

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

C.T., Appellant	)	
	)	
and	)	<b>Docket No. 20-0138</b>
	)	<b>Issued: September 29, 2020</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>Los Angeles, CA, Employer</b>	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 22, 2019 appellant, through counsel, filed a timely appeal from an August 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 9, 2019 employment incident.

## FACTUAL HISTORY

On January 10, 2019 appellant, then a 71-year-old law enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2019 he sustained injuries to his left shoulder, cervical spine, jaw, tongue, and low back as a result of being thrown on a mat during edged weapon defense training while in the performance of duty. He did not stop work at the time of injury.

In a development letter dated January 25, 2019, OWCP notified appellant of the deficiencies of his claim and provided a questionnaire for his completion. It afforded him 30 days to respond.

Appellant subsequently submitted a January 10, 2019 report by Dr. Max Lebow, Board-certified in both emergency and occupational medicine, which noted the history of a January 9, 2019 injury. He obtained lumbar x-rays demonstrating possible degenerative changes. Dr. Lebow assessed acute jaw pain, acute abrasion of the oral cavity, acute neck strain, acute left shoulder strain, and acute lumbar strain.

In reports dated January 18 and 25, 2019, Dr. Pedram Kohan, a Board-certified internist, diagnosed jaw pain; abrasion of oral cavity; strain of muscle, fascia, and tendon at the neck and low back; and left shoulder strain. He released appellant to modified-duty work effective January 10, 2019 with restrictions pertaining to the lumbar spine.<sup>3</sup>

In reports dated from January 28 to February 5, 2019, Dr. Hovsep Babayan, Board-certified in family practice, noted that, on January 9, 2019, appellant sustained injuries to his neck, left shoulder, jaw, tongue, and lower back during training. He diagnosed left shoulder, neck, and low back strains. Dr. Babayan noted work restrictions limiting lifting, pulling, and pushing with the left shoulder.

In a February 15, 2019 report, Dr. Amos Ladouceur, a neurosurgeon, noted appellant's account of sustaining neck, left shoulder, jaw, tongue, and low back injuries while at work during training on January 9 2019.

In a February 22, 2019 report, Dr. Lebow noted appellant's account of January 9, 2019 neck, left shoulder, jaw, tongue, and lower back injuries sustained at work. He diagnosed neck, left shoulder, and low back strains. Dr. Lebow provided work restrictions for the left shoulder.

By decision dated February 28, 2019, OWCP accepted that the January 9, 2019 employment incident occurred as alleged, but denied the claim finding that the medical evidence

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<sup>3</sup> Appellant participated in physical therapy treatments from January 23 to February 24, 2019.

of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted employment incident.

On June 7, 2019 appellant requested reconsideration and submitted additional evidence.

In a February 22, 2019 request for authorization of a left shoulder imaging study, Dr. Lebow noted that appellant was unable to function normally and the “severe pain, resulting from this work-related injury,” prohibited him from returning to full duty at work. In a March 8, 2019 report, he noted that a March 4, 2019 magnetic resonance imaging (MRI) scan of the left shoulder demonstrated a full-thickness tear of the supraspinatus tendon with medial dislocation of the biceps tendon and effusion.<sup>4</sup> Dr. Lebow renewed restrictions for the left shoulder in reports through April 1, 2019.<sup>5</sup>

Dr. Babayan noted in a March 25, 2019 report that appellant’s left shoulder pain remained severe. He restricted appellant from using his left shoulder at work.

In April 10 and 17, 2019 reports, Dr. Enrico Melson, Board-certified in public health and preventive medicine, noted appellant’s account of being thrown to the floor during a training exercise at work on January 9, 2019, causing tongue and jaw injuries, left shoulder pain, left-sided neck pain, and lumbar pain. He opined that the March 4, 2019 MRI scan showed significant pathology reasonably consistent with the mechanism and history of injury.

In April 24, 2019 reports, Dr. Lebow noted that, on January 9, 2019, appellant “sustained an injury when he was thrown to the floor during a training exercise. His initial injuries included jaw pain, contusion of his oral cavity, cervical strain, left shoulder pain and strain, and back strain.” Dr. Lebow opined that based on the mechanism of injury, appellant’s “current state of disability, and his positive MRI,” there was a “direct causal connection between the diagnosed condition of joint derangement of the left shoulder” and the January 9, 2019 employment incident. He diagnosed a full-thickness tear of the left supraspinatus tendon with tendon retraction. Dr. Lebow emphasized that there was a “direct causal relationship between [appellant’s] left shoulder injury and his job duties” at the employing establishment.

In May 15, 2019 report, Dr. Melson noted that appellant had retired from the employing establishment and was awaiting surgical repair of the left rotator cuff tear.

By decision dated August 19, 2019, OWCP denied modification of the prior decision.

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<sup>4</sup> January 10, 2019 x-rays showed no significant bony abnormality of the left shoulder. A March 4, 2019 MRI scan of left shoulder showed a full-thickness tear of the supraspinatus tendon with 1.5 cm tendon retraction and mild atrophy of the supraspinatus musculature, tendinopathy of the infraspinatus tendon, minimal cystic changes of the humeral head, medial dislocation of the long head of the biceps tendon with probable associated disruption of the coracohumeral ligament of the superior glenohumeral ligament, effusion of the subacromial/subdeltoid bursa.

<sup>5</sup> Appellant also provided physical therapy treatment notes dated from February 7 to March 11, 2019.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>6</sup> 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 timely filed within the applicable time limitation of FECA,<sup>7</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>8</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>9</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.<sup>10</sup> 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.<sup>11</sup> The second component is whether the employment incident caused a personal injury.<sup>12</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>13</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish medical conditions causally related to the accepted January 9, 2019 employment incident.

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>10</sup> *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>11</sup> *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>12</sup> *Id.*

<sup>13</sup> *M.O.*, *supra* note 11; *see Y.D.*, *supra* note 10; *S.S.*, *supra* note 10; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

OWCP received multiple reports from treating physicians Drs. Babayan, Kohan, Ladouceur, and Melson in which they opined that the accepted January 9, 2019 employment incident had caused appellant's resolved cervical spine, jaw, oral cavity, and lumbar injuries, as well as his ongoing left shoulder condition. However, these physicians did not provide medical rationale explaining how or why the accepted employment incident would have caused the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment factors.<sup>14</sup>

Dr. Lebow first examined appellant on January 10, 2019, the day following the accepted January 9, 2019 employment incident. He diagnosed acute jaw pain, abrasion of the oral cavity, neck strain, left shoulder strain, and lumbar strain. In his report dated April 24, 2019, Dr. Lebow opined that the mechanism of the January 9, 2019 training incident was competent to cause joint derangement of the left shoulder with supraspinatus tendon tear as demonstrated by the March 4, 2019 MRI scan. While he consistently attributed these diagnoses to the accepted incident, he did not provide medical reasoning explaining how that incident caused appellant's cervical, lumbar, and oral cavity conditions. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.<sup>15</sup> Dr. Lebow's opinion is therefore insufficient to establish appellant's claim.

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>16</sup> These reports are therefore insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, the Board finds that he has not met his burden of proof.

On appeal counsel contends that the medical evidence of record is sufficient to establish the claim and that OWCP's August 19, 2019 decision was "not rationalized." As explained above, the Board finds the medical evidence of record is insufficient to establish causal relationship between the accepted January 9, 2019 employment incident and the diagnosed conditions.

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>14</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining the relationship between work factors and a diagnosed condition).

<sup>15</sup> *Id.*

<sup>16</sup> *M.J.*, Docket No. 19-1287 (issued January 13, 2020); see *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 9, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 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