

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

V.H., Appellant	)	
	)	
and	)	<b>Docket No. 20-0639</b>
	)	<b>Issued: November 10, 2020</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, BWI THURGOOD	)	
MARSHALL AIRPORT, Linthicum, MD,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 29, 2020 appellant filed a timely appeal from an October 11, 2019 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.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted July 25, 2018 employment incident.

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

## **FACTUAL HISTORY**

On August 22, 2018 appellant, then a 62-year-old supervisory transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2018 he injured his neck, shoulders, knees, and back when he fell over a cart while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, W.B., acknowledged that the incident occurred in the performance of duty and that there was no willful misconduct involved. Appellant stopped work on July 25, 2018 and returned on August 15, 2018.

Appellant was treated by Dr. Eddy J. Bullock, a Board-certified internist, on July 25 and 31, 2018, for low back, right shoulder, and neck pain after he fell over a cart at work. Dr. Bullock diagnosed myalgia and opined that appellant "most likely" sustained a contusion from a fall. On October 30, 2018 appellant presented with worsening neck and shoulder pain and cracking in the right shoulder. Dr. Bullock diagnosed osteoarthritis of the right shoulder, neck pain, and cervical spondylosis. On November 21, 2018 he evaluated appellant for recurrent low back pain. Dr. Bullock diagnosed chronic low back pain and opined that the episode "maybe" [sic] related to the fall over the summer; however, he noted that appellant had a history of back pain that predated the fall.

Appellant attended physical therapy treatment from July 31 to December 6, 2018.

Dr. Alireza P. Farsaii, a Board-certified orthopedist, evaluated appellant on November 16, 2018, for bilateral shoulder pain, which began after a fall that occurred four months earlier. An x-ray of the left shoulder of even date revealed no acute fractures, no dislocation or bony lesions, and mild degenerative arthritis at the glenohumeral joint and acromioclavicular (AC) joints. Dr. Farsaii's assessment was "right shoulder rule out rotator cuff tear."

A November 21, 2018 magnetic resonance imaging (MRI) scan of the right shoulder revealed: full-thickness, full width tear of the supraspinatus tendon, retracted; high-grade partial tear of the distal subscapularis with tendinopathy; chronic tears along the superior labrum, posterior labrum and anterior labrum; moderate degenerative joint disease of the AC joint, and minimal joint arthritis with chondromalacia. An MRI scan of the left shoulder of even date revealed an articular surface tear along the anterior fibers of the distal supraspinatus, partial insertional tear of the distal subscapularis with tendinopathy, degenerative changes, partial tears along the anterior labrum, fragmentation, and advanced degenerative changes along the AC joint.

On November 30, 2018 Dr. Farsaii reviewed the MRI scan of the right shoulder and diagnosed traumatic, full-thickness right rotator cuff tear and biceps tendinitis and recommended right shoulder arthroscopic rotator cuff repair and open subpectoral biceps tenodesis.

In a December 13, 2018 development letter, OWCP informed appellant that, when his claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time for work, and therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. It had now reopened his claim for consideration of the merits. OWCP advised appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. It afforded him 30 days to respond.

In a July 24, 2018 statement, appellant indicated that while he was opening up a passenger lane he fell over a cart and injured his right side, neck, shoulders, buttocks, and knees. He experienced a nose bleed later that day and stopped work.

An employing establishment incident report dated July 31, 2018, prepared by A.B., a fellow transportation security officer, noted that on July 24, 2018 appellant was on duty setting up lane four for checkpoint screening when he tripped and fell over a smart cart. He remained on the floor until being assisted up by a coworker and a passenger.

In an August 10, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, of even date, Dr. Bullock reported that appellant fell over a cart at work and landed on his right side. He noted that appellant reported preexisting neck and back pain. Dr. Bullock diagnosed myalgia, and noted the cause of injury was a fall against an object. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. Dr. Bullock further indicated that appellant was totally disabled from work from July 25 to August 14, 2019.

In return to work slips dated July 25 and 30, 2018, Dr. Bullock noted that appellant was disabled from work from July 25 to August 5, 2018. In an August 10, 2018 attending physician's report (Form CA-20), he noted that appellant was injured at work on July 25, 2018 when he fell over a cart and onto his side. Dr. Bullock diagnosed myalgia and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity.

By decision dated January 30, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted July 25, 2018 employment incident.

On February 25, 2019 appellant requested an oral hearing. He later requested that OWCP proceed with a review of the written record in lieu of an oral hearing.

OWCP received additional evidence. In a January 9, 2019 response to OWCP's development questionnaire, appellant indicated that, on July 24, 2018, he was working at C pier checkpoint opening the stanchions that blocked off an entrance way to two lanes. After opening the lane he tripped over a baggage cart and flipped upward about two or three feet and then fell on his backside. Appellant reported the accident to his supervisor A.B. He indicated that he had not sustained any injuries on or off duty since the accident. Appellant sought treatment from Dr. Bullock on July 25, 2018 for pain in his knees, neck, shoulder, back, and right side. He related that he experienced chronic back pain from a past injury and had bilateral knee surgery in 2016, but remained pain free until this accident.

In reports dated January 14 and February 5, 2019, Dr. Bullock summarized appellant's July 25 and 31, and November 21, 2018 office visits. He diagnosed chronic lumbar back pain and lumbar osteoarthritis/spondylosis, which flared up after appellant's fall at work on July 24, 2018, and opined that the fall against the cart exacerbated appellant's chronic back and neck conditions.

In a February 26, 2019 operative report, Dr. Farsaii noted performing a right shoulder arthroscopic rotator cuff repair and open subpectoral biceps tenodesis. He diagnosed right shoulder massive rotator cuff tear, biceps tendinitis, and biceps tendon tear.

By decision dated October 11, 2019, OWCP's hearing representative affirmed the January 30, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</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>5</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.<sup>7</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 specific employment incident identified by the employee.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 25, 2018 employment incident.

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In support of his claim appellant submitted medical reports from Dr. Bullock dated July 25 and 30, 2018, who diagnosed myalgia and advised that appellant “most likely” sustained a contusion from a fall. Similarly, on October 30 and November 21, 2018, Dr. Bullock diagnosed chronic low back pain and opined that the episode may be related to the fall over the summer. The Board has held that such medical opinions that suggest that a condition was most “likely” caused by work activities are speculative or equivocal in character and have limited probative value.<sup>9</sup> As such, these medical notes by Dr. Bullock are insufficient to establish appellant’s claim.

In return to work slips dated July 25 and 30, 2018, Dr. Bullock noted that appellant was disabled from work from July 25 to August 5, 2018. As these notes do not address causation, they are of no probative value and insufficient to meet appellant’s burden of proof.<sup>10</sup>

In a Form CA-20 dated August 10, 2018, Dr. Bullock diagnosed myalgia and checked a box marked “Yes” indicating that the condition was caused or aggravated by the employment incident. The Board has held, however, that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.<sup>11</sup>

Other reports from Dr. Bullock dated January 14 and February 5, 2019, diagnosed chronic lumbar back pain and lumbar osteoarthritis/spondylosis. He opined that appellant’s fall against a cart exacerbated his chronic back and neck conditions. Although his statement is supportive of a causal relationship, he did not offer medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant’s back and neck conditions and the factors of his federal employment.<sup>12</sup> The Board has held that a mere conclusion without the necessary rationale as to whether a given medical condition was related to an accepted employment incident is insufficient to meet a claimant’s burden of proof.<sup>13</sup> As such, these notes are of limited probative value.

In reports dated November 16 and 30, 2018, Dr. Farsaii evaluated appellant for a four-month history of bilateral shoulder pain, which began after a fall at work. He diagnosed traumatic, full thickness right rotator cuff tear, and biceps tendinitis and performed right shoulder arthroscopic surgery on February 26, 2019. However, as Dr. Farsaii did not offer an opinion on causal relationship, his opinion is of no probative value.<sup>14</sup> Therefore, his medical reports are insufficient to meet appellant’s burden of proof.

Appellant submitted physical therapy reports dated July 31 to December 6, 2018. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners,

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<sup>9</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

<sup>10</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *See K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>12</sup> *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

<sup>14</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

physical therapists, and social workers are not considered “physician[s]” as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>15</sup>

Appellant also submitted MRI scans of the left and right shoulder dated November 21, 2018, and an x-ray of the left shoulder dated November 22, 2017. The Board has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>16</sup>

As the case record does not contain rationalized medical evidence sufficient to establish causal relationship between the accepted July 25, 2018 employment incident and his diagnosed conditions, the Board finds that appellant has not met his burden of proof.

On appeal appellant asserts that his supervisors and physicians concluded that the fall at work caused his rotator cuff tear and exacerbated his arthritis, and that OWCP ignored this evidence. He asserted that, if this evidence was insufficient, the claims examiner should have obtained additional medical evidence or referred him for a second opinion evaluation. Appellant referenced the case of *Elizabeth Maypothor*.<sup>17</sup> In that case, he asserted that the leukemia and subsequent infection, which caused her husband’s death was causally related to a slip and fall injury that occurred at work on March 7, 1950. Appellant submitted rationalized medical evidence sufficient to merit further development and OWCP referred him to two second opinion evaluations. However, as explained above, he has not submitted rationalized medical evidence sufficient 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.

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<sup>15</sup> Section 8102(2) of FECA provides as follows: (2) 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *see also J.R.*, Docket No. 20-0496 (issued August 13, 2020) (physical therapists are not considered physicians under FECA); *see also S.L.*, Docket No. 19-0603 (issued January 28, 2020) (a nurse is not considered a physician as defined under FECA).

<sup>16</sup> *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

<sup>17</sup> 5 ECAB 604 (1953).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 25, 2018 employment incident.<sup>18</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>18</sup> The Board notes that the employing establishment issued a Form CA-16. A 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).