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

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| **K.H., Appellant** | ) | |
| **and** | ) | **Docket No. 20-0650** |
| | ) | **Issued: October 16, 2020** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, MINNEAPOLIS VETERANS MEDICAL CENTER, Minneapolis, MN, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On February 3, 2020 appellant filed a timely appeal from a December 30, 2019 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.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted March 4, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On May 1, 2019 appellant, then a 53-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2019, when painting door frames, he experienced pain in his right shoulder and sustained a muscle strain from repetitive motion while in the performance of duty. He did not immediately stop work.

In an April 12, 2019 medical report, Steven S. Williamson, a physician assistant, indicated that appellant had right shoulder pain, which began gradually five weeks earlier. He attributed appellant's symptoms to multiple injuries, including overuse from his work as a painter. Mr. Williamson noted that appellant had full active and passive range of motion, normal muscle strength, and intact sensation. An x-ray of the right shoulder of even date, revealed intact glenohumeral and acromioclavicular (AC) joint spaces, no fracture, and no dislocation. Mr. Williamson diagnosed right shoulder pain.

An April 23, 2019 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated moderate severity supraspinatus tendon tendinopathy with a focal partial-thickness intrasubstance and undersurface tear within the anterior third, mild subscapular tendinopathy without tearing, tendinopathy and longitudinal partial-thickness split tearing within the biceps tendon, mild hypertrophic change of the AC joint, and no evidence of fracture.

In a medical report dated April 26, 2019, Dr. Jack G. Skendzel, a Board-certified orthopedist, indicated that appellant presented with a gradual onset of right shoulder pain that he attributed to overuse from painting. He reported performing overhead lifting six to eight months earlier and felt a tear in his right shoulder, but the pain resolved, only to return six weeks prior to the current examination. Dr. Skendzel noted tenderness over the right biceps tendon and mild muscle weakness of the supraspinatus. He reviewed the MRI scan findings and diagnosed right shoulder pain, high-grade partial-thickness rotator cuff tear, and partial-thickness biceps tendon tear. Dr. Skendzel recommended arthroscopic shoulder surgery with right rotator cuff repair.

In an employing establishment work capacity evaluation form dated May 8, 2019, Dr. Skendzel noted that appellant required surgery for an injury he sustained six to eight months prior. He returned appellant to full-time work without restrictions.

OWCP informed appellant in a May 21, 2019 development letter that, when his claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work, and, therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. It noted that it 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 response to OWCP's questionnaire, appellant submitted a May 28, 2019 statement, indicating his injury occurred while he was repetitively painting overhead doorframes, hall frames, ceiling lines, bathroom entry frames, and bases for six hours a day. He reported the immediate effect of the injury was pain and numbness when lifting his right arm over his head. Appellant

further reported that he did not have similar symptoms prior to the injury and he had not participated in activities outside of his employment. He noted that he believed the injury would heal by itself, but after six weeks he still had symptoms and sought medical attention.

In a letter dated May 31, 2019, Dr. Skendzel noted initially treating appellant on April 26, 2019, for shoulder pain that had been present for six weeks. Appellant noted that his symptoms were the result of overuse while working as a painter. He also reported performing overhead lifting six to eight months prior and felt a tear in his right shoulder, but the pain resolved. Dr. Skendzel noted on examination that appellant had limited strength of the supraspinatus with pain. He diagnosed high-grade partial-thickness rotator cuff tear with partial-thickness tear involving the biceps tendon. Dr. Skendzel recommended a rotator cuff repair and biceps tenodesis. He opined that the activity that caused this injury was repetitive in nature and a tear of the biceps tendon and rotator cuff might be consistent with the tear he experienced six to eight months prior to his visit.

By decision dated June 27, 2019, OWCP denied appellant's traumatic injury claim finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed medical condition and the accepted March 4, 2019 employment incident.

OWCP continued to receive evidence. In an employing establishment work capacity evaluation form dated July 15, 2019, Dr. Skendzel noted that appellant was injured in March 2019 while working as a painter. He recommended surgical intervention and returned appellant to full-time work without restrictions.

Appellant submitted an August 12, 2019 report from Emily C. Petersen, a physician assistant, who provided treatment for progressively worsening right shoulder pain, limited motion, and weakness from overuse as a painter. Ms. Petersen noted the presence of a high-grade partial-thickness rotator cuff tear and partial-thickness biceps tendon tearing on a right shoulder MRI scan. Appellant reported that his pain began in March 2019 when he was working on a project, which required painting 50 door frames. He believed the continuous back and forth motion of painting caused the right shoulder pain. Ms. Petersen diagnosed tear of the right rotator cuff and provided work restrictions.

On October 7, 2019 appellant requested reconsideration.

By decision dated December 30, 2019, OWCP modified the prior decision finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It found, therefore, that the claim remained denied because the medical component of appellant's claim was not established as he submitted a report from a physician assistant who was not recognized as a physician under FECA.[2] Consequently, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

[2] *Id.*

## ***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 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] 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 a 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]

[3] *Id.*

[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); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *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] *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.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

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

## ***ANALYSIS***

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition.

Dr. Skendzel, in his report dated April 26, 2019, indicated that appellant presented with a gradual onset of right shoulder pain that he attributed to overuse from painting. He diagnosed right shoulder pain, high-grade partial-thickness rotator cuff tear, and partial-thickness biceps tendon tear. Similarly, on May 31, 2019 Dr. Skendzel diagnosed high-grade partial-thickness rotator cuff tear with partial-thickness tear involving the biceps tendon. Additionally, in a work capacity evaluation dated July 15, 2019, he noted that appellant was injured in March 2019 while working as a painter. Therefore, the Board finds that the evidence of record establishes diagnosed medical conditions.

The Board further finds, however, that the case is not in posture for decision as to whether appellant's diagnosed medical condition is causally related to the accepted March 4, 2019 employment incident.

OWCP has not reviewed the medical evidence of record regarding the issue of whether the established diagnoses are causally related to the accepted March 4, 2019 employment incident. Therefore, the case will be remanded to OWCP for consideration of the medical evidence on the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## ***CONCLUSION***

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition. The Board also finds, however, that the case is not in posture for a decision as to whether his diagnosed medical conditions are causally related to the accepted March 4, 2019 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 16, 2020
Washington, DC

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

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

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