

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

G.D., Appellant)	
)	
and)	Docket No. 19-1175
)	Issued: November 15, 2019
DEPARTMENT OF THE ARMY, RESEARCH,)	
DEVELOPMENT & ENGINEERING)	
COMMAND, PICATINNY ARSENAL, NJ,)	
Employer)	
)	

Appearances:
Russell T. Uliase, Esq., for the appellant¹
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 May 1, 2019 appellant, through counsel, filed a timely appeal from a December 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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 traumatic injury causally related to the accepted July 14, 2017 employment incident.

FACTUAL HISTORY

On July 18, 2017 appellant, then a 61-year-old industrial engineering technician, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 2017 he slipped backward on wet steps, slid downward on his back and buttocks, and sustained bruises and abrasions on his left arm, shoulders, back, and buttocks while in the performance of duty. He provided a July 14, 2017 witness statement from coworker M.F. indicating that appellant slipped and fell backward down three stairs, landing on his buttocks, back, and shoulders.

Appellant sought treatment on July 14, 2017 at the employing establishment health clinic, but there was no physician or nurse on duty.

In a July 17, 2017 report, Dr. James Bilello, Board-certified in occupational and preventive medicine, noted appellant's account of falling on stairs at work on July 14, 2017. He ordered x-rays.³ Dr. Bilello restricted appellant to light duty. Appellant returned to full duty in late July 2017.

In September 26, 2017 reports, Dr. Michael A. Deehan, a Board-certified orthopedic surgeon, noted that on July 14, 2017 appellant slipped and fell backward on wooden steps while at work, injuring his right shoulder. He diagnosed right rotator cuff impingement and a labral tear.

On October 12, 2017 appellant filed a notice of recurrence (Form CA-2a), claiming disability for work commencing September 26, 2017. He described continued soreness of the right shoulder. Appellant noted that on July 25, 2017 he had sustained a separate and unrelated employment injury to his left hand.⁴

In an October 23, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from him. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a November 13, 2017 statement. He described slipping and falling backward on four stairs of a wooden dock, striking his back, tailbone, and shoulders. Appellant sought treatment at an employing establishment clinic where he had abrasions cleaned. On July 17, 2017 he underwent x-rays and a clinic physician diagnosed arthritis of the right

³ July 17, 2017 x-rays demonstrated mild degenerative changes of the right shoulder, postsurgical changes of the lower cervical and upper thoracic spine, and mild disc space narrowing at L5-S1.

⁴ On July 25, 2017 appellant sustained a small puncture wound to the dorsum of the first web of the left hand from a fragment of a snapped drill bit. OWCP assigned the claim OWCP File No. xxxxxx026.

shoulder. Appellant returned to work. As his symptoms remained significant, he consulted Dr. Deehan, who diagnosed a rotator cuff tear.⁵

An October 13, 2017 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated a full-thickness supraspinatus tear with retraction, high-grade tears of the subscapularis and infraspinatus tendons, a superior labral tear, acromioclavicular arthrosis, subacromial and subdeltoid bursitis, and glenohumeral joint effusion.

In a report dated November 9, 2017, Dr. Deehan noted that on July 14, 2017 appellant injured himself at work when he fell “backwards and injured his shoulder.” Appellant’s right shoulder dysfunction, weakness, and pain remained unimproved. Dr. Deehan diagnosed a right rotator cuff tear requiring arthroscopic repair.

By decision dated December 6, 2017, OWCP accepted that the July 14, 2017 incident occurred at the time, place, and in the manner alleged, but denied appellant’s claim, finding that he had not met his burden of proof to establish causal relationship.

On December 18, 2017 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review. He submitted additional evidence.

In an October 19, 2017 report, Dr. Deehan diagnosed right supraspinatus and infraspinatus tears, impingement, and chronic pain.

In a January 11, 2018 report, Dr. Philip E. Lutz, a Board-certified anesthesiologist, noted that appellant had slipped and fallen down four steps while at work on July 14, 2017 striking his buttocks, back, and head. On examination, he found limited range of right shoulder motion, diminished grip strength in the right hand, and lumbar paraspinal tenderness. Dr. Lutz prescribed medication.⁶

In a report dated March 1, 2018, Dr. Lutz noted progressive atrophy of the right shoulder with decreased strength and range of motion. He diagnosed a post-traumatic right rotator cuff and labral tears, acromioclavicular arthrosis, bursitis, glenohumeral joint effusion, marked acromioclavicular osteoarthritis, chronic right shoulder pain, and lumbar stenosis with bilateral radiculopathy.

In a March 14, 2018 report, Dr. Deehan noted the accepted July 2017 employment incident. He diagnosed a right labral tear of the supraspinatus tendon with retraction, a subscapularis tendon tear, and infraspinatus tendon tear. Dr. Deehan indicated that the arthritic changes in the AC joint certainly preexisted the trauma sustained. He opined that “the causative factor of [appellant’s] shoulder problem is clearly the trauma he sustained and these injuries are structurally quite substantial.”

⁵ Appellant also submitted witness statements from coworkers O.D. and M.F., who corroborated appellant’s account of his slip and fall down wooden stairs. Immediately, after the incident, the coworkers transported appellant to the employing establishment’s health clinic for evaluation.

⁶ Dr. Lutz also provided January 15, 2018 laboratory test results.

At the hearing, held on May 14, 2018, counsel contended that appellant's uncontroverted assertion of a right shoulder injury related to the accepted July 14, 2017 employment incident was supported by the detailed opinions of Dr. Deehan and Dr. Lutz. Counsel emphasized that Dr. Deehan provided medical rationale differentiating preexisting arthritis from the claimed traumatic injury.

By decision dated June 14, 2018, an OWCP hearing representative affirmed the December 6, 2017 decision, finding that the medical evidence of record was insufficient to establish causal relationship.

On September 18, 2018 appellant, through counsel, requested reconsideration. Counsel submitted additional medical evidence.

In a June 4, 2018 report, Dr. Deehan explained that the accepted July 14, 2017 incident "resulted in forceful motion of the right arm and resulted in tear of the rotator cuff. This is a common mechanism for this type of injury and is clearly causative based on his history of absence of prior disease and confirmatory MRI [scan]."

By decision dated December 6, 2018, OWCP denied modification as the evidence of record did not contain sufficient medical rationale supporting causal relationship to meet appellant's burden of proof.

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,⁷ 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.⁸ 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.⁹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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

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

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *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).

time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.¹⁰

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.¹¹ 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.¹²

In any case 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 a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹³

ANALYSIS

The Board finds that this case is not in posture for a decision.

In support of his claim, appellant provided a series of reports from Dr. Deehan, dated from September 26, 2017 to June 4, 2018. In his initial report, Dr. Deehan noted the accepted July 14, 2017 employment incident in which appellant slipped and fell backward on wooden stairs, sliding downward on his back, buttocks, and right shoulder. He opined on November 9, 2017 that the accepted incident caused a right rotator cuff tear. Additionally, Dr. Deehan in his March 14, 2018 report indicated that the arthritic changes in the AC joint certainly preexisted the trauma sustained. He opined that the causative factor of his shoulder problem was clearly the trauma between appellant's preexisting acromioclavicular joint arthritis and the claimed traumatic injury. Dr. Deehan opined that the rotator cuff injuries were clearly caused by the July 14, 2017 traumatic incident as they were structurally substantial. He elaborated in a June 4, 2018 report that forceful right arm motion during the accepted July 14, 2017 employment incident caused the diagnosed rotator cuff tendon tears. Dr. Deehan noted that this was a common method of causation and had been confirmed by MRI scan.

Dr. Deehan provided a consistent, detailed explanation of how appellant's right shoulder conditions resulted from accepted July 14, 2017 employment incident. Although his reports are insufficient to discharge appellant's burden of proving that his current right shoulder conditions were caused or aggravated by the July 14, 2017 employment incident, his opinion is of sufficient

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee) and 10.5(q) (traumatic injury and occupational disease defined, respectively).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345(1989).

¹² *James Mack*, 43 ECAB 321 (1991).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.A.*, Docket No. 19-0423 (issued August 7, 2019); *D.S.*, Docket No. 17-1359 (issued May 3, 2019).

probative quality to require further development of the case record by OWCP, and is uncontroverted in the record.¹⁴

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵

On remand OWCP should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician should provide an evaluation and a rationalized medical opinion as to the relation of the claimed right shoulder conditions to the accepted July 14, 2017 employment incident. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: November 15, 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

¹⁴ *R.A., id.; D.S., id.*

¹⁵ *Id.; X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).