

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

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**M.L., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
BOISE VETERANS ADMINISTRATION  
MEDICAL CENTER, Boise, ID, Employer**

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**Docket No. 18-0153  
Issued: January 22, 2020**

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 26, 2017 appellant filed a timely appeal from an October 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted February 11, 2016 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the October 2, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On May 25, 2017 appellant, then a 35-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on February 11, 2016, he was struck on the left shoulder by a door when accessing his locker while in the performance of duty. He experienced left shoulder pain which resolved after a few days, but “progressively returned with range of motion.” Appellant did not stop work. On the reverse side of the claim form, the employing establishment noted that he had been injured in the performance of duty and that it received notice of his injury on February 11, 2016.

In an incident report dated May 25, 2017, appellant reported that on February 11, 2016 at 11:00 a.m. he was accessing his locker and was struck on the left shoulder by a door as a person entered the area. He sustained a contusion/bruise of the left shoulder.

Appellant submitted a May 26, 2017 e-mail from, K.P., the human resource specialist, who noted that appellant’s work incident on February 11, 2016 was filed as a “No Lost Time, No Medical Expense” incident in his employee medical folder. He advised that his injury had occurred more than one year prior, but had not resolved completely and that he was seeking medical treatment. K.P. indicated that she would submit his claim to OWCP for adjudication.

In a development letter dated June 13, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of evidence needed to establish his claim, including a reasoned medical report from a physician providing an opinion on causal relationship. Appellant was afforded 30 days to respond.

Appellant submitted an attending physician’s report (Form CA-20) from Dr. Terry Ribbens, Board-certified in family medicine, dated June 23, 2017. Dr. Ribbens noted that, on February 11, 2016, appellant was struck by a door on his front left shoulder and sustained anterior shoulder pain and tendinitis. He checked a box marked “yes,” indicating that appellant’s condition was caused or aggravated by the employment incident. Dr. Ribbens recommended physical therapy.

By decision dated July 18, 2017, OWCP denied appellant’s traumatic injury claim finding that the medical evidence of record failed to provide a rationalized opinion sufficient to establish causal relationship between his diagnosed medical condition and the accepted February 11, 2016 employment incident.

Appellant was treated by Dr. Ribbens on June 21 and July 24, 2017 for chronic left shoulder pain. Dr. Ribbens repeated appellant’s account of the February 11, 2016 employment incident, noting that appellant experienced immediate pain which resolved in a week. He indicated that appellant’s left shoulder pain recurred and it was potentially related to the February 11, 2016 incident. Dr. Ribbens noted findings of mild tenderness over the anterior portion of the shoulder near the coracoids process and biceps tendon, no deformity or swelling, normal range of motion, no effusion, and no crepitus. He diagnosed chronic left shoulder pain. Dr. Ribbens noted that it was difficult to ascertain the relationship of the initial injury to his current pain, but opined that it was “possible” that his tendinitis was triggered by the initial injury. He noted that he was surprised that appellant continued to have pain from the

February 11, 2016 incident. Dr. Ribbens noted that physical therapy had not improved his symptomology.

In an August 14, 2017 letter, Dr. Ribbens noted previously examining appellant on June 21, 2017 for left shoulder pain and indicated that appellant had related that his pain at that first examination was similar to the pain he first experienced after being struck by the door. He opined that the duration of appellant's pain was atypical for this type of injury, but that the temporal relationship to the injury at work and the similar presentation of pain associated with the injury were sufficient to establish that his pain symptoms were work related.

A July 24, 2017 x-ray of appellant's left shoulder revealed no abnormalities.

On September 5, 2017 appellant requested reconsideration of the July 18, 2017 decision.

On September 6, 2017 appellant was treated by Dr. Kurt J. Nilsson, a Board-certified orthopedist, who noted that appellant reported that he had been at his locker when his left shoulder was struck by a door that suddenly opened. Dr. Nilsson noted findings of negative painful arc of motion, tenderness over coracoids, intact sensory, and motor examination of the extremity. He noted x-rays of the left shoulder revealed no degenerative change and normal coracoids. Dr. Nilsson diagnosed left shoulder adhesive capsulitis, unclear etiology. He opined that it was more likely than not that appellant's left shoulder condition was due to the injury sustained at work on February 11, 2016. Dr. Nilsson recommended a corticosteroid injection and physical therapy.

By decision dated October 2, 2017, OWCP denied modification of the July 18, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.<sup>9</sup> Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>10</sup> 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 between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup> 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>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted February 11, 2016 employment incident.

In a report dated August 14, 2017, Dr. Ribbens noted left shoulder pain after appellant had been hit on his left shoulder by a door and experienced pain. In this report, he opined that, although the duration of his pain was atypical for this type of injury, there was causal relationship as there was a temporal relationship to the injury at work and he had a similar presentation of the type of pain associated with the injury. However, Dr. Ribbens merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether his condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>13</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited

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<sup>7</sup> *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>10</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>12</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>13</sup> *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

probative value.<sup>14</sup> To the extent that he is providing his own opinion, Dr. Ribbens failed to provide a rationalized explanation regarding the causal relationship between appellant's left shoulder condition and the accepted employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>15</sup> This report is, therefore, insufficient to establish appellant's claim.

Dr. Ribbens also examined appellant on June 21 and July 24, 2017. He again noted that appellant complained of chronic left shoulder pain after being struck on his left shoulder by a door at work on February 11, 2016. Dr. Ribbens noted that appellant experienced pain which resolved in a week, but recurred several months later resulting in a diagnosis of chronic left shoulder pain. He opined that it was difficult to ascertain the relationship of the initial injury to appellant's current pain and noted it was "possible" that his tendinitis had been triggered by the initial injury. The Board has long held that medical opinions that suggest that a condition is "likely" or "possibly" employment related are speculative or equivocal in character have little probative value.<sup>16</sup> Also, the Board has consistently held that pain is a symptom and not a compensable medical diagnosis.<sup>17</sup>

In a June 23, 2017 attending physician's report (Form CA-20), Dr. Ribbens checked the box marked "yes" indicating that appellant's condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>18</sup>

Appellant also submitted a September 6, 2017 report from Dr. Nilsson who examined him due to left shoulder pain after the February 11, 2016 incident in which he was struck by a door. Dr. Nilsson diagnosed left shoulder adhesive capsulitis, unclear etiology, but opined that it was more likely than not that appellant's condition was due to the injury sustained at work on February 11, 2016. However, it is found that the opinion of Dr. Nilsson is conclusory in nature. The Board has held that a mere conclusion, without the necessary rationale as to whether a medical condition is causally related to an accepted employment incident, is insufficient to meet a claimant's burden of proof.<sup>19</sup>

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<sup>14</sup> See *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>15</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *Z.B.*, Docket No. 17-1336 (issued January 10, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>17</sup> See *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

<sup>18</sup> See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 334 (2003); *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

<sup>19</sup> *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

Finally, appellant submitted an x-ray report in support of his claim. However, diagnostic studies, such as an x-ray, lack probative value as to the issue of causal relationship as they do not address whether the employment incident caused the diagnosed condition.<sup>20</sup>

The Board finds that the medical evidence of record is insufficient to establish that the accepted February 11, 2016 employment incident caused appellant's left shoulder condition and thus 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 left shoulder condition causally related to the accepted February 11, 2016 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2020  
Washington, DC

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

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

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

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<sup>20</sup> See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).