

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

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<b>T.G., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0175</b>
	)	<b>Issued: June 23, 2021</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>H.G. HEFNER VETERANS MEDICAL</b>	)	
<b>CENTER, Salisbury, NC, 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:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 24, 2020 appellant filed a timely appeal from a September 16, 2020 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 over 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 her burden of proof to establish a left shoulder condition causally related to the accepted September 5, 2018 employment incident.

## FACTUAL HISTORY

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

On September 10, 2018 appellant, then a 54-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2018 she sustained a left shoulder injury when dressing a large patient who suffered from dementia while in the performance of duty. She stopped work on September 6, 2018 and then returned to full-time regular-duty work on September 12, 2018.

In a progress report and note dated September 6, 2018, Sylvia D. Dickerson, a family nurse practitioner, indicated that appellant was seen in her clinic that day for acute left shoulder pain and was released to work effective September 11, 2018.

A September 28, 2018 magnetic resonance imaging (MRI) scan of appellant's left shoulder demonstrated high-grade (near complete) partial-thickness tearing of the ventral supraspinatus tendon and prominent infraspinatus tendinopathy.

By decision dated October 23, 2018, OWCP found that the factual evidence was insufficient to establish that the September 5, 2018 incident occurred at the time, place, and in the manner alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In an October 23, 2018 medical report, Dr. Thomas A. Ginn, a Board-certified orthopedic hand surgeon, diagnosed left rotator cuff tear. In a work status form of even date, he released appellant to work with restrictions regarding her left arm.

On October 31, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a February 12, 2019 note, Dr. Ginn noted that appellant could return to light-duty work with restrictions.

A telephonic hearing was held before an OWCP hearing representative on March 11, 2019. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

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<sup>3</sup> Docket No. 19-1441 (issued January 28, 2020).

Appellant subsequently submitted notes dated March 18 and 26, 2019 from Dr. Ginn, who indicated that appellant developed shoulder pain while at work on September 5, 2018 was eventually diagnosed with a rotator cuff tear, and had undergone surgery. Dr. Ginn opined that her job placed her at a higher risk than the general population for shoulder pathology. He explained that appellant's repetitive pushing, pulling, and lifting placed her shoulder at a higher risk of developing rotator cuff disease/tearing.

By decision dated May 24, 2019, OWCP's hearing representative modified, the October 23, 2018 decision to find that appellant had established that the September 5, 2018 incident occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish that her diagnosed left shoulder condition was causally related to the accepted September 5, 2018 employment incident.

On June 24, 2019 appellant, through counsel, appealed to the Board. By decision dated January 28, 2020, the Board affirmed OWCP's May 24, 2019 decision.<sup>4</sup>

On March 2, 2020 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. By decision dated July 10, 2020, OWCP denied her hearing request.

On August 7, 2020 appellant, through counsel, requested reconsideration of the January 28, 2020 decision.

In a July 15, 2020 narrative report, Dr. Cecil M. Farrington, a family medicine specialist, treated appellant for left shoulder pain due to a work-related injury. He related that a patient at appellant's work constantly pulled and grabbed her arm when she tried to perform her work duties, resulting in worsening pain and decrease in her ability to use her arm. Dr. Farrington reviewed the September 28, 2018 MRI scan of appellant's left shoulder, which revealed partial-thickness tearing of the ventral supraspinatus tendon, and indicated that she underwent left shoulder surgery on November 14, 2018. He noted that she continued to have periodic episodes of pain and decreased range of motion in her left shoulder as a result of the injury and subsequent surgery, despite being asymptomatic prior to the work incident.

By decision dated September 16, 2020, OWCP denied modification of the January 28, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</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

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<sup>4</sup> *Id.*

<sup>5</sup> *Supra* note 2.

time limitation period of FECA,<sup>6</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>7</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>8</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>9</sup> There are 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>10</sup> The second component is whether the employment incident caused a personal injury.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.<sup>13</sup> 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 appellant's specific employment incident.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted September 5, 2018 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's May 24, 2019 merit decision because the

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<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *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>8</sup> *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>10</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> *S.S.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>14</sup> *Id.*

Board considered that evidence in its January 28, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>15</sup>

Dr. Farrington, in his July 15, 2020 narrative report, reviewed the September 28, 2018 MRI scan of appellant's left shoulder and indicated that appellant underwent left shoulder surgery on November 14, 2018. He noted that appellant was asymptomatic prior to the work incident and opined that appellant experienced periodic episodes of pain and decreased range of motion in her left shoulder as a result of her work-related injury and the subsequent surgery. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support causal relationship.<sup>16</sup> Moreover, Dr. Farrington failed to explain, with rationale, how the accepted employment incident either caused or contributed to appellant's left shoulder condition. The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.<sup>17</sup> Thus, the Board finds that this report from Dr. Farrington is insufficient to establish causal relationship.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed left shoulder condition and the September 5, 2018 accepted employment incident, the Board finds that she has not met her burden of proof to establish her 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted September 5, 2018 employment incident.

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<sup>15</sup> See *P.B.*, Docket No. 20-0124 (issued March 10, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

<sup>16</sup> *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *Kimper Lee*, 45 ECAB 565 (1994).

<sup>17</sup> *J.D.*, Docket No. 19-1953 (issued January 11, 2021); see *K.W.*, Docket No. 19-1906 (issued April 1, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2021  
Washington, DC

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

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

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