United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 20-0377**
	)	**Issued: November 9, 2020**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Tucson, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 7, 2019 appellant filed a timely appeal from a December 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 medical condition causally related to the accepted March 13, 2019 employment incident.

[1] Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated November 5, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 20-0377 (issued November 5, 2020).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 15, 2019 appellant, then a 49-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2019 his right shoulder twisted and turned in an abnormal and awkward position when role playing in a use of force training scenario while in the performance of duty. He explained that he then experienced a burning sensation and numbness radiating from his neck down to his right fingers. Appellant did not stop work.

In progress notes dated March 20, 2019, Dr. Todd J. Tucker, a Board-certified orthopedic surgeon and orthopedic sports medicine physician, reported that appellant was seen for a new right shoulder injury. He noted appellant's history of acute pain when his arm was brought up from behind during apprehension technique training and his current complaints of deltoid pain, clavicle pain down to his ulnar forearm and ulnar digits, occasional neck pain, and occasional night pain. Dr. Tucker noted appellant's complaints that he had been dropping things from his hand and had difficulty lifting items. He related that appellant had been fine until this aggravation on March 13, 2019. Dr. Tucker reported appellant's physical examination findings which included decreased neck motion, ulnar digits numbness and tingling, pain during Spurling's examination, positive right ulnar nerve tension test, and positive cubital tunnel Tinel's sign. A review of appellant's x-ray interpretations revealed very early age-appropriate cervical spine degenerative changes and right shoulder glenohumeral osteoarthritis. Dr. Tucker diagnosed cervical radiculopathy or possible cubital tunnel with ulnar nerve end result compromise, and right shoulder joint osteoarthritis. He recommended nerve conduction studies for the intrinsic wasting and gross weakness of appellant's hand.

In an attending physician's report, Part B of an Authorization for Examination and/or Treatment (Form CA-16), dated March 20, 2019, Dr. Tucker noted appellant's history of injury during apprehension technique training. He diagnosed cervical radiculopathy and right shoulder degenerative joint disease. Dr. Tucker checked a form box marked "Yes," indicating that the condition was caused or aggravated by the employment activity.

In a duty status report (Form CA-17) dated March 20, 2017, Dr. Tucker diagnosed cervical radiculopathy and right shoulder degenerative joint disease, which he attributed to the March 13, 2019 employment incident. He noted appellant's history of injury and opined that appellant was capable of performing his usual duties. Dr. Tucker, in a March 20, 2019 note, prescribed physical therapy two times a week for six weeks for the diagnosed cervical radiculopathy and right shoulder degenerative joint disease.

The record also contains physical therapy reports dated April 12, 17, 24, 26, 30, May 2, 7, and 8, 2019.

In a May 1, 2019 report, Dr. Tucker reported that appellant was seen for his cervical radiculopathy and right shoulder condition. He related appellant's physical examination findings and diagnosed bone-on-bone glenohumeral joint osteoarthritis and cervical radiculopathy/ulnar neuritis with gross weakness.

A May 8, 2018 electromyogram and nerve conduction velocity study (EMG/NCV) indicated severe right cubital tunnel syndrome.

In a May 28, 2019 report, Dr. Joel R. Goode, a Board-certified orthopedic surgeon, noted that appellant had been referred by Dr. Tucker for a further evaluation of his right shoulder and elbow. He noted appellant's complaints that he had constant small ring finger numbness and tingling, weakness and muscle atrophy, and weakness in hand when lifting weights; further noting that these symptoms were worsening. Dr. Goode indicated that review of appellant's EMG showed severe cubital tunnel syndrome, which was work related. He reported physical examination findings of full cervical range of motion, no signs of radiculopathy, no right shoulder atrophy, right shoulder very crepitant global range of motion, nontender clavicle joint, hypersensitive ulnar nerve, significant visual interosseous muscle wasting, diminished strength with adduction and abduction, and negative wrist Phalen's sign. A review of an x-ray interpretation showed significant right shoulder arthrosis and significant glenohumeral arthritis. Dr. Goode diagnosed right shoulder degenerative joint disease and severe right cubital tunnel syndrome.

In a July 9, 2019 development letter, OWCP advised appellant, that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment of a limited amount of medical expenses, but the merits of the claim had not been formally adjudicated. OWCP informed him that his claim would be formally adjudicated because his medical bills exceeded $1,500.00. It informed appellant of the deficiencies of his claim and advised him of the type of medical evidence needed to establish his claim. OWCP afforded him 30 days to respond.

By decision dated August 14, 2019, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted March 13, 2019 employment incident.

OWCP subsequently received a report dated August 20, 2019, Dr. Goode related that appellant's diagnosis of right elbow/cubital tunnel syndrome had been confirmed by nerve x-ray interpretations. He attributed the diagnosed condition to the employment incident, based on the timing of the incident, and indicated that it appeared to be related to the trauma. If nothing else, it would at a minimum be an aggravation of a preexisting condition. Dr. Goode recommended that appellant undergo nerve decompression and surgical intervention.

On September 19, 2019 appellant requested reconsideration.

By decision dated December 3, 2019, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[3] *Id*.

limitation of FECA,[4] 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[7] Generally, 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.[8] The second component is whether the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[11] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of 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]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted March 13, 2019 employment incident.

In March 20, 2019 progress notes, Dr. Tucker noted seeing appellant for a right shoulder injury sustained during apprehension technique training. He related appellant's complaints, reviewed diagnostic testing, and observed that appellant had been doing well since the last time he saw him until the accepted March 13, 2019 incident aggravated his right shoulder. Dr. Tucker

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *J.R.*, *supra* note 6; *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[10] *T.H.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[12] *Id.*; *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

diagnosed cervical radiculopathy, possible cubital tunnel with ulnar nerve end result, hand wasting, loss of fine motor skills, and right shoulder joint osteoarthritis. In a May 1, 2019 report, he found no change from the March 20, 2019 examination and diagnosed bone-on-bone glenohumeral joint osteoarthritis and cervical radiculopathy/ulnar neuritis with gross weakness. However, Dr. Tucker offered no medical opinion regarding causal relationship in either report. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] Thus, these reports are of no probative value and are insufficient to establish the claim.

The record also contains a duty status report (Form CA-17) dated March 20, 2019 from Dr. Tucker diagnosing cervical radiculopathy and right shoulder degenerative joint disease; however, this report also does not provide an opinion on causal relationship and is therefore insufficient to establish the claim.[14]

In Part B of a Form CA-16, Dr. Tucker checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. The Board has held that an opinion on causal relationship, standing alone, which consists only of a physician checking a box marked "Yes" in response to a form report question is of little probative value.[15] Dr. Tucker did not provide any rationale for his opinion. This report is, therefore, of limited probative value and insufficient to establish that the diagnosed conditions should be accepted as employment related.

Appellant also submitted reports dated May 28 and August 20, 2019 from Dr. Goode. In the May 28, 2019 report, Dr. Goode diagnosed severe right cubital tunnel syndrome and right shoulder degenerative disease. However, he offered no opinion as to the cause of the diagnosed conditions. As previously noted, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[16] This report is, therefore, also insufficient to establish the claim.

Dr. Goode related, in an August 20, 2019 report, that he had confirmed appellant's diagnosis of right elbow/cubital tunnel syndrome. He attributed the diagnosed condition to the twisting employment incident, which he opined at a minimum caused an aggravation of a preexisting condition. Dr. Goode provided no medical reasoning explaining how the accepted March 13, 2020 employment incident would cause or aggravate the diagnosed condition. While he provided an affirmative opinion in his August 20, 2019 report that supported causal relationship, Dr. Goode did not provide a pathophysiological explanation as to how the accepted

[13] *See K.W.*, Docket No. 19-1906 (issued April 1, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Id.*

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020.

[16] *Supra* note 13.

incident either caused or contributed to the diagnosed conditions.[17] For these reasons, the Board finds that his reports are also insufficient to meet appellant's burden of proof.

The record also contains a May 8, 2018 EMG/NCV study. The Board has held, however, that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between the accepted employment incident and a diagnosed condition.[18]

Appellant also submitted reports from a physical therapist. Certain healthcare providers such as physical therapists, however, are not considered "physician[s]" as defined under FECA.[19] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[20]

As appellant has not submitted rationalized medical evidence establishing causal relationship between his diagnosed conditions, and the accepted March 13, 2019 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

On appeal appellant asserts that the evidence submitted is unequivocal that he sustained an employment injury. As discussed above, 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 medical condition causally related to the accepted March 13, 2019 employment incident.[21]

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[17] *K.W.*, *supra* note 13; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[18] *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *J.M.*, Docket No. 17-1688 (issued December 13, 2018); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

[19] Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also 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); *J.F.*, Docket No. 19-1694 (issued March 18, 2020) (physical therapists are not considered physicians under FECA).

[20] *Id.*

[21] The Board notes that a properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form 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. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 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