

ISSUE

The issue is whether appellant has met his burden of proof to establish left shoulder and cervical conditions causally related to the accepted October 15, 2018 employment incident.

FACTUAL HISTORY

On October 16, 2018 appellant, then a 60-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2018 he slipped and fell, injuring his left shoulder while in the performance of duty. He recounted that he was transporting dishes to the dish washing machine when he slipped on a soapy, wet floor and landed on his left side.

A September 27, 2018 left shoulder magnetic resonance imaging (MRI) scan revealed Type 1 acromion without a subacromial spur, mild osteoarthritis of the acromioclavicular (AC) joint, full-thickness tear involving nearly the entire width of the supraspinatus, and diffuse tear of the glenoid labrum with a cluster of paralabral cysts. A September 27, 2018 cervical spine MRI scan revealed degenerative discogenic disease, most pronounced at C4-5 and C5-6, interval progression at C4-5 with moderate spinal and neural foramina narrowing, and facet osteoarthritis at C2-3 and C3-4 with left neuroforamina narrowing.

In an October 18, 2018 report, Dr. Scott Ritterman, a Board-certified orthopedic surgeon, described appellant's complaints of left shoulder pain since 2016. He related that approximately two days ago appellant had a slip and fall injury at work and landed on his left shoulder. Dr. Ritterman reported that the "date of onset" was "two years, acute on chronic pain." Examination of appellant's left shoulder revealed tenderness anteriorly at the biceps tendon and no active abduction or forward elevation on range of motion testing. Dr. Ritterman diagnosed full-thickness rotator cuff tear with acute injury from fall. He completed a work status note indicating that appellant should be out of work until October 22, 2018.

Dr. Glenn E. Lipton, a Board-certified orthopedic surgeon, noted a date of onset in his October 22, 2018 report of "October 16, 2018 after being injured at work." Upon examination of appellant's left shoulder, he observed direct tenderness at the insertion point of appellant's left rotator cuff tendon, tenderness anteriorly over the coracocromial arch, and focal tenderness at the AC joint. Examination of appellant's cervical spine showed decreased range of motion. Dr. Lipton discussed appellant's diagnostic testing results and diagnosed full thickness rotator cuff tear, rotator syndrome, labral tear, possible biceps tear, AC joint osteoarthritis, and cervicgia. He completed a work status note indicating that appellant could return to work with restrictions.

P.O., a human resources specialist for the employing establishment, controverted appellant's claim. In an October 30, 2018 letter, she alleged that appellant injured his shoulder prior to the claimed October 15, 2018 work incident.

In a November 8, 2018 development letter, OWCP informed appellant that his claim initially appeared to be a minor injury and was therefore administratively approved for a payment of a limited amount of medical expenses. It reported that the claim was now being reopened for formal consideration and that additional factual and medical evidence was necessary to establish his claim. OWCP requested that appellant respond to an attached development questionnaire and provide medical evidence to establish that he sustained a diagnosed condition as a result of the

alleged incident. It afforded him 30 days to submit the necessary factual information and medical evidence.

Appellant submitted hospital records dated October 15 and 29, 2018 and a document titled “Problem Lists,” which included his various medical conditions. He also submitted a series of progress notes from the employing establishment health unit dated August 7 to October 1, 2018, which indicated that he was treated for left shoulder mild arthritis, mild left shoulder impingement, severe facet osteoarthritis at C2-3 and C3-4, and cervical degenerative disc disease.

A December 9, 2016 lumbar spine MRI scan showed multilevel degenerative discogenic disease, facet osteoarthritis, and prominent epidural fat, resulting in multilevel spinal canal narrowing. An August 8, 2018 left shoulder MRI scan demonstrated mild osteoarthritis of the AC joint. A September 7, 2018 cervical spine MRI scan revealed moderate degenerative discogenic disease at C5 and C6-7 and multilevel left facet osteoarthritis. An October 11, 2018 computerized tomography (CT) scan of appellant’s abdomen showed no evidence of acute abnormality in the abdomen or pelvis.

In an October 15, 2018 employing establishment health unit progress note, Dr. Dennis L. Iaccarino, an internist, recounted that appellant complained of left shoulder pain after he slipped and fell down at work. He noted that appellant did not move his left upper extremity during examination. Dr. Iaccarino assessed a “fall, left upper arm/shoulder injury.”

An October 16, 2018 progress note by Dr. David Reyes, a Board-certified family physician, indicated that appellant was seen for a follow-up examination for left shoulder pain after a fall at work yesterday.

In a November 21, 2018 cervical spine MRI scan report, Dr. Amit Verma, a Board-certified neurologist, noted no substantial changes of the cervical spine as compared to the September 27, 2018 MRI scan.

Appellant submitted a November 14, 2018 statement in which he described in detail how he slipped and fell on his left shoulder at work on October 15, 2018. He alleged that the fall did more damage to his shoulder and neck because before the fall he was able to lift his shoulder and able to tie his shoes and the pain rated at 4 or 5, but now the pain was at 7 to 10.

By decision dated December 10, 2018, OWCP accepted that the October 15, 2018 employment incident occurred as alleged and that appellant was diagnosed with left shoulder and cervical conditions. However, it denied his claim, finding that he failed to establish that the diagnosed conditions were causally related to the accepted employment incident.

Appellant submitted a December 7, 2018 report by Dr. Linda Park D’Andrea, a Board-certified orthopedic surgeon, who noted that she evaluated appellant for complaints of cervical spine pain. Dr. D’Andrea indicated that appellant had a history of cervical and left upper extremity pain and that his symptoms worsened significantly after an October 16, 2018 fall at work. Examination of the cervical spine revealed paraspinal tenderness and decreased range of motion for flexion, extension, axial rotation, and lateral bending. Dr. D’Andrea diagnosed cervical spinal stenosis, cervical spondylosis, cervicalgia, and cervical disc degeneration.

On January 3, 2019 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on April 4, 2019.

Following the hearing, appellant also provided additional medical evidence. In a generic February 4, 2019 handwritten form, Dr. Reyes noted a date of injury of October 15, 2018 and indicated that appellant could work with specific restrictions.

In a February 28, 2019 work capacity evaluation form (OWCP-5c), Dr. Lipton recommended that appellant return to work with restrictions of no lifting with the left upper extremity.

Dr. Ramzan Akbar, Board-certified in physical medicine and rehabilitation, in an April 11, 2019 letter related that appellant was seen for complaints of pain in the left side of the neck radiating to the left shoulder for the past two and a half years. He noted that appellant was diagnosed with left-sided cervical radiculopathy and left shoulder impingement syndrome with full-thickness rotator cuff and labral tear. Dr. Akbar referred appellant to neurosurgery.

By decision dated May 7, 2019, an OWCP hearing representative affirmed the December 10, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA,⁵ 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.⁶ 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.⁷

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁸ 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 time, place, and in the manner alleged.⁹ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹⁰

⁴ *Supra* note 2.

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

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

⁷ *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).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

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.¹¹ 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.¹² 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.¹³

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.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish left shoulder and cervical conditions causally related to the accepted October 15, 2018 employment incident.

Appellant was initially treated by Dr. Ritterman. In an October 18, 2018 examination report, Dr. Ritterman related that appellant began to experience left shoulder and neck pain in 2016. He indicated that appellant had a slip and fall injury at work approximately two days prior and landed on his left shoulder. Dr. Ritterman also noted the date of onset as "two years, acute on chronic pain." He conducted an examination and diagnosed full-thickness rotator cuff tear with acute injury from fall. While Dr. Ritterman attributed appellant's medical conditions to the October 15, 2018 slip and fall incident at work, he also reported a date of onset of "two years." The Board has held that inconsistent and contradictory reports from the same physician lack probative value and cannot constitute competent medical evidence.¹⁵ Dr. Ritterman's report, therefore, fails to establish appellant's claim.

Dr. Lipton also treated appellant. In an initial October 22, 2018 report, he failed to opine on the issue of causation. 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.¹⁶ This report, therefore, is insufficient to establish appellant's claim.

In an October 15, 2018 progress note, Dr. Iaccarino related appellant's complaints of left shoulder pain after a fall at work. He diagnosed "fall, left upper arm/shoulder injury." While

¹¹ See S.A., Docket No. 18-0399 (issued October 16, 2018); see also *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *D.H.*, Docket No. 19-0633 (issued January 8, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

¹⁵ *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987).

¹⁶ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Iaccarino discussed appellant's fall at work, he did not provide any discussion of appellant's preexisting left shoulder conditions. He did not provide a reasoned explanation of how the October 15, 2018 employment incident worsened or aggravated his underlying left shoulder condition. Medical evidence that states a condition, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Such rationalized medical opinion is particularly important since September 27, 2018 diagnostic test results show that appellant was diagnosed with a left shoulder rotator cuff tear and labral tear before the October 15, 2018 employment incident.¹⁸

In a December 7, 2018 report, Dr. D'Andrea reviewed appellant's history and noted that appellant's cervical and left upper extremity pain significantly worsened after an October 16, 2018 fall at work. She diagnosed cervical spinal stenosis, cervical spondylosis, cervicgia, and other cervical disc degeneration of the mid-cervical region. Dr. D'Andrea did not, however, offer an opinion regarding the cause of appellant's cervical conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁹ Likewise, the health unit progress notes dated August 7 to October 1, 2018 also fail to contain an opinion on the cause of the diagnosed left shoulder and cervical conditions, and therefore, are of no probative value to establish causal relationship.²⁰

Appellant also submitted several diagnostic reports. However, diagnostic studies lack probative value as they do not address whether an employment incident caused the diagnosed condition.²¹

On appeal counsel asserts that OWCP's decision is contrary to law and fact. However, there is no rationalized medical opinion, based upon a proper factual and medical background, which explains how the October 15, 2018 employment incident either caused or aggravated appellant's diagnosed conditions. As such, the Board finds that appellant has not met his 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 left shoulder and cervical conditions causally related to the accepted October 15, 2018 employment incident.

¹⁷ *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁸ *See B.R.*, Docket No. 16-0456 (issued April 25, 2016).

¹⁹ *A.S.*, Docket No. 19-0915 (issued November 22, 2019); *see L.B.*, *supra* note 16; *D.K.*, *supra* note 16.

²⁰ *Id.*

²¹ *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2020
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