



## ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted August 1, 2017 employment incident.

## FACTUAL HISTORY

On August 1, 2017 appellant, then a 63-year-old supervisory surf guard, filed a traumatic injury claim (Form CA-1) alleging that he injured his right shoulder on August 1, 2017 when he was hit by a wave while swimming. An employing establishment supervisor, W.M., indicated that appellant was in the performance of duty when injured, and that he stopped work on August 2, 2017.

The employing establishment executed an authorization for examination and/or treatment (Form CA-16), on August 1, 2007. In the attending physician's report portion of the form, Dr. Aruna M. Seneviratne, Board-certified in orthopedic surgery and sports medicine, noted a history of increased right shoulder pain after lifeguarding. He reported that appellant had a preexisting right shoulder implant and that an x-ray demonstrated that the implant was in position and no fracture was seen. Dr. Seneviratne diagnosed biceps pain and inflammation. He checked a form box marked "yes," indicating that the condition was caused or aggravated by employment activity, explaining that it was due to overuse/swimming. Dr. Seneviratne held appellant off work for six to nine weeks.

In a state workers' compensation form report dated August 7, 2017, Dr. Seneviratne again noted appellant's complaint of right shoulder pain. He reported a history that appellant injured himself at work on August 1, 2017 while swimming and lifeguarding. Dr. Seneviratne indicated that he had previously treated appellant for a similar work-related injury.<sup>3</sup> He advised that a right shoulder x-ray demonstrated good position of right shoulder hemiarthroplasty from prior shoulder surgery. Dr. Seneviratne diagnosed right shoulder pain and checked form boxes marked "yes," indicating that the incident appellant described was the competent medical cause of his injury, and that his complaints were consistent with the history of injury and objective findings. He recommended rest, ice, and medication, and advised that appellant not return to work at that time.

In a report dated August 22, 2017, Dr. Stephen J. Nicholas, a Board-certified orthopedic surgeon, noted appellant's complaint of right shoulder pain that began on August 1, 2017. He described a history that appellant had been swimming that day while working as a lifeguard on a beach and felt strain in his shoulder, stopped immediately, and reported it to medical staff. Dr. Nicholas reported that appellant had a past history of right shoulder hemiarthroplasty in 2010, followed by a debridement on February 10, 2017. He reviewed a right shoulder x-ray taken that day which revealed a slipped ball and stem and wearing of the glenoid cup. Physical examination demonstrated full range of motion with 4/5 strength and atrophy of the musculature of the shoulder.

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<sup>3</sup> The record does not indicate that appellant had a prior workers' compensation injury.

Dr. Nicholas diagnosed right shoulder pain and degenerative joint disease with primary osteoarthritis, status post right hemiarthroplasty.<sup>4</sup>

By development letter dated September 8, 2017, OWCP informed appellant that the evidence submitted was insufficient to support his claim. It informed him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

In a letter dated September 14, 2017, received by OWCP on September 26, 2017, appellant described the August 1, 2017 employment incident, noting that he was swimming in very rough surf during a training drill, and without warning, he experienced a sudden and extremely sharp pain in his right shoulder. He immediately exited the water, and sought assistance from first aid personnel. Appellant saw his treating physician on August 7, 2017 who prescribed physical therapy and three to four weeks of rest. He returned to light-duty work on September 1, 2017. Appellant related that, although he did have a prior right shoulder condition, he worked for five full seasons as a supervisory lifeguard without incident following shoulder surgery. He maintained that he sustained an acute injury on August 1, 2017 which temporarily incapacitated him from continuing his duties as a lifeguard. Appellant also submitted reports from Dr. Seneviratne dated August 29, 2017 who advised that appellant could return to work on September 1, 2017 with a restriction of no long distance swimming. On a state workers' compensation form report, he indicated that appellant's right shoulder was better. Dr. Seneviratne checked a box marked "yes" indicating that appellant's complaints were consistent with the history of injury and his objective findings. He diagnosed right shoulder hemiarthroplasty pain radiating to the biceps.

In correspondence dated September 20, 2017, Dr. Seneviratne indicated that appellant had been his patient for over eight years, and he had performed multiple operations on both shoulders, after which appellant had successfully returned to lifeguarding. He reported seeing appellant on August 7, 2017 for right shoulder pain and reiterated the history of injury. Dr. Seneviratne described his diagnoses and treatment recommendations, after which he cleared appellant to return to work. He opined that, although he had treated appellant for a right shoulder problem that was not related to his work injury, the acute shoulder pain he experienced on August 1, 2017 was causally related to his federal employment.

By decision dated October 20, 2017, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish a right shoulder condition causally related to the accepted August 1, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</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 timely filed within the applicable

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<sup>4</sup> Appellant also submitted an October 31, 2016 right shoulder computerized tomography (CT) scan that revealed status post shoulder replacement, degenerative changes, and superior migration of the humeral head. He also submitted physical therapy notes dated August 15 to 29, 2017.

<sup>5</sup> *Supra* note 1.

time limitation period of FECA, that an injury<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. 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, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.<sup>11</sup> 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 the specific employment factors identified by the employee.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted August 1, 2017 employment incident.

The October 31, 2016 CT scan of appellant's right shoulder predated the employment injury and is, therefore, not relevant to the instant claim.

Appellant also submitted several reports from Dr. Seneviratne. He described the August 1, 2017 incident, noted complaints of right shoulder and biceps pain, and reviewed x-ray findings. Dr. Seneviratne checked a form box on the attending physician's report portion of the Form CA-16 indicating that he believed the condition was caused or aggravated by employment due to overuse or swimming. He also checked boxes on state workers' compensation forms indicating that the August 1, 2017 incident was the competent medical cause of appellant's injury, and that

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<sup>6</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>7</sup> *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *Id.*

<sup>9</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020).

<sup>10</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020).

<sup>11</sup> *K.C.*, Docket No. 18-0529 (issued January 21, 2020).

<sup>12</sup> *D.J.*, *supra* note 7.

appellant's complaints and Dr. Seneviratne's objective findings were consistent with the history of injury. Dr. Seneviratne opined on September 20, 2017 that appellant's acute right shoulder pain on August 1, 2017 was causally related to work. In an August 29, 2017, he advised that appellant could return to work on September 1, 2017 with a restriction of no long distance swimming. On a state workers' compensation form report, Dr. Seneviratne indicated that appellant's right shoulder was better. He checked a box marked "yes" indicating that appellant's complaints were consistent with the history of injury and with his objective findings. Dr. Seneviratne diagnosed right shoulder hemiarthroplasty pain radiating to the biceps. The Board has consistently held that pain is a description of a symptom and not, in itself, considered a firm medical diagnosis,<sup>13</sup> and Dr. Seneviratne did not provide medical rationale explaining the basis of his conclusion opinion regarding causal relationship.<sup>14</sup> Moreover, Dr. Seneviratne did not describe specific examination findings and included no explanation of the mechanics of how the August 1, 2017 employment incident caused or aggravated appellant's right shoulder condition. As noted, to establish causal relationship, 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 the specific employment factors identified by the employee.<sup>15</sup> Dr. Seneviratne's reports are, therefore, insufficient to meet appellant's burden of proof.

Dr. Nicholas examined appellant on August 22, 2017. He described the August 1, 2017 incident, appellant's previous right shoulder surgery, and x-ray findings. Physical examination demonstrated full range of motion with 4/5 strength and atrophy of the musculature of the shoulder. Dr. Nicholas diagnosed pain and degenerative joint disease with osteoarthritis of the right shoulder, status post right hemiarthroplasty. He did not offer an opinion as to the cause of appellant's diagnosed condition, rather he merely communicated the history of injury as reported to him by appellant. Medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>16</sup> As such, Dr. Nicholas' report, which lacks an opinion on the cause of appellant's right shoulder condition, is not sufficient to establish his claim.

Medical rationale is especially important in a case such as this wherein, as reported by both Dr. Seneviratne and Dr. Nicholas, that appellant had a previous right shoulder injury that required surgery. The Board has explained that, if a preexisting condition involving the same part of the body is present and the issue of causal relationship involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between

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<sup>13</sup> See *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 10, 2008). Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4.a(6) (August 2012).

<sup>14</sup> See *D.G.*, Docket No. 19-1259 (issued January 29, 2020).

<sup>15</sup> *D.J.*, *supra* note 7.

<sup>16</sup> See *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

the effects of the preexisting condition and the current employment incident.<sup>17</sup> Neither physician did so in this case.

As none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the August 1, 2017 work incident and his diagnosed right shoulder conditions, the Board finds that appellant has not met his burden of proof.<sup>18</sup>

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 August 1, 2017 employment incident.

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<sup>17</sup> *M.V.*, Docket No. 18-1132 (issued September 16, 2019).

<sup>18</sup> The Board notes that when the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *C.C.*, Docket No. 18-1453 (issued January 28, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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