

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

K.G., Appellant)
and) Docket No. 20-0625
U.S. POSTAL SERVICE, DOVER POST) Issued: November 6, 2020
OFFICE, Dover, NH, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 27, 2020 appellant filed a timely appeal from an August 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a left shoulder condition causally related to the accepted factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 28, 2019 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 May 24, 2019 appellant, then a 62-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a sharp pain in his left shoulder due to factors of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on April 27, 2019. Appellant stopped work on May 4, 2019.

In a June 6, 2019 medical report, Christopher L. Wheeler, a certified physician assistant, noted that appellant was seen for evaluation of left shoulder pain. He indicated that appellant had a previous history of shoulder pain about four to five years ago that was resolved with physical therapy. Mr. Wheeler observed that appellant experienced a sharp pain when he raised his arm away from his side, but no numbness or tingling. He diagnosed left shoulder rotator cuff strain. In a medical note of even date, Mr. Wheeler again diagnosed left shoulder rotator cuff strain and provided work restrictions.

In an undated statement, appellant indicated that he first noticed having a slight ache in his left shoulder on April 27, 2019. He asserted that this ache progressed into a more intense ache, eventually becoming a sharp pain. Appellant noted that his x-rays revealed a bone spur and inflamed rotator cuff. He noted that his doctor recommended physical therapy. In separate undated statement, appellant listed his job duties as a letter carrier, noting that all of his duties required constant movement from left to right and down. He indicated that his route had about 600 parcel deliveries, often requiring him to climb three flights of stairs.

In a development letter dated June 6, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It afforded both parties 30 days to submit the necessary evidence.

In a May 22, 2019 patient intake form, appellant noted that his injury was caused by constant use of his left shoulder at work. In a report of even date, Mr. Wheeler conducted a physical examination, which revealed mild tenderness to bicipital groove and greater tuberosity, but no other obvious deformity in the left shoulder. He diagnosed left shoulder rotator cuff strain with impingement. In a state workers' compensation medical form of even date, Mr. Wheeler again diagnosed left rotator cuff strain.

In a June 12, 2019 state workers' compensation medical form, Mr. Wheeler reiterated his diagnosis and released appellant to work with restrictions.

Appellant underwent physical therapy treatments from June 17 through August 9, 2019.

A June 20, 2019 left shoulder magnetic resonance imaging (MRI) scan revealed a supraspinatus tendon tear, mild peritendinobursitis, and mild acromioclavicular arthropathy.

In an undated letter, the employing establishment controverted appellant's claim, noting that he previously called in sick on April 20, 2019 describing a sharp pain in his shoulder while at

home. It indicated that appellant was currently only casing mail with no street duties. The employing establishment also provided a job description for a city carrier.

In a June 26, 2019 patient intake form, appellant repeated that his injury was caused by constant use of his left shoulder at work. In a state workers' compensation medical form of even date, Dr. Joshua A. Siegel, a Board-certified orthopedic surgeon, noted that appellant reported that he developed a sharp pain in the left shoulder starting on April 27, 2019. He diagnosed left partial rotator cuff tear and released appellant to work with restrictions. In a medical report of even date, Dr. Siegel opined that repetitive work at the employing establishment over a course of months caused appellant's left shoulder condition. He noted that appellant originally had a walking mail route and was supporting a lot of mail with his left arm and that currently he was driving and reaching with his left arm. Dr. Siegel reviewed appellant's MRI scan and conducted a physical examination, which revealed a positive impingement and mild tenderness over the acromioclavicular joint. He diagnosed impingement rotator cuff tendinopathy and a partial-thickness tear.

On July 9, 2019 appellant accepted an offer of modified assignment to work a limited-duty position casing mail.

In a July 15, 2019 medical form report, cosigned by an unidentifiable healthcare provider, Mr. Wheeler diagnosed a supraspinatus tendon tear and provided work restrictions.

In a July 22, 2019 patient intake form, appellant again noted that his injury was caused by his work. In a state workers' compensation medical form of even date, Dr. Siegel reiterated his diagnosis. In a medical report of even date, he indicated that appellant previously had similar shoulder pain in 2016, which he reported was getting mildly worse over time. Dr. Siegel conducted a physical examination, which still revealed positive impingement and tenderness over acromioclavicular joint in the left shoulder. He noted that the acromioclavicular joint was more symptomatic. Dr. Siegel diagnosed mild acromioclavicular joint arthrosis and impingement and discussed with appellant the possibility of undergoing an arthroscopy.

In an undated state workers' compensation medical form, Dr. Siegel noted that appellant began experiencing a sharp pain on April 27, 2019 and provided work restrictions.

By decision dated August 28, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish causal relationship between appellant's diagnosed left shoulder condition and the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that

³ *Supra* note 1.

⁴ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 specific employment factors identified by the employee.⁹

In a case in which 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted a series of medical reports from Dr. Siegel. In state workers' compensation medical forms dated from June 26 through July 22, 2019, Dr. Siegel did not offer an opinion on causal relationship. 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

⁵ *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *A.O.*, Docket No. 20-0038 (issued August 26, 2020); *B.H.*, Docket No. 18-1693 (issued July 20, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013)..

on the issue of causal relationship.¹¹ Thus, this evidence is insufficient to establish appellant's claim.

In medical reports dated from June 26 through July 22, 2019, Dr. Siegel provided multiple diagnoses related to appellant's left shoulder condition and noted that appellant previously had similar shoulder pain, which had mildly worsened over the years. He opined that repetitive work at the employing establishment over a course of time caused appellant's condition. While in his narrative reports Dr. Siegel supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's left shoulder condition and the accepted factors of his federal employment.¹² The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.¹³ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁴ Further, as noted above, a well-rationalized opinion is particularly important since appellant has a history of left shoulder pain from years ago.¹⁵ For these reasons, Dr. Siegel's reports are insufficient to meet appellant's burden of proof.¹⁶

Appellant also submitted a medical report from an unidentifiable healthcare provider. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.¹⁷ Therefore, this report is also insufficient to establish the claim.

The record also contains a series of reports from a physician assistant and a physical therapist. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

¹¹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

¹³ *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

¹⁴ *Id.*

¹⁵ *Supra* note 11.

¹⁶ *L.J.*, *supra* note 6.

¹⁷ *J.P.*, Docket No. 19-0197 (issued June 21, 2019).

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

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); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013). See also *T.W.*, Docket No. 19-1412 (issued February 3, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *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); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA).

Finally, appellant also submitted a June 20, 2019 left shoulder MRI scan. However, the Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between accepted employment conditions and a given claimed period of disability.²⁰ Therefore, this evidence is also insufficient to establish appellant's claim.

As there is no rationalized medical evidence of record explaining how appellant's accepted factors of his employment caused or aggravated his condition, 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 left shoulder condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ S.K., Docket No. 19-0272 (issued July 21, 2020); A.V., Docket No. 19-1575 (issued June 11, 2020).