

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

P.J., Appellant	)	
	)	
and	)	<b>Docket No. 18-1738</b>
	)	<b>Issued: May 17, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Melville, NY, Employer	)	
	)	

*Appearances:*  
Stephen V. Barszcz, Esq., for the appellant<sup>1</sup>  
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 18, 2018 appellant, through counsel, filed a timely appeal from a September 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> 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 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.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include additional left shoulder conditions causally related to the accepted February 2, 2016 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 2, 2016 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left shoulder injury that day when shaking a postal container (postcon) loose from another postcon while in the performance of duty. He reported feeling his left shoulder pop or tear. Appellant stopped work the following day.

By decision dated March 22, 2016, OWCP accepted that the incident occurred as alleged, but denied the claim finding that appellant had not established that a diagnosed medical condition was causally related to the accepted employment incident. On May 4, 2016 appellant requested reconsideration and on August 2, 2016 OWCP denied modification.

On September 2, 2016 appellant, through counsel appealed to the Board. By decision dated December 23, 2016, the Board affirmed the August 2, 2016 decision denying appellant's traumatic injury claim. The Board found the medical evidence submitted by appellant failed to establish causal relationship between the diagnosed left shoulder conditions and the accepted February 2, 2016 employment incident.<sup>5</sup>

On December 22, 2017 OWCP received a request for reconsideration from counsel along with reports dated December 5 and 21, 2017 from Dr. David Weiss, an osteopath Board-certified in family practice.

In a December 5, 2017 report, Dr. Weiss noted his review of the medical records and found that his left shoulder examination revealed well-healed portal arthroscopy scars, anterior cuff tenderness, biceps long head tenderness, and reduced range of motion. He noted that appellant sustained a left shoulder injury in 2013. Dr. Weiss reviewed magnetic resonance imaging (MRI) scans dated June 8, 2013 and March 4 and February 2, 2016 x-ray interpretation. The June 8, 2013 MRI scan revealed a supraspinatus tendon partial thickness tear. Dr. Weiss diagnosed post-traumatic left shoulder massive rotator cuff tear, glenohumeral joint chondromalacia, glenoid labral tear with extension into the bicipital anchor, aggravation of preexisting acromioclavicular joint arthropathy, status post arthroscopic surgery, status post glenohumeral joint chondroplasty, status post glenoid labral debridement with repair to shoulder, status post rotator cuff tear repair, status post biceps tenotomy with biceps tenodesis, and status post subacromial decompression with acromioplasty with distal claviclectomy. He opined that the February 2, 2016 employment incident caused a proinflammatory cell release which in turn caused chemical and mechanical

---

<sup>4</sup> Docket No. 16-1774 (issued December 23, 2016).

<sup>5</sup> *Id.*

irritation to the rotator cuff. Dr. Weiss concluded that appellant's left shoulder pain was causally related to the accepted February 2, 2016 employment incident.

Dr. Weiss, in a December 21, 2017 report, noted a history of a 2013 left shoulder injury causing supraspinatus partial thickness tendon tear. He described the composition of the rotator cuff and its function. Dr. Weiss observed that overexertion including twisting and pulling were common causes of shoulder pain. A review of a March 4, 2016 left shoulder MRI scan revealed full-thickness left supraspinatus and infraspinatus tendon muscle, a massive complete left rotator cuff tear, and tendinosis of the biceps tendon and suprascapularis. Dr. Weiss observed that appellant's left shoulder was vulnerable as it was compromised by the preexisting supraspinatus tendon partial thickness tear. He concluded that appellant sustained a left shoulder injury from pulling a mail container weighing 870 pounds which was stuck to another mail container. Dr. Weiss reported that the pulling motion involved in the February 2, 2016 employment incident placed additional stress on the rotator cuff, which resulted in a humeral head subluxation. He opined that the accepted February 2, 2016 incident caused proinflammatory cell release which in turn caused rotator cuff mechanical irritation. Dr. Weiss concluded that the February 2, 2016 employment incident caused left rotator cuff chemical and mechanical irritation, left shoulder pain and a left shoulder subluxation.

By decision dated March 12, 2018, OWCP vacated in part and affirmed in part the December 23, 2016 decision denying appellant's claim. It found the evidence submitted with his reconsideration request sufficient to accept the claim for left shoulder humeral head subluxation. However, OWCP found the evidence insufficient to establish that the acceptance of his claim should be expanded to include post-traumatic left shoulder rotator cuff tear, left shoulder glenoid labral tear, left shoulder glenohumeral joint chondromalacia, and aggravation of preexisting left shoulder acromioclavicular joint arthropathy. It explained that Dr. Weiss failed to provide sufficient medical rationale explaining how these additional conditions were caused or aggravated by the accepted February 2, 2016 accepted employment injury.

On June 11, 2018 appellant, through counsel, requested reconsideration regarding the denial of the additional left shoulder conditions. In support of his claim, he submitted medical literature and an April 20, 2018 report from Dr. Weiss.

Dr. Weiss, in an April 20, 2018 report, opined that the February 2, 2016 work injury caused a massive rotator cuff tear. He concluded that the stress from trying to remove a mail container weighing about 875 pounds placed additional stress on his compromised rotator cuff. In support of this conclusion, Dr. Weiss explained that the glenoid labral was caused by compromised rotator cuff inability to keep the humerus in place. Furthermore, the excess stress on the acromioclavicular joint from the February 2, 2016 work injury also aggravated appellant's preexisting arthropathy. Dr. Weiss referenced medical literature which found that small to massive posterior and anterior superior rotator cuff tears have been found with people 40 years and older who have had anterior shoulder dislocations.

By decision dated September 5, 2018, OWCP denied modification of the March 12, 2018 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while 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.<sup>7</sup> 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.<sup>8</sup>

To establish causal relationship between the claimed condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, be one of reasonable medical certainty, and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup> The weight of 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.<sup>11</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that acceptance of his claim should be expanded to include additional left shoulder conditions causally related to the February 2, 2016 employment injury.

Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>12</sup> The Board will, therefore, not review the evidence addressed in the prior appeal.

In support of his reconsideration request, appellant submitted reports from Dr. Weiss dated December 5 and 22, 2017 and April 20, 2018. In his December 5, 2017 report, Dr. Weiss noted the history of the February 2, 2016 employment injury. He related the results of the June 8, 2013 MRI scan and diagnosed post-traumatic left shoulder massive rotator cuff tear, glenohumeral joint chondromalacia, glenoid labral tear with extension into the bicipital anchor, aggravation of preexisting acromioclavicular joint arthropathy, status post arthroscopic surgery, status post

---

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *Tracey P. Spillane*, 54 ECAB 608 (2003).

<sup>8</sup> *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

<sup>10</sup> *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

<sup>11</sup> *F.H.*, *supra* note 7.

<sup>12</sup> *See K.V.*, Docket No. 18-0947 (issued March 4, 2019); *S.S.*, Docket No. 17-1106 (issued June 5, 2018); *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

glenohumeral joint chondroplasty, status post glenoid labral debridement with repair to shoulder, status post rotator cuff tear repair, status post biceps tenotomy with biceps tenodesis, and status post subacromial decompression with acromioplasty with distal claviclectomy. Dr. Weiss opined that the attempted removal of a stuck mail container on February 2, 2016 led to proinflammatory cell release which in turn caused chemical and mechanical irritation of the left shoulder rotator cuff. However, he did not explain how the February 2, 2016 work injury caused, aggravated, or contributed to diagnosed post-traumatic left shoulder massive rotator cuff tear, glenohumeral joint chondromalacia, glenoid labral tear with extension into the bicipital anchor, and aggravation of preexisting acromioclavicular joint arthropathy. A medical opinion that does not offer a rationalized medical explanation regarding the cause of the diagnosed medical conditions is of limited probative value on the issue of causal relationship.<sup>13</sup> Dr. Weiss' report was therefore of limited probative value in establishing that appellant had additional diagnosed left shoulder conditions causally related to the accepted February 2, 2016 employment injury.<sup>14</sup>

While in his December 21, 2017 report, Dr. Weiss concluded that the stress from trying to remove a mail container weighing about 875 pounds placed additional stress on his compromised rotator cuff and aggravated appellant's preexisting arthropathy, he again did not explain with medical rationale how this mechanism of injury would have physiologically caused the diagnosed conditions.<sup>15</sup> Furthermore, in cases where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>16</sup>

Additionally, Dr. Weiss referenced literature and books in support of his medical opinion in his April 20, 2018 report. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship between a claimed condition and an employee's federal employment, as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>17</sup> Dr. Weiss did not sufficiently explain how the medical literature applied to appellant's specific circumstances.

As he failed to adequately explain how appellant's additional left shoulder conditions were causally related to the February 2, 2016 employment injury, the Board finds that Dr. Weiss' reports were insufficient to establish appellant's claim.

---

<sup>13</sup> *S.S., id.; H.V.*, Docket No. 17-0492 (issued June 19, 2017); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>14</sup> *M.G.*, Docket No. 16-0451 (issued March 17, 2017); *see also Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history are of diminished probative value).

<sup>15</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

<sup>16</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); *G.G.*, Docket No. 18-0550 (issued October 1, 2018).

<sup>17</sup> *See A.G.*, Docket No. 18-0281 (issued July 12, 2018); *R.O.*, Docket No. 08-1133 (issued October 8, 2008); *William C. Bush*, 40 ECAB 1064, 1075 (1989) (excerpts from publications lack probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation in a case).

On appeal counsel asserts that OWCP erred finding Dr. Weiss' opinion insufficiently rationalized to include additional left shoulder conditions when it used his opinion to accept the condition of left shoulder humeral head subluxation. As discussed above, Dr. Weiss failed to provide sufficient rationale explaining how the additional diagnosed left shoulder conditions had been caused or aggravated by the accepted February 2, 2016 work injury

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 that the acceptance of his claim should be expanded to include additional left shoulder conditions causally related to the accepted February 2, 2016 work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 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