

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

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<b>T.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1412</b>
	)	<b>Issued: February 3, 2020</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>BUREAU OF ENGRAVING &amp; PRINTING,</b>	)	
<b>Washington, DC, 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 June 17, 2019 appellant, through counsel, filed a timely appeal from an April 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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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> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted November 30, 2016 employment incident.

## FACTUAL HISTORY

On November 30, 2016 appellant, then a 56-year-old counter/sheet examiner, filed a traumatic injury claim (Form CA-1) alleging that he experienced pain in his arm, shoulder, and neck earlier that same day when moving packs of currency from a rack to a skid while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that he stopped work on November 30, 2016. It also indicated that appellant was injured in the performance of duty and had sought medical treatment at the employee health unit.

In a November 30, 2016 work excuse note, Lynette R. Sandoval, a physician assistant, stated that appellant had been seen and treated at the hospital emergency department that day and “may return to work after cleared by physician.”

A November 30, 2016 right shoulder x-ray was read as negative/unremarkable. There was no evidence of soft tissue injury, acute fracture, or subluxation.<sup>3</sup>

In a December 22, 2016 development letter, OWCP informed appellant that he had not submitted sufficient evidence to support his claim. It noted that he had not submitted a physician’s opinion as to how his claimed injury had resulted in a diagnosed condition. OWCP afforded appellant at least 30 days to submit the requested evidence.

Additional November 30, 2016 emergency department treatment records indicated that appellant was seen by Dr. Brian M. Krieger, Board-certified in emergency medicine, who diagnosed right shoulder strain. Appellant was prescribed a muscle relaxant and pain medication and referred to an orthopedist.

In a December 28, 2016 work/school status note, Dr. Nadim L. Hallal, a Board-certified orthopedic surgeon, diagnosed right rotator cuff tear. He stated that appellant should be off work for the next four weeks and that a magnetic resonance imaging (MRI) scan should be obtained to rule out a traumatic rotator cuff tear.

By decision dated January 25, 2017, OWCP denied appellant’s claim because he failed to establish a causal relationship between the accepted work incident of November 30, 2016 and his diagnosed right shoulder condition(s). It explained that the medical evidence received did not state how his diagnosed rotator cuff tear and/or shoulder strain occurred.

Appellant timely requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review. OWCP also received additional evidence.

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<sup>3</sup> Dr. William J. Dunwoody, a Board-certified diagnostic radiologist, interpreted the November 30, 2016 right shoulder x-ray.

In a report dated December 2, 2016, Dr. Scott L. Whittaker, a Board-certified internist, examined appellant for complaints of right shoulder pain. Appellant told Dr. Whittaker that he experienced pain from the neck to the right elbow after lifting a large crate of money at work. On examination Dr. Whittaker noted tenderness in the right shoulder region with poor range of motion due to pain. He assessed appellant with arthralgia of the right shoulder region. In a follow-up report dated December 16, 2016, Dr. Whittaker noted that appellant continued to have neck and right shoulder pain, which had not gotten any better despite two weeks' rest and use of pain medication. He diagnosed intervertebral cervicothoracic disc disorder with radiculopathy and recommended an MRI scan.

On December 28, 2016 Dr. Hallal ordered a right shoulder MRI scan. He reported his reason for the MRI scan request was "acute traumatic rotator cuff tear" and "marked weakness."

In a February 1, 2017 attending physician's report (Form CA-20), Dr. Whittaker diagnosed right rotator cuff tear. He reported a November 30, 2016 date of injury. Dr. Whittaker noted that, after lifting a heavy crate of money, appellant developed severe, sharp right shoulder pain while at work, which remained ongoing for greater than two months. He checked a box marked "Yes" indicating that he believed that the condition was caused or aggravated by an employment activity and included the notation "clearly!!!" (Emphasis in the original.) Dr. Whittaker noted that appellant needed a right shoulder MRI scan, and might need surgery pending the results. He also advised that appellant had been totally disabled since November 30, 2016 and presently remained disabled.

By decision dated July 14, 2017, an OWCP hearing representative affirmed OWCP's January 25, 2017 decision. He noted that there was no objective evidence to support the diagnosed rotator cuff tear. The hearing representative further noted that even if there was an MRI scan to support the diagnosis, the medical evidence failed to establish a causal relationship between lifting packs of currency and the diagnosed right rotator cuff tear.

On December 4, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a report dated December 28, 2016, Dr. Hallal examined appellant for complaints of right shoulder pain and weakness. Appellant told Dr. Hallal that, nearly a month before, while lifting large, heavy sheets of money, his arm turned downward and he experienced marked pain over the lateral aspect of the shoulder and up to the neck. On examination of the right shoulder Dr. Hallal noted reduced strength in forward elevation, positive impingement testing, diffuse tenderness to palpation over the paraspinal musculature of the cervical spine, and mild tenderness to palpation over the biceps and acromioclavicular joint. He stated that, given the mechanism, he was concerned about the possibility of a traumatic rotator cuff repair. Dr. Hallal stated an impression of right shoulder pain and weakness and recommended an MRI scan.

A November 4, 2017 right shoulder MRI scan revealed a full-thickness tear in the supraspinatus, mild tendinosis in the infraspinatus, tendinosis in the subscapularis, and a strain of the subscapularis muscle. There was also evidence of moderate degenerative changes with associated focal bony spur in the acromioclavicular joint. Additionally, a November 4, 2017 cervical MRI scan revealed multilevel cervical spondylosis, significant neural foramen narrowing

at C2-3 through C4-5, with bilateral nerve root compression, and C6-7 canal stenosis, with associated stenosis of the neural foramen and bilateral nerve root compression.

In a November 9, 2017 letter, Dr. Whittaker noted that he had treated appellant as a patient for 10 years and that appellant had no prior history of shoulder complaints or injuries before a work-related incident on November 30, 2016 and that he began having severe right-sided neck/shoulder pain after lifting a large crate of money at work on that date. He concluded that appellant had a full-thickness rotator cuff tear, as demonstrated by MRI scan. Dr. Whittaker opined that appellant sustained this injury on November 30, 2016 while at work, noting that appellant continued to have shoulder pain and loss of range of motion.

In February 1, 2017 treatment notes, Dr. Whittaker examined appellant and noted that he continued to have right shoulder pain, radiating into the neck, and down into the right elbow. He noted that appellant had not yet undergone an MRI scan because “they are not covering it.” Dr. Whittaker stated that appellant’s condition was clearly related to a work injury two months prior. On examination he noted decreased range of motion of the right shoulder. Dr. Whittaker assessed appellant with arthralgia of the right shoulder. He further noted that the severe shoulder pain, ongoing for two months, was clearly related to work and heavy lifting.

By decision dated March 1, 2018, OWCP denied modification of its decision of July 14, 2017. It noted that appellant had submitted numerous medical reports that did not address causal relationship. With regard to Dr. Whittaker’s November 9, 2017 letter, OWCP stated that he had not provided a specific mechanism of injury or rationalize how a full-thickness tear of the rotator cuff tendons correlated with appellant’s claimed mechanism of injury.

On April 23, 2018 appellant, through counsel, appealed the March 1, 2018 decision to the Board. By order dated January 18, 2019, the Board dismissed the appeal at the request of counsel.<sup>4</sup>

By letter dated January 23, 2019, appellant, through counsel, requested reconsideration of OWCP’s March 1, 2018 decision. Accompanying the request, appellant submitted the results of a fitness-for-duty examination dated October 31, 2018 from Dr. Chalonda K. Hill, an occupational medicine specialist and medical director at the employing establishment. Dr. Hill noted that appellant stated that he suffered a work-related right shoulder injury on November 30, 2016 after lifting a heavy stack of paper currency. On examination of the right upper extremity she observed tenderness to palpation along the lateral surface of the shoulder/deltoid muscle, limited forward flexion to approximately 20 degrees, limited abduction to approximately 20 degrees, decreased external rotation, and internal rotation limited to the right hip. Dr. Hill opined that, within a reasonable degree of medical certainty, appellant was functionally impaired due to a right rotator cuff tear. She recommended work restrictions of no lifting, carrying, pushing, pulling, reaching overhead with the right upper extremity, crawling, or climbing ladders.

By decision dated April 18, 2019, OWCP denied modification of the March 1, 2018 decision.

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<sup>4</sup> *Order Dismissing Appeal*, Docket No. 18-1023 (issued January 18, 2019).

## 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 of FECA, 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.<sup>5</sup> 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.<sup>6</sup>

To determine if an employee 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.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale that explains the nature of the relationship between the diagnosed condition and appellant's employment incident.<sup>9</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted November 30, 2016 employment incident.

In November 30, 2016 emergency department treatment records, Dr. Krieger diagnosed right shoulder strain. In a follow-up report dated December 16, 2016, Dr. Whittaker diagnosed intervertebral cervicothoracic disc disorder with radiculopathy. In a work/school status note dated December 28, 2016, Dr. Hallal diagnosed a right rotator cuff tear. In an order for an MRI scan on appellant's right shoulder, dated December 28, 2016, he stated that the reason for the examination was an acute traumatic rotator cuff tear. The Board has found that medical evidence offering no opinion about the cause of an employee's condition is of no probative value on the issue of causal

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<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *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).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>9</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

relationship.<sup>10</sup> As such, the November 30 and December 16 and 28, 2016 notes and reports from Drs. Krieger, Whittaker, and Hallal are insufficient to establish appellant's claim for compensation.

The record includes diagnostic reports dated November 30, 2016 and November 4, 2017. Diagnostic testing reports lack probative value on the issue of causal relationship as they do not provide an opinion regarding the cause of the diagnosed conditions.<sup>11</sup>

The record also contains a November 30, 2016 note from a physician assistant. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>12</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>13</sup>

On December 2, 2016 Dr. Whittaker assessed appellant with arthralgia of the right shoulder region. In a report dated December 28, 2016, Dr. Hallal stated an impression of right shoulder pain and weakness. In February 1, 2017 treatment notes, Dr. Whittaker assessed appellant with arthralgia. The Board has held that under FECA the assessment of pain, of which arthralgia is a type, is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.<sup>14</sup>

In a February 1, 2017 Form CA-20, Dr. Whittaker diagnosed a right rotator cuff tear. He stated that appellant told him that, after lifting a heavy crate of money, appellant developed severe and sharp right shoulder pain while at work. Dr. Whittaker checked a box marked "Yes" indicating that he believed that the condition was caused or aggravated by an employment activity and noted "clearly" as an explanation. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>15</sup>

A November 9, 2017 letter from Dr. Whittaker noted that he had treated appellant as a patient for 10 years and that appellant had no prior history of shoulder complaints or injuries before a work-related incident on November 30, 2016. Dr. Whittaker further noted that appellant began to have severe right-sided neck/shoulder pain after lifting a large crate of money at work on

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<sup>10</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> See *Z.G.*, Docket No. 19-0967 (issued October 21, 2019).

<sup>12</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>13</sup> See *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>14</sup> See *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>15</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

November 30, 2016. 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.<sup>16</sup> As such, noting that the right-sided neck/shoulder pain began after lifting a large crate of money at work on November 30, 2016 is insufficient to establish a causal relationship between that incident and appellant's diagnosed shoulder conditions. Dr. Whittaker expressed an opinion on causal relationship, but did not support his opinion with medical rationale explaining how the specific incident of November 30, 2016 physiologically caused appellant's condition. As such, his opinion as expressed in the November 9, 2017 letter is of limited probative value on the issue of causal relationship.<sup>17</sup>

Dr. Hill opined in an October 31, 2018 report that, within a reasonable degree of medical certainty, appellant was functionally impaired due to a right rotator cuff tear. The October 31, 2018 report from her does not offer any opinion on the cause of the diagnosed right shoulder conditions, but instead provides an opinion as to his functional impairment. As noted above, medical evidence offering no opinion about the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>18</sup> As such, the October 31, 2018 report of Dr. Hill is insufficient to establish appellant's claim.

The Board finds that because appellant has not submitted medical evidence providing a rationalized medical opinion that his diagnosed right shoulder condition is causally related to the accepted November 30, 2016 employment incident, he has not met his burden of proof to establish his claim.

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 right shoulder condition causally related to the accepted November 30, 2016 employment incident.

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<sup>16</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>17</sup> *See A.D.*, Docket No. 17-1136 (issued November 9, 2017).

<sup>18</sup> *Supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 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