

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

R.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Manorville, NY, Employer**

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**Docket No. 20-0161
Issued: October 23, 2020**

Appearances:
Paul Kalker, Esq. for the appellant¹
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 October 28, 2019 appellant, through counsel, filed a timely appeal from a September 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 25, 2018 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date he was reaching for a scanner from a seated position and felt a sudden sharp pop/pain in his left bicep and armpit area while in the performance of duty. He notified his supervisor, stopped work, and sought medical treatment on the date of injury.

In a development letter dated January 29, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence required and afforded him 30 days to provide the necessary evidence.

In support of his claim, appellant submitted a February 2, 2018 duty status report (Form CA-17), and February 7, 2018 attending physician's report from Dr. John-Paul Blaber, Board-certified in emergency medicine. Dr. Blaber diagnosed left bicep injury and left bicep ecchymosis, reporting that appellant injured his left bicep while reaching for a scanner at work. In a February 7, 2018 form report, he additionally checked a box marked "Yes" indicating that the conditions were caused or aggravated by an employment activity. Dr. Blaber provided appellant restrictions, reported that he was totally disabled from work until further evaluation, and referred him to orthopedics for additional treatment.

In a February 12, 2018 medical report, Dr. Michael Sileo, a Board-certified orthopedic surgeon, reported that appellant presented for evaluation of left arm pain following a January 25, 2018 work-related injury. Appellant described a pop in his left bicep muscle while reaching for a tray at the level of the shoulder. Dr. Sileo reviewed left shoulder x-rays and recommended a magnetic resonance imaging (MRI) scan of the left shoulder to evaluate for a proximal biceps tendon rupture versus a possible rotator cuff tear.

In a February 27, 2018 medical report, Dr. Sileo reviewed the results of the February 17, 2018 left shoulder MRI scan which revealed a high-grade partial thickness tear of the rotator cuff, as well as a more acute rupture of the long head bicep tendon. He opined that this injury was a direct and causal result of the work-related incident. Dr. Sileo placed appellant on temporary total disability and discussed surgery to repair the left shoulder.

³ *Order Remanding Case*, Docket No. 19-0301 (issued August 21, 2019).

By decision dated March 8, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the diagnosed left rotator cuff tear and left biceps tendon rupture were causally related to the accepted January 25, 2018 employment incident.

In a March 9, 2018 narrative statement, appellant reported that on January 25, 2018, he was at work for approximately four and a half hours and had finished about one third of his route. He reached for a scanner from the dashboard cradle when his bicep popped and felt like it exploded. Appellant described experiencing great pain and called his postmaster to inform her that he had been injured. He reported no similar pain prior to this incident.

Medical and form reports dated February 2, 2018 were submitted from Dr. Blaber documenting treatment at urgent care. Dr. Blaber reported that appellant injured his left bicep on January 25, 2018 while at work. Appellant stated that he was reaching for a scanner and felt a pop and pain in his left bicep radiating to his left shoulder. Dr. Blaber diagnosed unspecified injury of muscle, fascia, and tendon of other parts of biceps, left arm. Appellant was discharged with work restrictions and scheduled for an MRI scan of the left shoulder.

A March 19, 2018 progress note, was also submitted from Richard Georges, a physician assistant, documenting a follow-up evaluation of the left shoulder.

On August 7, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a July 13, 2018 report, Dr. Sileo described the January 25, 2018 employment incident when appellant was reaching across the dashboard of his postal vehicle at the level of his shoulder and felt a pop in the shoulder and bicipital area, with sudden and severe pain radiating from the shoulder into the bicep musculature. He noted that this was associated with visible deformity of the bicep musculature and significant bruising and swelling. Dr. Sileo initially evaluated appellant on February 12, 2018 and a February 17, 2018 MRI scan of the left shoulder revealed evidence of rupture of the long head of the bicep, as well as a high-grade partial tear of the rotator cuff anteriorly (directly next to his bicep tendon rupture). He noted that no evidence of muscle atrophy was appreciated on his MRI scan, suggesting the findings were acute (new). Dr. Sileo also noted some tearing of the labral cartilage.

Dr. Sileo described appellant's course of treatment and reported no previous history of left shoulder or bicep pain when he sustained a work-related injury on January 25, 2018. He opined that the work-related injury directly and causally resulted in a symptomatic left shoulder long head of the bicep tendon rupture and a high-grade partial tear of the rotator cuff. Dr. Sileo explained that appellant struggled with persistent pain, and associated weakness of the shoulder, which was consistent with his objective MRI scan findings. Furthermore, the MRI scan findings showed no muscle atrophy (shrinking), which provided objective support suggesting the acute onset of his injury. Dr. Sileo recommended left shoulder arthroscopic repair and provided work restrictions for appellant, noting that his condition was permanent and would not improve without surgery.

By decision dated October 29, 2018, OWCP denied modification of the March 8, 2018 decision.

On November 20, 2018 appellant, through counsel, filed an appeal before the Board.

By order dated August 21, 2019, the Board set aside the October 29, 2018 decision finding that it failed to acknowledge, reference, or analyze the July 13, 2018 report of Dr. Sileo.⁴ The Board therefore remanded the case for full consideration of all the evidence that was of record at the time of the October 29, 2018 decision to be followed by a *de novo* decision.

On remand OWCP evaluated the evidence submitted and reviewed the merits of the case. By decision dated September 5, 2019, it denied the claim finding that the evidence of record was insufficient to establish that appellant's diagnosed left shoulder and bicep conditions were causally related to the accepted January 25, 2018 employment incident. OWCP found that Dr. Sileo's July 13, 2018 report, failed to provide a well-reasoned medical opinion regarding causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

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.⁸ The second component is whether the employment incident caused a personal injury.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence. 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 identified by the employee.¹⁰ The weight of the medical evidence is determined by its reliability, its

⁴ *Id.*

⁵ *Supra* note 2.

⁶ *D.K.*, Docket No. 17-1186 (issued June 11, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *T.C.*, Docket No. 18-1498 (issued February 13, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

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

Appellant submitted medical reports from Dr. Blaber dated February 2 to 7, 2018. Dr. Blaber discussed the history of injury when appellant injured his left bicep while reaching for a scanner at work. In a form report dated February 7, 2018, he diagnosed left bicep ecchymosis and left bicep injury in which he checked a box marked "Yes," without further comment, indicating that the diagnosed conditions were caused or aggravated by the employment incident. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹² In the remainder of Dr. Blaber's reports he did not offer an opinion as to 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 on the issue of causal relationship.¹³ Dr. Blaber's reports, therefore, are insufficient to establish appellant's claim.

OWCP also received medical reports dated February 12 through July 13, 2018, from Dr. Sileo. Dr. Sileo diagnosed left shoulder long head of the bicep tendon rupture and high-grade partial tear of the rotator cuff as evidenced on the February 17, 2018 left shoulder MRI scan, which he opined were causally related to the January 25, 2018 employment incident. The Board finds that the reports of Dr. Sileo are not well rationalized.¹⁴ While Dr. Sileo provided a firm medical diagnosis pertaining to the left shoulder and bicep, he failed to provide a sufficient explanation, based on medical rationale, on the cause of appellant's conditions. Rather, he only generally noted that the tendon rupture and rotator cuff tear were trauma-induced.¹⁵ The Board has held that medical evidence that does not offer supporting rationale regarding the cause of an employee's condition is of limited probative value.¹⁶ Dr. Sileo's general statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how reaching for a scanner from a seated position would cause ruptures and tears

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

¹⁵ *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

¹⁶ *See D.K.*, Docket No. 17-1549 (issued July 6, 2018).

to the left shoulder.¹⁷ Therefore, his medical opinion is of limited value and insufficient to establish his claim.¹⁸

OWCP also received a February 17, 2018 MRI scan of the left shoulder. The Board has held that diagnostic studies, standing alone lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁹ Such reports are therefore insufficient to establish appellant's claim.

The physician assistant notes of record are also of no probative value. Such healthcare providers are not considered "physician[s]" as defined under FECA.²⁰ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²¹

As the record lacks rationalized medical evidence establishing causal relationship between the January 25, 2018 employment incident and appellant's diagnosed left shoulder conditions the Board finds that appellant has not met his burden of proof.

Appellant may submit additional evidence or argument with a written request for reconsideration, to OWCP within one year of the Board's 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 upper extremity condition causally related to the accepted January 25, 2018 employment incident.

¹⁷ See *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.R.*, Docket No. 16-1901 (issued April 17, 2017).

¹⁸ *C.M.*, Docket No. 19-0360 (issued February 21, 2020); see *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁹ *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

²⁰ 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *K.C.*, Docket No. 19-0834 (issued October 28, 2019); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

²¹ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 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