

ISSUE

The issue is whether appellant met his burden of proof to establish that his right shoulder conditions were causally related to the accepted March 6, 2019 employment incident.

FACTUAL HISTORY

On March 13, 2019 appellant, then a 63-year-old truck driver, filed a traumatic injury claim (Form CA-1)⁴ alleging that on March 6, 2019 he pulled a muscle in his right shoulder when pulling a loading plate while in the performance of duty. He did not stop work.

In a development letter dated March 25, 2019, OWCP informed appellant that additional factual and medical evidence was necessary to establish his claim. It advised that he should submit a medical report from a physician, which explained with medical rationale how the reported work incident caused a diagnosed medical condition and also provided a questionnaire for completion. OWCP granted him 30 days to submit the requested evidence.

In a letter dated April 10, 2019, Cory Bauer, a doctor of physical therapy, noted that appellant was seen that day for a right shoulder injury. He explained that the injury limited appellant from reaching the top of the steering wheel on the truck he drove at work.

By decision dated April 29, 2019, OWCP denied appellant's claim, finding that he had not established that the claimed March 6, 2019 employment incident occurred, as alleged. It noted that he had not returned the factual questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Subsequent to the April 29, 2019 decision, OWCP received additional evidence.

In a March 21, 2019 report, Jennifer L. Kesterson, a certified registered nurse practitioner, noted that appellant had been seen for right shoulder pain since March 19, 2019, when he picked up a loading plate to put into a truck at work. She related his physical examination findings, diagnosed acute right shoulder pain due to trauma, and referred him for physical therapy.

An x-ray report of appellant's right shoulder dated March 21, 2019 was interpreted by Dr. Benjamin Y. Lee, a physician specializing in internal medicine, as revealing right glenohumeral osteoarthritis.

OWCP also received physical therapy notes covering the period March 27 to April 12, 2019, which noted a March 6, 2019 injury date and diagnoses of right shoulder pain and other chronic pain.

In an April 25, 2019 report, Ms. Kesterson noted that appellant was seen for decreased right shoulder range of motion and pain. Appellant attributed his right shoulder condition to a work injury. Examination findings were unchanged from the March 21, 2019 report. Ms. Kesterson diagnosed acute right shoulder pain.

⁴ The Board notes that the Form CA-1 transposed his first and middle names.

On May 9, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a letter dated August 12, 2019, the employing establishment controverted the claim, asserting that appellant had not established an employment-related injury.

A July 23, 2019 after visit summary noted that appellant had been seen that day by Dr. Eric M. Kutz, a Board-certified orthopedic surgeon, who addressed issues of traumatic incomplete right shoulder rotator cuff tear, right shoulder impingement syndrome, right shoulder degenerative glenoid labrum tear, loose shoulder joint body, and primary shoulder osteoarthritis. Patient instructions included scheduling of right shoulder surgery.

By decision dated September 13, 2019, an OWCP hearing representative in effect affirmed the April 29, 2019 decision denying appellant's claim, as modified. The hearing representative concluded that appellant had not established the medical component of fact of injury as Dr. Kutz had not causally related appellant's diagnosed right shoulder conditions to the March 6, 2019 employment incident.

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,⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

⁵ *Supra* note 3.

⁶ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

Rationalized medical opinion evidence is required to establish causal relationship. 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.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not established that his right shoulder conditions were causally related to the accepted March 6, 2019 employment incident.

OWCP received a July 23, 2019 after-visit summary from Dr. Kutz. While this summary provided diagnoses of appellant's right shoulder conditions, it did not provide an opinion on the issue of causal relationship. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ As such, this report is insufficient to establish appellant's claim.

The record also establishes that on March 21, 2019 Dr. Lee interpreted an x-ray of appellant's right shoulder and found evidence of right glenohumeral osteoarthritis. However, the Board has held that diagnostic studies standing alone lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁵

Appellant also submitted reports authored by a nurse practitioner and several physical therapists. The Board has held that medical reports signed solely by nurse practitioners or physical therapists are of no probative value as such health care providers are not considered "physician[s]" as defined under FECA and are, therefore, not competent to provide medical opinions.¹⁶ Consequently, this evidence is also insufficient to establish appellant's claim.

The Board finds that there is no rationalized medical evidence of record establishing that appellant's right shoulder conditions were causally related to the accepted March 6, 2019 employment incident. Thus, appellant has not met his burden of proof to establish his claim.

¹² S.S., Docket No. 18-1488 (issued March 11 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ D.S., Docket No. 19-1641 (issued July 16, 2020).

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

¹⁶ 5 U.S.C. § 8102(2) of FECA provides as follows: (physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *S.S.*, Docket No. 19-1803 (issued April 1, 2020); *S.J.*, Docket No. 19-0489 (issued January 13, 2020); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

On appeal counsel argues that OWCP's decision was contrary to law and fact. As explained above, however, the medical evidence of record does not contain a rationalized medical evidence establishing causal relationship. Accordingly, 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 that his right shoulder conditions were causally related to the accepted March 6, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 31, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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