

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

A.C., JR., Appellant)	
)	
and)	Docket No. 20-1127
)	Issued: May 19, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Fair Lawn, NJ, Employer)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
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 May 4, 2020 appellant, through counsel, filed a timely appeal from a December 18, 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 right shoulder condition causally related to the accepted July 2, 2016 employment incident.

FACTUAL HISTORY

On July 2, 2016 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained right shoulder and palm injuries when he fell on stairs while in the performance of duty. He stopped work on July 3, 2016 and returned to work on July 16, 2016.

On July 2, 2016 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). The Form CA-16 listed the date of injury as July 2, 2016 and alleged open wounds and cuts to the palm of appellant's hand.

Appellant submitted substantially illegible, unsigned progress notes covering the period June 3 through July 25, 2016, providing examination findings and complaints of right shoulder pain. Diagnoses included right shoulder bursitis and rotator cuff tear.

A July 15, 2016 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed evidence of a superior labrum anterior posterior (SLAP) tear, moderate subacromial/subdeltoid bursitis, moderate acromioclavicular joint hypertrophy, resulting in moderate supraspinatus outlet impingement, and complete full-thickness supraspinatus and infraspinatus tears.

In an August 2, 2016 report, Dr. Umer R. Dasti, a Board-certified orthopedic surgeon, diagnosed right shoulder impingement syndrome, complete right rotator cuff tear, right biceps tenosynovitis, and right glenoid labrum degenerative tear. He noted that appellant had a history of shoulder problems, but nothing like his current pain following a fall at work on July 2, 2016. Physical examination findings for the right shoulder included tenderness on palpation over the biceps tendon, mild range of motion (ROM) limitation, mild strength limitation, and no gross instability.

Dr. Dasti, in an August 18, 2016 progress note, advised that appellant was seen for shoulder pain. Appellant reported right shoulder pain and ROM loss beginning July 2, 2016. He also noted that he previously had problems with the right shoulder, but nothing like the pain he developed following the July 2, 2016 fall. At the last visit, Dr. Dasti indicated that appellant had been diagnosed with full-thickness retracted rotator cuff tear and surgery had been scheduled. Physical examination findings and diagnoses were unchanged from prior reports.

In a September 28, 2016 development letter, OWCP advised appellant of the deficiencies of his claim and of the type of medical evidence needed to establish his claim. It afforded him 30 days to respond.

In response, appellant submitted additional medical evidence.

In an April 17, 2012 report, Dr. Kenneth Levitsky, a Board-certified surgeon, diagnosed right shoulder rotator cuff syndrome.

Dr. Brian P. VanGrouw, a Board-certified osteopathic orthopedic surgeon, noted; in a January 8, 2015 report, that appellant was seen for a bilateral shoulder evaluation. Physical examination findings were provided. Dr. VanGrouw diagnosed right shoulder sprain following a slip and fall and chronic left shoulder bursitis/tendinitis.

In a February 27, 2015 report, Dr. VanGrouw diagnosed underlying left shoulder bursitis with possible rotator cuff tendinitis secondary to shoulder sprain. Appellant complained of increased shoulder pain and tenderness following a slip and fall where he hyperextended his shoulders.

A March 3, 2015 MRI of appellant's left shoulder revealed left shoulder anterior labral tear, small glenohumeral joint effusion, full-thickness distal subscapularis tendon tear, partial subscapularis muscle bell tear, partial biceps tendon tear, partial distal supraspinatus tendon thickness tear, and moderate supraspinatus impingement.

A July 15, 2016 MRI scan of appellant's right shoulder revealed complete full-thickness supraspinatus and infraspinatus tendon tears, interstitial partial distal subscapularis tendon thickness tear, evidence of a SLAP tear, moderate acromioclavicular joint hypertrophy, and moderate subacromial/subdeltoid bursitis.

In an October 10, 2016 progress note, Dr. Dasti diagnosed right shoulder impingement syndrome, right bicipital tenosynovitis, right glenoid labrum degenerative tear, and complete right rotator cuff tear.

By decision dated April 7, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed right shoulder conditions and the accepted July 2, 2016 employment incident.

On May 8, 2017 appellant requested reconsideration and submitted an April 26, 2017 report from Dr. Dasti, who noted treating appellant since July 5, 2016 following a July 2, 2016 traumatic injury at work. Dr. Dasti diagnosed right shoulder impingement syndrome, complete right rotator cuff tear, right bicipital tenosynovitis, and right glenoid labrum degenerative tear. He explained the injury occurred when appellant extended his arms to break a fall after tripping on the third step he was descending. Diagnoses included right shoulder impingement syndrome, complete right rotator cuff tear, right bicipital tenosynovitis, and right glenoid labrum degenerative tear. Dr. Dasti advised that surgery was required prior to appellant returning to work. He opined that the diagnosed conditions had been caused by the July 2, 2016 traumatic incident as the injury was consistent with appellant's description of the incident. Dr. Dasti explained that when appellant extended his arms to break his fall from a considerable height, his upper extremity, particularly the right arm, absorbed the full weight of his body. Additionally, the shock from his hand hitting the pavement transferred to his shoulder joint resulted in multiple injuries. Dr. Dasti noted that the tear occurred from tendon being stretched beyond its normal limit when the humerus was jolted upwards. The diagnosed shoulder impingement occurred when appellant's shoulder blade muscles rubbed against the bone. The sudden trauma of appellant's arm shifting upwards

resulted in inflammation of the biceps tendon or bicipital tenosynovitis. Dr. Dasti also explained that the glenoid labrum is a fibrous tissue providing support for the shoulder socket joint. Over time and through repetitive use of the joint, he noted an erosion of labrum occurs. Dr. Dasti concluded that appellant's preexisting labrum degeneration had been aggravated by the accepted July 2, 2016 employment incident.

By decision dated July 21, 2017, OWCP denied modification.

On March 16, 2018 appellant, through counsel, requested reconsideration and submitted additional evidence. Counsel asserted that the March 3, 2015 MRI scan was of appellant's left shoulder and, thus, irrelevant to the current claim for a right shoulder condition. He argued that Dr. Dasti's opinion was a well-rationalized opinion and explained how appellant's right rotator cuff tear had been caused by the accepted July 2, 2016 employment incident.

In a December 27, 2017 initial visit report, Dr. Richard Seldes, a Board-certified orthopedic surgeon, summarized appellant's history of injury and medical history. He noted appellant's right shoulder physical examination findings. Dr. Seldes reviewed a right shoulder MRI scan, which showed full-thickness rotator cuff tear with retraction and impingement and biceps tendon tear. He diagnosed right shoulder full-thickness rotator cuff tear with possible biceps tendon tear with persistent weakness and pain. Dr. Seldes recommended right shoulder arthroscopy and rotator cuff repair and possible biceps tenodesis.

On January 22, 2018 Dr. Seldes performed right shoulder arthroscopic rotator cuff repair, acromioplasty, debridement of SLAP tear, distal clavicle excision, and removal of right shoulder loose body, and open right shoulder biceps tenodesis.

In a January 31, 2018 report, Dr. Seldes, noted appellant was seen for right shoulder pain status post arthroscopy and full-thickness tear in a follow-up visit. He reported decreased right shoulder range of motion to pain. Dr. Seldes diagnosed stable and improving status post right shoulder arthroscopic surgery. He recommended physical therapy to work on active and passive right shoulder range of motion.

Dr. Seldes, in a February 28, 2018 follow-up visit, diagnosed neck sprain and status post right shoulder arthroscopy rotator cuff repair. He noted that appellant had related that his shoulder was improving, but he had developed some neck pain.

In a March 28, 2018 report, Dr. Seldes noted right shoulder range of motion findings and some pain and weakness. He indicated that appellant was status post right shoulder arthroscopy with rotator cuff repair.

By decision dated October 5, 2018, OWCP denied modification.

On September 19, 2019 appellant, through counsel, requested reconsideration and resubmitted Dr. Dasti's April 26, 2017 report in support of his request. Counsel asserted that, in denying appellant's claim, OWCP had erroneously relied upon a March 3, 2015 MRI scan of the left shoulder.

By decision dated December 18, 2019, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 factors identified by the employee.⁹

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation,

³ *Supra* note 1

⁴ *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *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).

⁵ *A.O.*, Docket No. 20-0038 (issued August 26, 2020); *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).

⁶ *S.W.*, *supra* note 4; *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).

⁷ *S.W.*, *supra* note 4; *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *A.O.*, *supra* note 5; *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).

⁹ *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).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that this case is not in posture for a decision.

In support of his claim, appellant submitted an August 2, 2016 report from Dr. Dasti describing appellant's employment duties and how the fall on July 2, 2016 caused or aggravated his right shoulder conditions. Dr. Dasti described the July 2, 2016 fall and explained that the extension of appellant's arms to break his fall and the shock of his right hand hitting the pavement transferred to his shoulder, resulting in multiple injuries. He specified physiologic effects of the forces generated by the fall, including appellant's right arm absorbing the full weight of the body from the fall, the hyperextension of appellant's shoulders, the jolting of the humerus upwards, and the right shoulder blade muscles rubbing against the bone. Dr. Dasti explained that the right shoulder tear occurred from the tendon being stretched beyond its normal limit when the humerus was jolted upwards, and the diagnosed shoulder impingement occurred when appellant's shoulder blade muscles rubbed against the bone. He further explained that the sudden trauma of appellant's arm shifting upwards resulted in inflammation of the biceps tendon or bicipital tenosynovitis. The Board finds that this report from Dr. Dasti was sufficient to require further medical development of the claim as he described the accepted July 2, 2016 employment incident and provided a pathophysiologic explanation as to how the fall was a contributing factor in the aggravation of appellant's right shoulder conditions.

The Board, thus, finds that, while not sufficiently rationalized, Dr. Dasti's August 2, 2016 report is of sufficient probative value to require further development of the case record by OWCP.¹¹ It is well established that proceedings under FECA are not adversarial in nature and that, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. The referral physician shall provide an evaluation and a rationalized medical opinion as to the causal relationship of the claimed conditions to the accepted July 2, 2016 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹¹ *L.C., JR.*, Docket No. 20-0505 (issued November 24, 2020); *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹² *L.C., JR., id., A.P.*, Docket No. 17-0183 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹³ *L.C., JR., supra* note 11, *J.J., supra* note 11; *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *William J. Cantrell, id.*

the opinion differs from that of Dr. Dasti. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.¹⁴

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with the decision of the Board.

Issued: May 19, 2021
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

¹⁴ 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. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).