United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 18-0072**
	)	**Issued: January 21, 2020**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Boston, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 11, 2017 appellant filed a timely appeal from a July 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right upper extremity condition causally related to the accepted December 9, 2016 employment incident.

FACTUAL HISTORY

On December 13, 2016 appellant, then a 56-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2016 he injured his right

[1] 5 U.S.C. § 8101 *et seq.*

shoulder and upper right arm when installing computers and moving portable walls while in the performance of duty. On the reverse side of the claim form the employing establishment noted that its knowledge of the facts about the injury aligned with his statements. Appellant did not stop work.

On December 15, 2016 x-rays of appellant's right shoulder revealed: moderate glenohumeral narrowing and hypertrophic change; moderate hypertrophic change of the acromioclavicular joint; a small focus of mineralization superior to the greater tuberosity, possibly reflecting calcific tendinosis; and a spall possible projecting over the axillary recess. No acute fracture or dislocation was noted.

On December 15, 2016 Dr. Elizabeth Matzkin, a Board-certified orthopedic surgeon, examined appellant for complaints for right shoulder pain. She noted that she had last seen him in August 2014 for his right shoulder and that he had been doing fairly well. Appellant reported that, less than one week prior, he was at work moving wall dividers when he jammed his right shoulder. He did not experience pain until he was driving home. On physical examination Dr. Matzkin noted no tenderness, full muscle strength with pain at the subscapularis, and positive impingement and Hawkins' tests. She noted that appellant's right shoulder range of motion was 80 degrees active abduction, 140 degrees active forward flexion, 70 degrees of external rotation, and internal rotation at 90 degrees of 40 degrees. Dr. Matzkin diagnosed right shoulder glenohumeral osteoarthritis exacerbation. She noted the December 9, 2016 employment incident and indicated that appellant may also have a partial thickness supraspinatus tear. Dr. Matzkin performed an injection into his right subacromial space and glenohumeral joint.

On January 23, 2017 Dr. Matzkin examined appellant and in her report she noted that his right shoulder displayed the same ranges of motion, tenderness, muscle strength, and positive tests as on December 15, 2017. She indicated that he had attended physical therapy since their last meeting and that his pain had decreased. Dr. Matzkin diagnosed a right shoulder glenohumeral osteoarthritis exacerbation and a likely partial thickness supraspinatus tear. She recommended that appellant continue physical therapy. Dr. Matzkin again examined him on April 27, 2017 and noted that he had not kept up with physical therapy exercises.

Appellant submitted physical therapy treatment notes covering the period December 22, 2016 through January 19, 2017.

On May 4, 2017 appellant informed Dr. Matzkin that he had another injury at work on May 1, 2017, but that his pain had improved since that time. On physical examination Dr. Matzkin noted no tenderness, full muscle strength with pain at the supraspinatus, and positive impingement and Hawkins' tests. Appellant's right shoulder range of motion was 160 degrees forward flexion, 80 degrees external rotation, internal rotation at 0 degrees of "lumbar," and internal rotation at 90 degrees of 60 degrees. Dr. Matzkin diagnosed a right shoulder glenohumeral osteoarthritis exacerbation and a possible partial thickness rotator cuff tear. She noted that appellant's pain and limitations were mostly attributable to his osteoarthritis. Appellant refused an additional steroid injection.

In a development letter dated June 2, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It explained the medical evidence needed to

establish his claim and advised that appellant's physician should differentiate his claimed injury from the symptoms of preexisting right shoulder and arm injuries, as well as subsequent injuries. OWCP noted appellant's prior injuries to his right shoulder and arm under OWCP File Nos. xxxxxx457 and xxxxxx626, as well as the subsequent right shoulder injury on April 18, 2017 under OWCP File No. xxxxxx315. It requested that he respond to its inquiries and afforded him 30 days to submit additional evidence. Appellant did not respond.

By decision dated July 5, 2017, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish causal relationship between a right shoulder condition and the accepted December 9, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 filed within the applicable time limitation period of FECA,[3] that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To determine whether 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship

[2] *Id*.

[3] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

between the diagnosed condition and the specific employment factors identified by the employee.[9] 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.[10]

In a 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.[11]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right upper extremity condition causally related to the accepted December 9, 2016 employment incident.

In support of his claim, appellant submitted a series of medical reports from Dr. Matzkin. Dr. Matzkin noted that he had a preexisting right shoulder injury in August 2014 for his right shoulder and noted that he had progressed well. She noted appellant's history of injury and conducted a physical examination. Dr. Matzkin diagnosed a right shoulder glenohumeral osteoarthritis exacerbation, indicating that he may also have a partial thickness supraspinatus tear, and noting a work injury on December 9, 2016. In her May 4, 2017 report, she noted that appellant's pain and limitations were mostly attributable to his osteoarthritis and that he sustained an additional employment injury to his right shoulder on May 1, 2017. The Board finds that none of the reports of Dr. Matzkin provide an opinion on the issue of causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

[9] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[12] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[13] *Id*. at U.S.C. § 8101(2) (defining a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *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. *Supra* note 11 at Chapter 2.805.3a(1).

probative value on the issue of causal relationship.[14] As such, the reports from Dr. Matzkin are insufficient to establish a work-related injury to appellant's right shoulder on December 9, 2016.[15]

Appellant submitted a diagnostic study of his right shoulder in support of his claim. The Board has held, however, that diagnostic studies lack probative value on the issue of causal relationship, as they do not address whether the employment incident caused an exacerbation of his right shoulder conditions.[16] Thus, the diagnostic study is insufficient to establish appellant's claim.

Appellant also submitted physical therapy reports. Reports signed by physical therapists, without a countersignature from a physician, have no probative value, as physical therapists are not considered physicians as defined under FECA.[17]

As the medical evidence of record does not contain a rationalized opinion on causal relationship between appellant's right upper extremity condition and the December 9, 2016 employment incident, the Board finds that 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 upper extremity condition causally related to the accepted December 9, 2016 employment incident.

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

[15] *See C.R.*, Docket No. 17-1681 (issued December 1, 2017).

[16] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[17] *Supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2020
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board