United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 18-0853**
	)	**Issued: March 9, 2020**
DEPARTMENT OF THE AIR FORCE, RANDOLPH AIR FORCE BASE, Randolph, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 13, 2018 appellant filed a timely appeal from an October 31, 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted July 19, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 31, 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 additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 31, 2017 appellant, then a 39-year-old management analyst, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2017, while descending steps at work, the material covering the stairs gave way causing him to roll his ankle and lose his balance. He indicated that, as he tried to regain his balance, he grabbed a bar with his left hand and injured his left wrist and left shoulder. Appellant stopped work on July 19, 2017 and returned to regular duty on a full-time basis on August 3, 2017.

On July 25, 2017 appellant was treated by Dr. Adrian T. Baddar, Board-certified in orthopedic surgery, for his shoulder complaints. He noted that a magnetic resonance imaging (MRI) scan of the left shoulder from November 2016 showed mild bursitis.[3] Appellant reported "having a fall yesterday" which caused worsening anterior shoulder pain. Findings on physical examination revealed limited range of motion of the left shoulder to 100 degrees, reasonable strength, and severe discomfort with Neer and Hawkins testing. Dr. Baddar diagnosed acute bursitis of the left shoulder and bilateral shoulder pain.

In an August 1, 2017 note, Sarah Latuga, a physician assistant, indicated that appellant could return to work on August 3, 2017.[4] On August 3, 2017 Dr. Baddar noted left shoulder findings of active forward flexion of 90 degrees, reasonable strength, and intact sensation distally, and he diagnosed left shoulder pain and acute bursitis of the left shoulder.[5]

In reports dated August 8 and 10, 2017, William Power, a physical therapist, noted physical therapy sessions with appellant.

On September 5, 2017 Dr. Baddar noted findings on examination of active forward flexion and abduction to 90 degrees with reasonable strength. He diagnosed left shoulder pain and acute bursitis of the left shoulder.

In a duty status report (Form CA-17) dated September 5, 2017, Dr. Baddar listed the date of injury as July 19, 2017 and provided a "diagnosis due to injury" of left shoulder pain. He noted that appellant could resume work full time with restrictions on September 5, 2017.

In a report dated September 7, 2017, Dr. Baddar advised that appellant reported undergoing left ankle reconstructive surgery in 2015. He noted findings of no swelling or deformity of the left ankle and left wrist, stable anterior drawer sign of the left ankle, and minimal pain with range of

[3] The case record does not contain a copy of this MRI scan. Appellant submitted July 25, 2017 x-rays of the left shoulder, left wrist, and left ankle which revealed no abnormalities. A July 31, 2017 MRI scan of the left shoulder showed no full-thickness rotator cuff tear, tendon retraction, or muscle atrophy.

[4] Appellant submitted an incomplete version of an August 1, 2017 report which did not contain a page with a signature.

[5] In another August 3, 2017 report, Dr. Baddar diagnosed acute bursitis of both shoulders. On August 17, 2017 he reported that appellant had left shoulder forward flexion and abduction of 30 degrees, and he diagnosed left shoulder pain and acute bursitis of the left shoulder.

motion of the left wrist. X-rays of the ankle and wrist revealed no acute abnormality. Dr. Baddar diagnosed left wrist sprain, left wrist pain, left ankle pain, and acute bursitis of the left shoulder.

In a Form CA-17 report dated September 7, 2017, Dr. Baddar listed the date of injury as July 19, 2017 and provided a "diagnosis due to injury" of left shoulder bursitis and left ankle sprain. He advised that appellant could resume work full time with restrictions on September 7, 2017. In an attending physician's report (Form CA-20) dated September 7, 2017, Dr. Baddar noted that appellant reported falling at work on July 19, 2017. He diagnosed left shoulder bursitis and checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity.

In a September 28, 2017 development letter, OWCP advised appellant that the evidence received was insufficient to support his claim, noting that the medical evidence did not substantiate that the diagnosis provided, left shoulder bursitis, was caused or aggravated by the reported employment incident It requested that he submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested information.

On October 5, 2017 Dr. Baddar noted that his physical examination of appellant's left ankle revealed no swelling, stability on anterior drawer testing, and intact function. With respect to the left wrist, there was no swelling or erythema, and painless range of motion. Dr. Baddar diagnosed left wrist pain, left ankle pain, and acute bursitis of the left shoulder.

By decision dated October 31, 2017, OWCP accepted that the July 19, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish a medical condition in connection with the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period 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]

[6] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine if an employee has 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[9] The second component is whether the employment incident caused a personal injury.[10]

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.[11] 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.[12]

In any 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.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted July 19, 2017 employment incident. In a Form CA-20 report dated September 7, 2017, Dr. Baddar noted that appellant reported falling at work on July 19, 2017. He diagnosed left shoulder bursitis and checked a 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 more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[14] As such, Dr. Baddar's September 7, 2017 report is insufficient to discharge appellant's burden of proof to establish causal relationship.

In Form CA-17 reports dated September 5 and 7, 2017, Dr. Baddar provided diagnoses due to the reported July 19, 2017 employment incident of left shoulder pain, left shoulder bursitis, and left ankle sprain. Although he related these conditions to the accepted July 19, 2017 employment incident, these reports are of limited probative value on the underlying issue of the present case because he did not provide medical rationale in support of his opinion on causal relationship. Dr. Baddar did not describe the employment incident in detail or explain how it could have been

[9] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[12] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

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

[14] *Id.*

competent to cause or aggravate the diagnosed conditions. Thus, this evidence is insufficient to meet appellant's burden of proof.

In several narrative reports, including those dated July 25, August 3 and 17, and September 7, 2017, Dr. Baddar reported physical examination findings and primarily diagnosed acute bursitis of the left shoulder and left shoulder pain.[15] On September 7, 2017 he diagnosed left wrist sprain, left wrist pain, left ankle pain, and acute bursitis of the left shoulder. On October 5, 2017 Dr. Baddar diagnosed left wrist pain, left ankle pain, and acute bursitis of the left shoulder. However, these reports are of no probative value on the underlying issue of this case because they do not contain an opinion that appellant sustained an injury due to the accepted July 19, 2017 employment incident. The Board has held that medical 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.[16] Therefore, these reports are insufficient to establish appellant's claim.[17]

Appellant also submitted an August 1, 2017 note from Ms. Latuga, a physician assistant, who indicated that appellant could return to work on August 3, 2017. Under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.[18] Thus, this evidence is not sufficient to meet appellant's burden of proof. The record also contains notes from Mr. Powers, a physical therapist, regarding appellant's physical therapy sessions on August 8 and 10, 2017. The Board has held that the report of a physical therapist does not constitute probative medical evidence as a physical therapist is not a physician under FECA.[19] Thus, these treatment records also are of no probative medical value in establishing appellant's claim.[20] Appellant submitted the findings of diagnostic testing, including July 25, 2017 x-rays of the left wrist, left shoulder, and left ankle, and a July 31, 2017 MRI scan of the left shoulder. However, diagnostic studies lack probative value as they do not address whether employment factors caused the diagnosed condition.[21]

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship, the Board finds that appellant has not met his burden of proof.

[15] To a lesser extent, Dr. Baddar also diagnosed bilateral shoulder pain and acute bursitis of both shoulders.

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

[17] *Id.*

[18] *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).

[19] *S.T.*, Docket No. 17-0913 (issued June 23, 2017) (a physical therapist is not a physician under FECA).

[20] Appellant submitted an incomplete version of an August 1, 2017 report which did not contain a page with a signature. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence. *C.B.*, Docket No. 09-2027 (issued May 12, 2010). Therefore, this August 1, 2017 report does not constitute probative medical evidence.

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

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 an injury causally related to the accepted July 19, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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