

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted December 10, 2018 employment incident.

FACTUAL HISTORY

On January 3, 2019 appellant, then, a 53-year-old fuel system distribution worker, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2018 he injured his right shoulder when he fully extended his right arm to catch a rain-soaked mooring line and felt pain in his right shoulder when the line landed on his right arm while in the performance of duty. He did not stop work.

In a work restriction form report dated January 2, 2019, Dr. Daniel Gonzalez-Dilan, Board-certified in emergency medicine, advised that appellant could work with restrictions which were effective through January 16, 2019.

In a January 16, 2019 report, Dr. Marc Suffis, Board-certified in emergency medicine, noted that appellant related that on December 10, 2018 he immediately experienced right shoulder pain after trying to catch a wet, heavy mooring line with his right hand. Appellant advised that the line pulled his right arm in a downwards and backwards motion. On physical examination, Dr. Suffis observed tenderness in appellant's right supraspinatus muscle and a negative O'Brien sign for his right shoulder. Range of motion (ROM) testing of the right shoulder revealed 100 degrees of flexion and 80 degrees of abduction, and isolated right rotator cuff testing showed 4/5 supraspinatus/infraspinatus strength and 5/5 subscapularis strength. Dr. Suffis indicated that he reviewed x-rays of the right shoulder and diagnosed right shoulder strain, noting that a diagnosis of right rotator cuff tear could not be ruled out. Appellant submitted a January 16, 2019 x-ray which contained an impression of probable mild degenerative changes of the right shoulder joint with no acute bony abnormalities. In an accompanying work capacity evaluation form (Form OWCP-5c) of even date, Dr. Suffis diagnosed right rotator cuff strain and rule out tear of the right shoulder, and he indicated that appellant could perform light work.

A February 4, 2019 magnetic resonance imaging (MRI) scan report of the right shoulder contained an impression of reduced ROM likely secondary to adhesive capsulitis, low-grade undersurface tearing of the supraspinatus and infraspinatus with mild subacromial/subdeltoid bursitis, and abnormal labral signal more likely degenerative than acute post-traumatic (given the subject's age), which might correlate to anterior inferior instability. On February 4, 2019 Dr. Suffis discussed the MRI scan and diagnosed rotator cuff and labral tears of the right shoulder with adhesive capsulitis.

In a February 13, 2019 report, Dr. Suffis reported physical examination findings and indicated that appellant could perform light work. In a subsequent Form OWCP-5c report of even date, he diagnosed rotator cuff and labral tears of the right shoulder with adhesive capsulitis, and he provided work restrictions.

A February 14, 2019 dispensary permit report by Dr. Robert Uniszkievicz, a Board-certified occupational medicine specialist, indicated that he provided medical treatment to appellant and advised that he could work with restrictions.

In a March 4, 2019 report, Dr. Gregory P. Duff, a Board-certified orthopedic surgeon, discussed the December 10, 2018 employment incident and noted that appellant reported no prior injuries. He diagnosed right superior glenoid labrum and rotator cuff tears (improved), and strain of muscles/tendons of the right rotator cuff. On March 28, 2019 Dr. Duff noted that appellant was being followed for right shoulder pain related to a reported work injury. He diagnosed superior glenoid labrum tear (deteriorated), strain of muscles/tendons of the right rotator cuff (unchanged), and unspecified injury of muscles, fascia, and tendons of the right biceps long head (deteriorated).

A March 22, 2019 dispensary permit report by Lisa Laurion, a physician assistant, revealed that she treated appellant and advised that he could work with restrictions.

In a development letter dated April 2, 2019, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported December 10, 2018 employment incident caused or aggravated a medical condition. It provided a questionnaire for his completion requesting clarification of the circumstances of the reported employment incident. In a letter of even date, OWCP requested that the employing establishment provide additional information. It afforded both parties 30 days to respond.

In response, appellant submitted an April 10, 2019 statement in which he asserted that his December 10, 2018 injury occurred during an overtime callback while performing line handling to tie up a fuel barge. In an April 10, 2019 e-mail and April 11, 2019 letter, appellant's immediate supervisor verified appellant's assertion that the claimed December 10, 2018 incident occurred while performing overtime work.

Appellant resubmitted several medical reports previously considered by OWCP.

By decision dated May 8, 2019, OWCP accepted the occurrence of a December 10, 2018 employment incident in the form of a mooring line falling on appellant's right arm. However, it denied his claim for a traumatic injury because he did not submit sufficient medical evidence to establish causal relationship between a diagnosed medical condition and the accepted December 10, 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 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

³ *Supra* note 1.

limitation 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 specific employment factors identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted December 10, 2018 employment incident.

Appellant submitted several reports of Dr. Suffis, including narrative reports dated January 16, and February 4 and 13, 2019, and form reports dated January 16 and February 13, 2019. Dr. Suffis diagnosed the right shoulder conditions of rotator cuff/labral tears and adhesive capsulitis, and he recommended work restrictions. In some of these reports, he referenced the accepted December 10, 2018 employment incident, *i.e.*, the falling of a mooring line on appellant's right arm. However, these reports do not contain an opinion that appellant sustained a diagnosed medical condition due to this accepted incident and, therefore, they are of no probative value in establishing an employment-related traumatic injury on December 10, 2018. The Board has held that medical

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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.¹⁰ Therefore, these reports of Dr. Suffis are insufficient to establish appellant's claim.

Appellant submitted March 4 and 28, 2019 reports from Dr. Duff who collectively diagnosed right superior glenoid labrum and rotator cuff tears, strain of muscles/tendons of the right rotator cuff, and unspecified injury of muscles, fascia, and tendons of the right biceps long head. However, these reports are of no probative value in establishing an employment-related December 10, 2018 traumatic injury because Dr. Duff did not provide an opinion that appellant sustained a diagnosed medical condition due to the accepted employment incident. In his March 28, 2019 report, Dr. Duff noted that appellant was being followed for right shoulder pain related to a reported work injury, but he merely reported appellant's own belief regarding the cause of his right shoulder condition and did not provide his own opinion on causal relationship.¹¹ As noted above, a report without an opinion on causal relationship is of no probative value in establishing an employment-related injury.¹²

In a form report dated January 2, 2019, Dr. Gonzalez-Dilan advised that appellant could work with restrictions and, in a form report February 14, 2019, Dr. Uniszkievicz also indicated that he could work with restrictions. These reports also are of no probative value on the underlying issue of the case because they do not relate a diagnosed condition to the accepted December 10, 2018 employment incident.¹³

Appellant submitted a March 22, 2019 form report from Ms. Laurion, a physician assistant. However, this report is of no probative value regarding appellant's claim because the Board has held that, under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.¹⁴

Additionally, the case record contains a January 16, 2019 x-ray and February 4, 2019 MRI scan of appellant's right shoulder. These diagnostic studies standing alone lack probative value as they do not address whether employment factors caused the medical conditions diagnosed therein.¹⁵

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

¹¹ See *A.L.*, Docket No. 18-1016 (issued May 6, 2020) (finding that entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship).

¹² See *supra* note 10.

¹³ *Id.*

¹⁴ *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁵ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

As the medical evidence of record does not contain a rationalized opinion on causal relationship between appellant's diagnosed conditions and the accepted December 10, 2018 employment incident, the Board finds that he has not met his burden of proof.

On appeal appellant asserts that there was a series of miscommunications by "all parties involved" and that he has established his claim. As the submitted evidence in the case record before OWCP at the time of its final decision contains no rationalized medical evidence addressing causal relationship, appellant has not met his burden of proof.¹⁶

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 December 10, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 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

¹⁶ See *D.S.*, Docket No. 18-0061 (issued May 29, 2018).