

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

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<b>T.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1043</b>
	)	<b>Issued: November 8, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Concord, NC, Employer</b>	)	
_____	)	

*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:  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 11, 2019 appellant, through counsel, filed a timely appeal from January 29 and March 14, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup>

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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> The Board notes that, following the March 14, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the 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.*

Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish disability for the periods March 8 to 10 and March 16 to 30, 2018 causally related to his accepted May 24, 2017 employment injury; and (2) whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include a left shoulder condition casually related to his accepted May 24, 2017 employment injury.

### **FACTUAL HISTORY**

On May 24, 2017 appellant, then a 40-year-old part-time flexible rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on the same date he retrieved a heavy box from the back of his postal vehicle and sustained a back injury while in the performance of duty. He stopped work on May 24, 2017.<sup>4</sup>

Appellant submitted a May 24, 2017 report from Dr. Patricia Kaldy, a Board-certified family practitioner, who indicated that he reported experiencing thoracic back pain on the same date when he bent over to pick up a box at work. Dr. Kaldy diagnosed thoracic back pain. In a June 6, 2017 follow-up report, she indicated that appellant denied numbness or tingling in his extremities. In a July 17, 2017 report, Dr. Lewis Roberson, a Board-certified family practitioner, noted that appellant reported sudden upper back pain after lifting a box weighing approximately 40 pounds on May 24, 2017. He diagnosed thoracic myofascial strain.

After development of the evidence, OWCP accepted appellant's claim for thoracic myofascial sprain by decision dated November 21, 2017.<sup>5</sup>

Appellant subsequently submitted a July 24, 2017 report from Dr. Kaldy who listed the date of injury as May 24, 2017 and diagnosed thoracic strain and left shoulder strain. In a November 29, 2017 report, Dr. Roberson also diagnosed thoracic spine strain and left shoulder strain. On December 18, 2017 Dr. Paul Brezicki, a Board-certified family practitioner, indicated that appellant reported that on May 24, 2017 he sustained thoracic and left shoulder strains due to lifting a heavy box. Appellant also reported that on December 18, 2017 he was reaching back with

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> OWCP assigned the claim OWCP File No. xxxxxx567. Appellant had previously filed a claim for a July 15, 2015 traumatic injury under a separate file number, OWCP File No. xxxxxx954. OWCP accepted the claim for a thoracic sprain and later administratively closed it. This injury is not the subject of the present claim.

<sup>5</sup> Appellant periodically returned to light-duty work and received wage-loss compensation on the daily rolls for periods of work stoppage, including September 19 to November 27, 2017 and February 27 to March 6, 2018 when the employing establishment was unable to provide him with work.

his left arm to place mail in a mailbox and felt a sudden onset of pain and burning sensation in his left thoracic region. Dr. Brezicki diagnosed left shoulder strain and thoracic myofascial strain.<sup>6</sup>

Appellant returned to work on March 7, 2018, but stopped work on March 8, 2018. On March 31, 2018 he filed compensation claim forms (Form CA-7) seeking wage-loss compensation for the periods March 8 to 10 and March 16 to 30, 2018 due to his May 24, 2017 employment injury.<sup>7</sup> In addition, appellant, through counsel, requested that the accepted conditions related to his May 24, 2017 employment injury be expanded to include a left shoulder condition.

In an April 16, 2018 development letter, OWCP requested that appellant submit medical evidence in support of his disability claim. It afforded him 30 days to submit the requested evidence.

Appellant submitted an undated note in containing an illegible signature which indicated that he could return to work on March 28, 2018 with restrictions of no use of his left arm for three days. In a May 4, 2018 note and a May 9, 2018 duty status report (Form CA-17), Dr. Kaldy indicated that he could work with restrictions including lifting no more than 15 pounds.

By decision dated May 18, 2018, OWCP denied appellant's disability claim because he did not submit medical evidence sufficient to establish disability for the periods March 8 to 10 and March 16 to 30, 2018 causally related to his accepted May 24, 2017 employment injury.

On May 29, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review regarding the denial of his disability claim. In a May 24, 2018 statement, appellant indicated that he began to feel left shoulder pain on approximately July 7, 2017. He advised that, once the pain was consistent, he mentioned it to his physician and he indicated that a couple of weeks later at a visit with his physician he had limited mobility when attempting to raise his left arm above his head. Appellant noted that he did not have any additional injury event, but indicated that he continued to work and that his left shoulder would give out from time to time. He noted that his attending physician advised him to get treatment for his left shoulder because it was "a result of the thoracic injury."

Appellant submitted a May 22, 2018 report from Dr. Kaldy who indicated that he was first evaluated and treated for a left thoracic strain on May 24, 2017. Dr. Kaldy noted that his pain complaints initially were with respect to the thoracic spine region only and that it was not until later on July 24, 2017 that the added diagnosis of left shoulder strain was made. She indicated that no new injury event was documented and that a new finding of pain radiating to the left shoulder from the left thoracic musculature was documented. Dr. Kaldy indicated that appellant continued to complain of pain in the thoracic and left shoulder regions. Appellant reported that the left shoulder pain was exacerbated by lifting, pushing, and pulling with the left arm. Dr. Kaldy indicated that magnetic resonance imaging (MRI) scans of his thoracic spine and left shoulder were negative for any significant injury. She indicated that appellant's "left shoulder pain

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<sup>6</sup> Dr. Brezicki also produced January 9 and 26, and February 9, 2018 reports which contained diagnoses of left-sided thoracic back pain and left shoulder strain.

<sup>7</sup> Appellant returned to light-duty work between these two periods of claimed disability.

correlates directly with the left upper back/thoracic strain.” Dr. Kaldy noted that, although the complaint of left shoulder pain was not documented until July 24, 2017, she believed that the pain was “the result of radiating pain from the left upper back musculature injury” and that both complaints should be treated as one injury that occurred on May 24, 2017.

By decision dated August 6, 2018, OWCP denied appellant’s request to expand the accepted conditions to include a left shoulder condition. It found that he did not submit medical evidence sufficient to establish a condition, other than the accepted thoracic myofascial sprain, causally related to the May 24, 2017 employment injury.<sup>8</sup>

During a hearing held on November 14, 2018 regarding the disability claim, appellant testified that he was unable to work beginning March 8, 2018 because his left shoulder became incapacitated after he had been playing with his dog. He testified that he woke up on the morning of March 8, 2018 and could hardly move his left arm.<sup>9</sup>

By decision dated January 29, 2019, OWCP’s hearing representative affirmed OWCP’s May 18, 2018 decision denying appellant’s claim that he sustained disability for the periods March 8 to 10 and March 16 to 30, 2018 causally related to his accepted May 24, 2017 employment injury.

Appellant, through counsel, requested a telephonic hearing with a representative of OWCP’s Branch of Hearings and Review on August 10, 2018 regarding the denial of his claim for expansion of the accepted conditions. He subsequently submitted a December 27, 2018 report in which Dr. Alexander Chasnis, a Board-certified orthopedic surgeon, indicated that appellant could perform light-duty work.

During the hearing held on January 8, 2019, appellant testified that he delayed two months in reporting his left shoulder pain to his physicians because it was “very minute” compared to his upper back pain. He further testified that he believed that the box he lifted on May 24, 2017 weighed 30 to 35 pounds.<sup>10</sup>

By decision dated March 14, 2019, OWCP’s hearing representative affirmed OWCP’s August 6, 2018 decision.

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<sup>8</sup> In late August 2018, appellant resubmitted a number of previously considered medical reports. He also submitted a January 9, 2018 report in which Dr. Brezicki diagnosed left-sided thoracic back pain and left shoulder strain.

<sup>9</sup> In mid-November 2018, OWCP referred appellant to Dr. Seth Jaffe, a Board-certified orthopedic surgeon and osteopath, for a second opinion examination and opinion regarding whether appellant still had residuals of his accepted May 24, 2017 employment injury. In a December 17, 2018 report, Dr. Jaffe opined that appellant’s May 24, 2017 thoracic myofascial sprain had resolved and that “there are no other diagnoses related to the injury to the claimant’s back.” He indicated that appellant’s thoracic myofascial sprain was a soft-tissue condition that has an average healing time of 6 to 12 weeks.

<sup>10</sup> After the hearing, appellant submitted a January 18, 2019 report in which Dr. Chasnis indicated that appellant could return to work with restrictions on January 21, 2019.

### **LEGAL PRECEDENT -- ISSUE 1**

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, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>11</sup> In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>12</sup> This meaning, for brevity, is expressed as disability for work.<sup>13</sup>

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimant.<sup>14</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish disability for the periods March 8 to 10 and March 16 to 30, 2018 causally related to his accepted May 24, 2017 employment injury.

Appellant submitted an undated note containing an illegible signature which indicated that he could return to work on March 28, 2018 with restrictions of no use of his left arm for three days. This report is of no probative value with respect to his disability claim because there is no indication that it was signed by a physician within the meaning of FECA. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence.<sup>15</sup> Therefore, this report does not establish appellant's disability claim.<sup>16</sup>

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<sup>11</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>12</sup> *See* 20 C.F.R. § 10.5(f).

<sup>13</sup> *See S.W.*, *supra* note 11. *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>14</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>15</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>16</sup> *Id.* Appellant also submitted several reports of Dr. Kaldy and Dr. Chasnis concerning disability, but none of these reports addressed the claimed period of disability in the present case, *i.e.*, March 8 to 10 and March 16 to 30, 2018.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's accepted May 24, 2017 employment injury and the claimed periods of disability, the Board finds that appellant has not met his burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>17</sup> The medical evidence required to establish causal relationship between a claimed period of disability or specific condition and an employment injury is rationalized medical opinion evidence. 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 claimant.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

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 a left shoulder condition causally related to his accepted May 24, 2017 employment injury.

Appellant submitted a May 22, 2018 report in which Dr. Kaldy indicated that his "left shoulder pain correlates directly with the left upper back/thoracic strain." Dr. Kaldy noted that, although the complaint of left shoulder pain was not documented until later in July 24, 2017, she believed that the pain was "the result of radiating pain from the left upper back musculature injury" and that both complaints should be treated as one injury that occurred on May 24, 2017.

The Board finds that Dr. Kaldy's May 22, 2018 report is of limited probative value with respect to appellant's claim for expansion of the accepted conditions because she did not provide adequate medical rationale in support of her opinion on causal relationship. Such medical rationale is especially necessary in the present case because appellant did not report to his physicians that he had left shoulder pain until more than two months after the accepted May 24, 2017 employment injury. Dr. Kaldy did not describe the May 24, 2017 employment injury in any detail or explain the mechanism through which it could have caused a left shoulder strain. She noted that pain radiated into appellant's left shoulder from the muscles in the area of his accepted thoracic sprain. However, this observation does not elucidate the precise nature of any specific injury to the left shoulder and the Board has held that pain localized in a given body part is not, in and of itself, a valid diagnosis.<sup>19</sup> The Board has further held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is

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<sup>17</sup> *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>18</sup> *See supra* note 14.

<sup>19</sup> *See F.U.*, Docket No. 18-0078 (issued June 6, 2018). The record also contains a July 24, 2017 report in which Dr. Kaldy listed the date of injury as May 24, 2017 and diagnosed thoracic strain and left shoulder strain. However, she did not provide an explanation for her ostensible opinion that the left shoulder strain was related to the May 24, 2017 employment injury.

unsupported by medical rationale.<sup>20</sup> Therefore, Dr. Kaldy's May 22, 2018 report is insufficient to establish appellant's claim for expansion of the accepted conditions.<sup>21</sup>

The case record also contains several other reports dated beginning in late 2017 which contain a diagnosis of left shoulder strain, including those of Dr. Roberson and Dr. Brezicki. However, these reports are of no probative value with respect to appellant's claim for expansion of the accepted conditions because Dr. Roberson and Dr. Brezicki did not provide an opinion on the cause of this diagnosis. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition/disability is of no probative value on the issue of causal relationship.<sup>22</sup> Therefore, these reports are insufficient to establish appellant's claim for expansion of the accepted conditions.<sup>23</sup>

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's accepted May 24, 2017 employment injury and a left shoulder condition, the Board finds that he has not met his burden of proof with respect to his claim for expansion of the accepted conditions.

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 disability for the periods March 8 to 10 and March 16 to 30, 2018 causally related to his accepted May 24, 2017 employment injury. The Board further finds that he has not met his burden of proof to establish that the acceptance of his claim should be expanded to include a left shoulder condition causally related to his accepted May 24, 2017 employment injury.

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<sup>20</sup> *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>21</sup> *Id.*

<sup>22</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>23</sup> *Id.* The Board notes that the case record contains a December 17, 2018 report of Dr. Jaffe, an OWCP referral physician who was asked to provide an opinion regarding whether appellant continued to have residuals of his May 24, 2017 employment injury at the time of the referral in late-2018. Dr. Jaffe was not specifically asked to comment on the cause of appellant's claimed disability in March 2018 or to indicate whether appellant sustained any conditions other than a thoracic sprain causally related to the May 24, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14 and January 29, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 8, 2019  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board