

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

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<b>C.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0175</b>
	)	<b>Issued: May 8, 2019</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Buford, GA, Employer</b>	)	
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*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 30, 2018 appellant, through counsel, filed a timely appeal from a September 21, 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.

**ISSUE**

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

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<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.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On April 15, 2016 appellant, then a 56-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that on September 1, 2015 he first became aware of his severe left shoulder pain and first realized that his condition was caused by his federal employment duties, including casing mail and heavy lifting. He stopped work on April 15, 2016.

By decision dated June 22, 2016, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of his federal employment.

On July 5, 2016 appellant appealed to the Board. By decision dated November 25, 2016,<sup>4</sup> the Board affirmed OWCP's June 22, 2016 decision, finding that the medical evidence of record was insufficient to establish that appellant sustained a left shoulder condition causally related to the accepted factors of his federal employment.

On July 13, 2018 appellant, through counsel, requested reconsideration before OWCP. He submitted a June 30, 2016 medical report from Dr. Darrell K. Scales, an attending Board-certified orthopedic surgeon. Dr. Scales performed left shoulder arthroscopic surgery. The preoperative diagnoses were partial rotator cuff tear, possible labral tear, impingement syndrome, and acromioclavicular (AC) arthritis. The postoperative diagnoses were partial intrasubstance rotator cuff tear, superior labral tear from anterior to posterior (SLAP) tears, AC arthritis, and impingement. In reports dated December 12, 2016 through August 23, 2017, Dr. Scales noted appellant's medical history, including his left shoulder arthroscopic surgery and that he was doing well as he had hardly no pain. He discussed findings on physical and x-ray examination. Dr. Scales provided an assessment of history of an arthroscopy of the left shoulder that was abnormal on the date of service, and left shoulder arthroscopy with extensive debridement, SLAP tear and posterior labral repair with distal clavicle excision and subacromial decompression, and partial rotator cuff debridement without repair. He also provided an assessment of left rotator cuff tear, left shoulder lateral epicondylitis, and right shoulder impingement. Dr. Scales performed right shoulder injections.

Appellant also submitted an April 19, 2017 left shoulder magnetic resonance imaging (MRI) scan post arthrogram from Dr. Shaan H. Shah, a Board-certified diagnostic radiologist. Dr. Shah noted moderate tendinosis of the supraspinatus, most prominent along the central articular surface fibers, and no definite tear. He also noted mild tendinosis of the infraspinatus and subscapulari. Dr. Shah further noted mild AC joint arthropathy, which had a mildly diminutive appearance along the distal clavicle may be postsurgical. In addition, he noted remodeling along the undersurface of the lateral acromion, likely related to prior subacromial decompression and edema along the anterior aspect of the humeral head that may represent contusion. Dr. Shah

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<sup>3</sup> Docket No. 16-1440 (issued November 25, 2016).

<sup>4</sup> *Id.*

reported status post labral repair, indicating that an appearance along the posterior-superior labrum was likely related to degeneration with adjacent fraying superiorly and that an appearance along the posterior labrum was likely related to post repair change or fraying and was less likely to represent a tiny tear. He also reported probable adjacent scarring along the posterior superior labrum. Lastly, Dr. Shah reported mild glenohumeral synovitis.

OWCP, by decision dated September 21, 2018, denied modification of its prior denial of the claim finding that appellant had not provided rationalized medical opinion evidence sufficient to establish that the accepted factors of his federal employment caused or aggravated his diagnosed left shoulder conditions.

### **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,<sup>5</sup> 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.<sup>6</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>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>8</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>9</sup> and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>10</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by

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<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *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).

<sup>8</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>9</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup>

### ANALYSIS

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

OWCP accepted that appellant cased mail and performed heavy lifting as part of his employment duties as a mail carrier. It denied his claim, however, because the evidence failed to establish a causal relationship between these factors of his federal employment and his diagnosed conditions. By decision dated November 25, 2016, the Board affirmed OWCP's denial of his claim. 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.

Appellant submitted a series of reports from his attending physician, Dr. Scales, in support of his November 27, 2017 request for reconsideration. In a June 30, 2016 report, Dr. Scales provided preoperative left shoulder diagnoses, which included partial rotator cuff tear, possible labral tear, impingement syndrome, and AC arthritis. He also provided postoperative left shoulder diagnoses, which included partial intrasubstance rotator cuff tear, SLAP and posterior labral tears, AC arthritis, and impingement. In reports dated December 12, 2016 through August 23, 2017, Dr. Scales discussed examination findings and provided assessments of left shoulder arthroscopic surgery, left rotator cuff tear, left shoulder lateral epicondylitis, and right shoulder impingement. However, none of Dr. Scales' reports offer an opinion regarding the cause of appellant's conditions. 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.<sup>13</sup> For these reasons, the Board finds that Dr. Scales' reports are insufficient to establish appellant's claim.

Appellant also submitted Dr. Shah's April 19, 2017 left shoulder MRI scan report. While Dr. Shah's diagnostic report establishes a diagnoses, it is of limited probative value as he did not address whether the accepted employment factors caused any of the diagnosed conditions.<sup>14</sup> 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 and a diagnosed condition.<sup>15</sup>

As appellant has not submitted rationalized medical evidence to establish an injury causally related to the accepted employment factors, he has not met his burden of proof.

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<sup>11</sup> See *J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

<sup>12</sup> See *M.M.*, Docket No. 18-1366 (issued February 27, 2019); *E.L.*, 16-0635 (issued November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014).

<sup>13</sup> See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *M.M.*, Docket No. 17-0960 (issued November 14, 2017).

<sup>14</sup> See *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *D.F.*, Docket No. 17-0135 (issued June 5, 2017).

<sup>15</sup> See *R.G.*, Docket No. 18-1045 (issued February 1, 2019).

On appeal counsel contends that OWCP failed to adjudicate appellant's claim in accordance with the proper standard of causation and requests that the Board take specific corrective action rather than simply remand the claim. However, as discussed above, Dr. Scales did not provide a rationalized opinion sufficient to establish that appellant's diagnosed left shoulder conditions and surgery were caused or aggravated by the accepted factors of his federal employment.

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 a left shoulder condition causally related to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2019  
Washington, DC

Christopher J. Godfrey, 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