

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, NEW CITY POST
OFFICE, New City, NY, Employer**

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**Docket No. 19-1814
Issued: April 1, 2020**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 28, 2019 appellant, through counsel, filed a timely appeal from a July 30, 2019 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 over the merits of this case.³

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.*

³ The Board notes that, following the July 30, 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.*

ISSUE

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

FACTUAL HISTORY

On November 13, 2018 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he had begun to experience persistent pain in the right shoulder that gradually worsened in severity due to factors of his federal employment, including repetitive lifting, pushing, grabbing, and loading. He indicated that he first became aware of the condition and attributed it to factors of his federal employment on August 15, 2018. Appellant stopped work on October 2, 2018.

October 2, 2018 x-rays of appellant's right shoulder revealed mild osteoarthritis. The x-rays showed mild bony spurring at the glenohumeral and acromioclavicular joints. A partial October 9, 2018 magnetic resonance imaging (MRI) scan report of his right shoulder revealed a rotator cuff tear with supraspinatus tendon retraction and subacromial/subdeltoid bursitis. It also showed evidence of long head biceps tendinitis.

In a November 13, 2018 attending physician's report (Form CA-20), Dr. James Giordano, an orthopedic surgeon, noted that appellant had been experiencing right shoulder pain for four months while driving and delivering packages in his capacity as a letter carrier. He diagnosed right shoulder bicep tendinitis and a complete rotator cuff tear/rupture in the right shoulder. Dr. Giordano checked a box marked "Yes" to indicate that the diagnosed conditions were caused or aggravated by an employment activity. He added that appellant's pain started on approximately August 15, 2018 while appellant was lifting heavy packages, working as a letter carrier. Dr. Giordano noted that appellant would be disabled from work for an indeterminate period of time as he required surgery.

In a November 26, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical evidence needed, including a comprehensive narrative medical report from a qualified physician explaining how factors of his federal employment caused, contributed to, or aggravated his diagnosed medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence.

In an October 2, 2018 report, Dr. Giordano noted that appellant had been experiencing right shoulder pain for four months. He noted that appellant's pain was worse with activity and that appellant also experienced pain while driving and carrying heavy packages. Dr. Giordano reviewed x-rays of appellant's right shoulder and diagnosed rotator cuff syndrome of the right shoulder.

An October 9, 2018 MRI scan of appellant's right shoulder revealed a rotator cuff tear with supraspinatus tendon retraction and subacromial/subdeltoid bursitis. It also showed evidence for long head biceps tendinitis.

In an October 12, 2018 report, Dr. Giordano reported that appellant was experiencing continued right shoulder pain while carrying heavy packages at work. He noted that appellant did

not perform heavy lifting at home. Dr. Giordano responded “Yes” to a question as to whether appellant’s work activity was the “competent medical cause of [appellant’s] injury/illness.” He reviewed a right shoulder MRI scan and diagnosed a nontraumatic complete rotator cuff tear or rupture of the right shoulder. Dr. Giordano noted that appellant wished to pursue surgical management for his right shoulder condition. In a follow-up report dated October 19, 2018 report, he again reviewed a right shoulder MRI scan and diagnosed a nontraumatic complete rotator cuff tear or rupture of the right shoulder and biceps tendinitis of the right shoulder.

In a November 13, 2018 report, Dr. Giordano noted that appellant was still experiencing right shoulder pain and that he believed that it started on August 15, 2018. He again answered “Yes” to a question as to whether appellant’s work activity was the “competent medical cause of [appellant’s] injury/illness.” Dr. Giordano examined appellant and diagnosed biceps tendinitis of the right shoulder, a nontraumatic complete rotator cuff tear or rupture of the right shoulder, and rotator cuff syndrome of the right shoulder. He noted that appellant would undergo right shoulder arthroscopy with rotator cuff repair, subacromial decompression, partial acromioplasty, and possible biceps tenodesis open. In an accompanying Form CA-20 of even date, Dr. Giordano reiterated appellant’s diagnoses, noted that he worked as a mail carrier which required driving and lifting packages. He checked a box marked “yes” indicating that appellant’s diagnosed conditions were caused or aggravated by his employment activities.

In November 28 and December 21, 2018 work excuse notes, Dr. Giordano confirmed that appellant was seen for medical appointments on both dates.

In a January 21, 2019 report, Dr. Giordano noted that appellant was experiencing continued right shoulder pain that he believed was caused by the activities of lifting and driving at work. He answered “Yes” to a question regarding causal relationship. Dr. Giordano noted appellant’s diagnoses and indicated that appellant wanted to pursue surgery as soon as he obtained approval.⁴

By decision dated February 14, 2019, OWCP denied appellant’s claim finding that the medical evidence of record was insufficient to establish a causal relationship between his right shoulder conditions and the accepted factors of his federal employment.

On February 21, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a February 14, 2019 operative note, received by OWCP on May 20, 2019, Dr. Giordano noted that appellant underwent right shoulder arthroscopy with subacromial decompression and partial acromioplasty, right shoulder arthroscopy with rotator cuff repair, right shoulder open biceps tenodesis, and right shoulder arthroscopy with synovectomy. He listed postoperative diagnoses of right shoulder subacromial impingement, right shoulder rotator cuff tear, right shoulder biceps tear, right shoulder extensive synovitis, and right shoulder degenerative anterior labral fraying.

In a February 26, 2019 letter, Dr. Giordano noted that he had been treating appellant for right shoulder biceps tendinitis and rotator cuff tear since October 2, 2018. He indicated that

⁴ In an accompanying prescription, Dr. Giordano prescribed a right shoulder abduction sling and a cryocuff machine.

appellant's condition started on approximately August 15, 2018 as a nontraumatic injury and had progressed since that time. Dr. Giordano opined that the nature and duties of appellant's job as a mail carrier, along with the motions of repetitive stress, led to the work-related injury. He found that the "causal relationship of the injury [was] directly correlated with [appellant's] job duties."

In a March 9, 2019 report, Dr. Giordano indicated that he saw appellant for a postoperative visit on February 26, 2019. He noted that appellant was doing well following his right shoulder operations. Dr. Giordano reported that appellant was in a sling and was unable to work at that time.

In a March 26, 2019 report, Dr. Giordano diagnosed biceps tendinitis of the right shoulder, a nontraumatic complete rotator cuff tear or rupture of the right shoulder, and rotator cuff syndrome of the right shoulder. In a letter of even date, he noted appellant's diagnoses and opined that appellant's condition "seem[ed] to be exasperated while performing [appellant's] duties at work of lifting packages and also driving." Dr. Giordano again opined that appellant's injury was causally related to his job duties, which he again noted included "repetitive stress."

A telephonic hearing was held on June 7, 2019. Appellant described his continued problems with his right shoulder. The record was held open for 30 days for the submission of additional evidence.

In a June 19, 2019 statement, appellant noted that his job duties had increased following the employing establishment's contract with Amazon in November 2013. He indicated that the daily amount of packages increased by 15 to 30 packages for each route. Appellant also indicated that he received heavier packages which required more use of the arm and shoulder. He stated that holiday parcels increased immensely which required significant overtime from Thanksgiving through the New Year.

By decision dated July 30, 2019, OWCP's hearing representative affirmed the February 14, 2019 decision finding that the medical evidence of record was insufficient to establish a causal relationship between appellant's right shoulder conditions and the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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

⁵ *Supra* note 2.

⁶ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁷ 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.⁸

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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹ Neither the mere fact that, a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹²

ANALYSIS

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

In support of his claim, appellant submitted a series of medical reports from Dr. Giordano. The November 28 and December 21, 2018 work excuse notes from Dr. Giordano, and the February 20, 2019 surgical note from him did not offer an opinion on causal relationship. The Board has held that 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.¹³

In other reports dated from October 12, 2018 through January 21, 2019, Dr. Giordano provided multiple diagnoses related to appellant's right shoulder condition and responded "Yes" to questions as to whether appellant's work activity was the medical cause of his diagnosed conditions. He offered no other opinion on causal relationship in these reports. The Board has

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² *E.W.*, *supra* note 6; *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *A.M.*, *supra* note 11.

held that when a physician's opinion on causal relationship consists only of answering "yes" to a form question, without explanation or rationale, that opinion is of limited probative value and is insufficient to establish a claim.¹⁴

In a February 26, 2019 letter, Dr. Giordano noted that appellant's job duties, along with the motions of repetitive stress, led to his work-related injury. He opined that the "causal relationship of the injury [was] directly correlated with [appellant's] job duties." The Board has held that a medical opinion is of limited value if it is conclusory in nature.¹⁵ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁶ While Dr. Giordano supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right shoulder conditions and the accepted factors of his federal employment.¹⁷ As such, his letter is insufficient to meet appellant's burden of proof.¹⁸

In a March 26, 2019 letter, Dr. Giordano reiterated his opinion that appellant's right shoulder conditions were causally related to his job duties. He added that appellant's condition "seem[ed] to be exasperated while performing his duties at work of lifting packages and also driving." As noted, a medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁹ Additionally, the Board has held that a medical opinion supporting causal relationship must be one of reasonable medical certainty and not speculative or equivocal in character.²⁰ Since Dr. Giordano's letter is equivocal in nature and lacks the proper medical rationale explaining causal relationship, it is of limited probative value.²¹

Appellant submitted multiple diagnostic studies. The Board has held, however, that diagnostic studies lack probative value on the issue of causal relationship as they do not address whether the implicated employment factors caused the diagnosed conditions.²² Accordingly, these diagnostic studies are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between his diagnosed right shoulder conditions and the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.

¹⁴ *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

¹⁵ *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *L.J.*, Docket No. 19-1343 (February 26, 2020).

¹⁹ *C.M.*, *supra* note 15.

²⁰ *A.M.*, Docket No. 19-1138 (issued February 18, 2020).

²¹ *Id.*

²² *J.S.*, *supra* note 14; *L.J.*, *supra* note 18.

On appeal counsel argues that OWCP called for a biomechanical explanation of injury which is beyond medical causation or pathophysiological explanation. The Board finds that OWCP correctly determined that the medical evidence of record was insufficient to establish causal relationship as the medical evidence did not explain how the accepted factors of appellant's federal employment physiologically caused, contributed to, or aggravated his diagnosed conditions.²³

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 his right shoulder conditions were causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

²³ *Id.*