continued to have right shoulder pain and that his pain was "causally related to his work injury."

Dr. Brown released appellant to full-duty work on November 30, 2017.

In a December 19, 2017 narrative report, Dr. Brown accurately described the November 21, 2016 employment incident and noted that as a federal air marshal, appellant was required to use the detector equipment for his assigned duties. He related that appellant "felt a popping sensation in his right shoulder" and continued to experience pain radiating from his right shoulder AC joint despite significant conservative management. Dr. Brown conducted an examination and opined that appellant was "suffering from AC joint arthropathy as a result of this work injury."

On January 12, 2018 Dr. Peter DeNoble, a Board-certified orthopedic surgeon, evaluated appellant for right shoulder pain due to recurrent shoulder separation. In a narrative report, he indicated that he last treated appellant on March 24, 2014 for a consult regarding a right shoulder type AC joint separation injury, from which he had recovered with minimal dysfunction. Dr. DeNoble reviewed appellant's history of the November 21, 2016 injury. Upon examination of appellant's right shoulder, Dr. DeNoble observed mild tenderness to palpation over the biceps groove and hypermobility with forward elevation and crepitus. Strength testing was 5/5 bilaterally with pain. Dr. DeNoble related that right shoulder diagnostic studies demonstrated fluid signal at the articular surface of the supraspinatus and that x-ray studies revealed AC joint separation. He diagnosed separation of right AC joint and tear of the right supraspinatus tendon. Dr. DeNoble reported: "I explained to the [patient] that his November 21, 2016 injury is directly related to job as described in the HPI. This could possibly be an exacerbation of his prior AC joint injury, but could also be related to a new rotator cuff strain that has n[o]t improved."

By decision dated February 21, 2018, an OWCP hearing representative affirmed the July 12, 2017 decision.

On February 28, 2018 appellant, through counsel, requested reconsideration.

Appellant submitted a report by Dr. DeNoble dated February 23, 2018. He discussed appellant's history, including appellant's previous right shoulder injury, and described that on November 21, 2016 appellant injured the same right shoulder while reaching overhead for a radiation detector. Dr. DeNoble provided similar examination findings and diagnosed separation of right AC joint and right supraspinatus tendon tear. He reported: "the radiation detector imparted a direct stress on the supraspinatus tendon that exceeded the tendon's tensile strength, and created strain (or tearing) within intra-substance fibers on the tendon." Dr. DeNoble opined that appellant's right shoulder injury was a result of the November 21, 2016 employment incident when he moved the radiation detector. He further explained that the "the highly stressful torsional loading of the joint during any overhead lifting of heavy objects can increase the risk of factors for these types of shoulder injuries, especially while the arm is fully extended which concentrates all of the mass/lifting at the shoulder joint." Dr. DeNoble clarified that usually the weight is distributed through multiple joints such as the elbow, shoulder, and wrist but when the arm is fully extended, there is maximum stress directly at the shoulder. He concluded that appellant's injury was a direct result of a task required by his job and directly precipitated this persistent and chronic right shoulder pain.

By decision dated May 29, 2018, OWCP denied modification of the February 21, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[3] *Id.*

time limitation period of FECA,[4] 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.[5] 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.[6]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[7] 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.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[10]

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.[11] 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 factors identified by the employee.[12] The weight of the 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.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right upper extremity condition causally related to the accepted November 21, 2016 employment incident.

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[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *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).

[7] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[8] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[13] *James Mack*, 43 ECAB 321 (1991).

OWCP accepted that appellant established that the November 21, 2016 incident occurred as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship.

In support of his claim, appellant submitted reports from Dr. Brown dated December 15, 2016 through December 19, 2017. In his initial examination report, Dr. Brown accurately described the November 21, 2016 employment incident and related appellant's complaints of chronic shoulder discomfort. He reported examination findings of tenderness and crepitation at the AC joints and positive O'Brien's test. In a November 21, 2017 report, Dr. Brown related that appellant continued to have right shoulder pain after a November 21, 2016 work injury. He opined that the pain was "causally related to his work injury."[14] In a December 19, 2017 report, Dr. Brown further concluded that appellant was "suffering from AC joint arthropathy as a result of this work injury." The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[15] Dr. Brown's opinion is therefore insufficient to establish the claim.[16]

In CA-20 forms dated March 21 to August 10, 2017, Dr. Brown indicated that on November 21, 2016 appellant was "reaching overhead at work and felt a pop." He diagnosed mild AC arthropathy and right proximal bicep tendinitis. Dr. Brown checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described employment activity. The Board has held that when a physician's opinion on causal relationship consists only of responding "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[17]

Appellant was also treated by Dr. DeNoble. In reports dated January 12 and February 23, 2018, Dr. DeNoble reviewed appellant's history of the November 21, 2016 injury and related that he had previously treated appellant in 2014 regarding a right shoulder type AC joint separation injury. He provided examination findings of mild tenderness to palpation over the biceps groove and hypermobility with forward elevation and crepitus. Dr. DeNoble diagnosed separation of right AC joint and tear of the right supraspinatus tendon based on diagnostic imaging. He reported that appellant's right shoulder injury was a result of the November 21, 2016 employment incident when he moved the radiation detector.

Although Dr. Noble accurately described the November 21, 2016 employment incident and provided an affirmative opinion on causal relationship, his opinion is of limited probative value as it is based on an inaccurate medical history. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions

[14] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[15] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[16] *T.R.*, Docket No. 18-1272 (issued February 15, 2019); *K.T.*, Docket No. 15-1758 (issued May 24, 2016).

[17] *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

based on an incomplete or inaccurate history are of limited probative value.[18] Dr. Noble indicated that diagnostic tests revealed AC joint separation and tear of the supraspinatus tendon. The Board finds, however, that the evidence of record does not contain any diagnostic tests which demonstrate a right shoulder tear. Dr. Noble did not explain how the November 21, 2016 employment incident caused a right shoulder tear or how he arrived at the diagnosis. It is especially important for him to explain how he arrived at his opinion in light of the December 30, 2016 right shoulder MRA report, which specifically noted that there was no evidence of a cuff tear. Because Dr. Noble's conclusion is not based on an accurate medical background, his opinion is insufficient to establish appellant's claim.[19]

The diagnostic testing, including the December 14, 2016 right shoulder x-ray scan report and December 30, 2016 right shoulder MRA revealed rotator cuff tendinosis, mild arthrosis of the AC joint, mild degenerative changes, and lucency and sclerosis in the inferior aspect of the glenoid, addressed appellant's right shoulder conditions, but provided no opinion on causal relationship. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment incident and a diagnosed condition.[20]

Similarly, the unsigned Form CA-20, which noted a November 21, 2016 date of injury, also fails to establish appellant's claim as reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[21]

On appeal counsel argues that Dr. DeNoble provided a well-rationalized and unequivocal opinion establishing causal relationship. As explained above, however, Dr. DeNoble's opinion regarding causal relationship fails to establish appellant's claim as it was based on an inaccurate medical history. In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.[22] Because appellant has not provided such evidence demonstrating that his diagnosed right shoulder condition was causally related to the accepted November 21, 2016 employment incident, he has not met his burden of proof to establish his traumatic injury 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.

[18] *J.M.*, Docket No. 17-1002 (issued August 22, 2017); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[19] *See C.S.*, Docket No. 17-1409 (issued December 21, 2018); *Douglas M. McQuaid, id.*

[20] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[21] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[22] *Supra* note 5.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right upper extremity condition causally related to the accepted November 21, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2019
Washington, DC

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

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

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