

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

R.D., Appellant)	
)	
and)	Docket No. 19-1076
)	Issued: July 2, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Naperville, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 16, 2019 appellant filed a timely appeal from a March 19, 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 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 right shoulder condition causally related to his accepted factors of federal employment.

FACTUAL HISTORY

On April 16, 2018 appellant, then a 58-year-old rural carrier, filed an occupational disease claim (Form CA-2), alleging that he injured his right arm due to factors of his federal employment, which included overcompensating with his right arm when performing his limited-duty assignment assigned for a left shoulder rotator cuff tear, involving pulling equipment over the pound restriction and passing mail. He indicated that he first became aware of this condition and its relationship to his federal employment on March 22, 2018.³

By development letter dated May 11, 2018, OWCP advised appellant that additional evidence was required to support his claim and advised him of the type of factual and medical evidence needed. It attached a questionnaire for his completion. OWCP also requested a narrative medical report from his physician that provided a firm diagnosis of a condition and a rationalized opinion on how his employment duties caused or aggravated his condition. It afforded appellant 30 days to provide the necessary information. In a letter of even date, OWCP asked that the employing establishment comment on his claim within 30 days. It did not respond.

A treatment note dated May 7, 2018 by Michael Coffel, a nurse practitioner, noted a chief complaint of right shoulder pain caused by lifting heavy bundles of mail at work that was constant, awakened appellant at night, and that he also complained of decreased range of motion and strength. He noted a history of a massive left shoulder rotator cuff tear with surgery in 2006, and two previous right arm tendon surgeries. Right shoulder examination demonstrated painful range of motion and pain over the acromioclavicular (ACL) joint, and decreased cervical spine range of motion. Shoulder palpation was positive over the ACL joint, acromion, and scapula. Speed's, Empty Can, Hawkins, and Neer's impingement sign tests were all positive, and rotator cuff strength was diminished. Mr. Coffel indicated that a right shoulder x-ray demonstrated mild-to-moderate arthritic changes in the ACL joint with lateral down sloping and a type 2 acromion. He diagnosed acute right shoulder pain, a right rotator cuff tear of unspecified extent, and ACL joint arthritis. Mr. Coffel provided work restrictions of no lifting, pushing, or pulling over 10 pounds, no repetitive use of his right arm, and no shoulder-height or overhead use of his right arm. He also completed a May 7, 2018 duty status report (Form CA-17) on which he noted clinical findings of pain and weakness with motion. Mr. Coffel indicated diagnoses of right rotator cuff impingement and possible tear due to the injury. He advised that appellant could resume modified duty on May 7, 2018 with restrictions on lifting/carrying to a maximum of 10 pounds.

On a May 21, 2018 progress note Mr. Coffel repeated the history of injury provided by appellant. He provided examination findings and reviewed a magnetic resonance imaging (MRI) scan of appellant's right shoulder. Mr. Coffel indicated that the study demonstrated a massive, retracted full-thickness tear of the rotator cuff involving the supraspinatus and infraspinatus

³ The record indicates that appellant has four additional accepted claims.

tendons. He diagnosed a complete tear of the right rotator cuff and recommended physical therapy and physical restrictions.⁴ Mr. Coffel also completed a duty status report (Form CA-17) and a note providing work restrictions on May 21, 2018.

On May 22, 2018 appellant responded to OWCP's questionnaire. He related that he had been working modified duty for the past year and a half ago, and he had been a rural carrier since January 2000. Appellant noted that he had surgery for a work-related torn tendon in his right forearm prior to March 22, 2018, yet he also indicated that he had no preexisting right arm conditions and that he did not experience any symptoms in his right shoulder or arm, nor did he receive any treatment for his right shoulder and arm prior to March 22, 2018. He noted that he did not engage in any activities outside of his federal employment.

By decision dated July 25, 2018, OWCP denied the claim. It found the medical evidence of record insufficient to establish that the claimed right shoulder conditions were causally related to appellant's accepted employment factors.

On July 18, 2018 Dr. Marc Asselmeier, a Board-certified orthopedic surgeon, noted a history of chronic disability due to a massive left rotator cuff tear. He reported that appellant began modified duty in 2015, where appellant became highly dependent on his right arm and shoulder due to his left shoulder condition, and that, three months previously, he noted pain in his right shoulder while pushing, pulling, and loading carts at work. Appellant indicated that he had tried physical therapy and was administered an injection, without relief. Dr. Asselmeier described appellant's treatment by Mr. Coffel. He noted right shoulder examination findings of weakness with external rotation, pain with active rotation, a positive drop arm maneuver, and glenohumeral crepitus. Shoulder flexion was 105 degrees, external rotation 10 degrees, and abduction 60 degrees. Dr. Asselmeier recommended a reverse shoulder arthroplasty and indicated that appellant's work restrictions would remain with a lifting restriction of five pounds.

On August 13, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.

At the January 8, 2019 telephonic hearing, appellant testified that, because he was on limited duty due to his left shoulder injury, he mostly used his right arm for job tasks and began to experience right arm pain. He stated that he had never injured his right shoulder before, and that he had been on limited duty for three or four years. Appellant described his work duties. Counsel noted that the MRI scan confirmed the presence of a rotator cuff tear and asserted that, even though Dr. Asselmeier did not say the words "causal relationship" in his July 18, 2018 report, however, it indicated that appellant's work duties resulted in his tear. She also noted that she had requested a clearer statement from Dr. Asselmeier on the issue of causal relationship.

In correspondence dated January 22, 2019, Dr. Asselmeier discussed the history of appellant's work-related left shoulder injury and indicated that in May 2018 appellant presented with right shoulder pain, which was specifically related to lifting bundles of mail and boxes at work. He noted that appellant's symptoms in his right shoulder, which included weakness,

⁴ A copy of the right shoulder MRI scan report is not found in the record. The record includes reports of left shoulder diagnostic studies.

limitations in movement, and functional compromise, were consistent with rotator cuff disease, and that an MRI scan demonstrated a nonrepairable rotator cuff tear. Dr. Asselmeier indicated that appellant's left shoulder had displayed the same symptoms of movement limitations, weakness, and functional compromise. He diagnosed right shoulder cuff tear arthropathy and advised that appellant would probably need surgical reconstruction or arthroplasty for one or both of his shoulders, and that he had some element of permanent disability.

By decision dated March 19, 2019, an OWCP hearing representative affirmed OWCP's July 25, 2018 decision.

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 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.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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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 incident.¹⁰

⁵ *Supra* note 2.

⁶ *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.*

⁸ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

ANALYSIS

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

In support of his claim, appellant submitted reports from Dr. Asselmeier dated July 18, 2018 and January 22, 2019 who diagnosed a right rotator cuff tear. He opined on January 22, 2019 that the right shoulder injury was specifically related to lifting bundles of mail and boxes at work. The Board has held that the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.¹¹ A medical opinion must provide an explanation of how the specific employment incident or employment factors physiologically caused or aggravated the diagnosed conditions.¹² While Dr. Asselmeier indicated that appellant's right shoulder condition was work related, he failed to provide medical rationale explaining the basis of his opinion. As noted above, without explaining, physiologically how the specific employment incident or employment factors caused or aggravated the diagnosed condition, his opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.¹³

Appellant submitted reports from a Mr. Coffel, a nurse practitioner, dated May 7 and 21, 2018. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁴ Consequently, these reports and/or opinions will not suffice for purposes of establishing appellant's claim.¹⁵

As to the diagnostic reports of record, the Board has held that diagnostic tests standing alone lack probative value as they do not provide an opinion on causal relationship between accepted employment factors and a claimant's diagnosed condition.¹⁶ Thus, these reports are also insufficient to establish appellant's claim.

¹¹ A.S., Docket No. 19-1955 (issued April 9, 2020).

¹² G.L., Docket No. 18-1057 (issued April 14, 2020).

¹³ W.M., Docket No. 19-1853 (issue May 13, 2020).

¹⁴ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See *M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); see also *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

¹⁵ *Id.*

¹⁶ See *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

As appellant has not submitted rationalized medical evidence establishing a right shoulder condition causally related to his accepted factors of federal employment, he 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 a right shoulder condition causally related to the accepted factors of federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board