

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder injury causally related to the accepted September 11, 2018 employment incident.

FACTUAL HISTORY

On October 3, 2018 appellant, then a 52-year-old compliance officer, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2018 he injured his left shoulder when a wheel broke off of his desk chair causing him to fall while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that he was in the performance of duty at the time of the incident and noted that he had not lost time from work.

A magnetic resonance imaging (MRI) scan of the cervical spine dated September 12, 2018 revealed severe disc degeneration at C5-6, a broad midline C5-6 disc herniation, and severe bilateral C5-6 neural foramen stenosis, moderate-to-severe on the left C3-4.

On September 4, 10, and 17, 2018 Dr. Christopher L. White, a physiatrist, examined appellant due to cervicalgia, spinal stenosis in the cervical region. He reviewed appellant's cervical MRI scan which demonstrated degenerative disc disease of the cervical spine and a herniated disc at C5-6. On October 17, 2018 appellant underwent an electromyogram (EMG) which demonstrated bilateral ulnar nerve lesions and bilateral median nerve lesions.

On October 2, 2018 Dr. Ana Perelman, a Board-certified internist, examined appellant due to acute pain of the left shoulder. She reviewed and agreed with the notes of Dr. Vinod Sehgal, a resident physician, who reported that appellant's chair at work broke and he reached out with this left hand to grab something and likely twisted his left shoulder during the fall. Appellant reported weakness and tenderness in the left shoulder since the fall. Dr. Sehgal diagnosed left shoulder pain and recommended imaging studies to rule out rotator cuff injury or tear. On October 6, 2018 appellant underwent a left shoulder MRI scan which demonstrated a high-grade partial thickness tear of the supraspinatus tendon and mild-to-moderate acromioclavicular (AC) arthrosis. Beginning on October 10, 2018 he sought treatment from Eileen Compty, a physical therapist.

An October 17, 2018 EMG study performed by Dr. Michael Collins, a neurologist, revealed mild bilateral carpal tunnel syndrome and ulnar nerve entrapments across the elbows.

On October 25, 2018 Dr. Spencer H. Moore, a resident physician, examined appellant due to left shoulder pain and noted that he had sustained a fall. He reported that, while at work on September 11, 2018, the leg of appellant's chair he was sitting in collapsed and he reached out his left arm to catch himself. Appellant believed that he had pulled a muscle in the back of his shoulder blade. On physical examination Dr. Moore found loss of range of motion of the left shoulder, positive Jobe's, Neer's, and O'Brien signs as well as scapular dyskinesis. He diagnosed partial-thickness rotator cuff tear and osteoarthritis of the AC joint, as demonstrated by the MRI scan. Dr. Moore found that these diagnoses were not the primary pain generators for appellant.

On November 25, 2018 Dr. Demetrios J. Douros, a Board-certified orthopedic surgeon, reviewed Dr. Moore's findings and examined appellant due to periscapular pain following an

injury at work when he fell off a chair. He also reviewed appellant's MRI scan and noted that it exhibited some rotator cuff pathology, and that his symptoms seemed to be stemming from his scapular dyskinesia that could be affected by what could be an acute rotator cuff tear.

In a November 27, 2018 development letter, OWCP advised that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time for work. Therefore payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. OWCP opened appellant's claim for consideration of the merits. It advised him of the deficiencies of his claim and requested additional factual and medical evidence from him. OWCP afforded appellant 30 days to respond.

On October 22, 2018 Dr. Moore examined appellant due to left shoulder pain. He noted appellant's history of injury on September 11, 2018. Dr. Moore provided results on physical examination and diagnosed high-grade partial rotator cuff tear of the left shoulder with scapular dyskinesia injured while at work on September 11, 2018. He noted that the mechanism of falling out of a chair and catching oneself with an arm could definitely have caused the injury. Dr. Moore explained that the strain could have caused the partial tear of the rotator cuff as well as the strain of the muscles around the shoulder. Dr. Douros also completed a note on October 22, 2018 and reviewed Dr. Moore's findings, noted appellant's history of injury, and diagnosed scapular dyskinesia that could be affected by an acute rotator cuff tear.

By decision dated January 17, 2019, OWCP denied appellant's traumatic injury claim finding that he had not established causal relationship between his diagnosed left shoulder condition and his accepted September 11, 2018 employment incident.

On January 23, 2019 appellant requested an oral hearing from an OWCP hearing representative.

At the hearing held on June 11, 2019, appellant testified before OWCP's hearing representative and described the September 11, 2018 employment injury. He noted that the wheel broke from his chair, he started to fall forward, and he tried to grab a desk to catch himself injuring his left shoulder, landing on his knees. Appellant explained that he delayed filing his claim as he was using leave. He noted that, at the time of his September 11, 2018 employment injury, he was also seeking treatment for his preexisting neck condition.

By decision dated August 14, 2019, OWCP's hearing representative found that appellant had failed to submit sufficient medical evidence to establish an injury causally related to the accepted September 11, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

time limitation period of FECA,⁴ 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.⁵ 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.⁶

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted September 11, 2018 employment incident.

In a series of reports from September 2018, Dr. White noted his review of appellant's cervical MRI scan which demonstrated degenerative disc disease of the cervical spine and a herniated disc at C5-6. However, he offered no opinion on the issue of causal relationship of appellant's injury and the Board has held that medical reports that fail to provide an opinion as to

⁴ *L.C.*, Docket No. 19-0724 (issued September 5, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *D.W., id.*; *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).

⁷ *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

causal relationship lack probative value.¹² Consequently, these reports lack probative value and are insufficient to satisfy appellant's burden of proof.

Dr. Perelman, in an October 2, 2018 report, noted her examination findings and expressed her agreement with a resident physician, Dr. Sehgal who diagnosed left shoulder pain. However, neither physician provided an opinion as to causal relationship. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.¹³ Also, the Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁴ As such, her report is insufficient to satisfy appellants' burden of proof.

In an October 25, 2018 report, Dr. Moore examined appellant for left shoulder pain due to a fall from a chair. His examination revealed a loss of range of motion and diagnosed partial-thickness rotator cuff tear and osteoarthritis of the AC joint. Subsequently, in an October 22, 2018 report, Dr. Moore diagnosed high grade partial rotator cuff tear of the left shoulder with scapular dyskinesis. He noted that the mechanism of falling out of a chair and catching oneself with an arm could definitely have caused the injury. Dr. Moore opined that the strain could have caused the partial tear of the rotator cuff as well as the strain of the muscles around the shoulder. The Board finds that this report is not provided with certainty and is speculative in nature. It has long been held that medical opinions that are speculative or equivocal in character have little probative value.¹⁵ Therefore, his reports are insufficient to establish appellant's claim.

On November 25, 2018 Dr. Douros reviewed Dr. Moore's findings and examined appellant due to periscapular pain following an injury at work when he fell off a chair. He also reviewed appellant's MRI scan and noted that it exhibited some rotator cuff pathology, and that his symptoms seem to be stemming from his scapular dyskinesis that could be affected by what could be an acute rotator cuff tear. As Dr. Douros does not offer an opinion regarding the cause of a diagnosed condition his report is of no probative value on the issue of causal relationship.¹⁶ As such, his report is insufficient to satisfy appellants' burden of proof.

The record also contains MRI scan reports of appellant's, left shoulder and cervical spine as interpreted by diagnostic radiologists. The Board has held that diagnostic tests standing alone lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.¹⁷

¹² *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *J.M.*, Docket No. 18-0853 (issued March 9, 2020); *A.D.*, 58 ECAB 149 (2006).

¹⁴ *I.M.*, Docket No. 19-1038 (issued January 23, 2020).

¹⁵ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

¹⁶ *Supra* note 14.

¹⁷ *V.Y.*, Docket No. 18-0610 (issued March 6, 2020).

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship, the Board finds that appellant has not met her burden of proof.

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 injury causally related to the accepted September 11, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 29, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board