

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

A.C., Appellant)	
)	
and)	Docket No. 20-1599
)	Issued: May 26, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
LYONS VA MEDICAL CENTER, Lyons, NJ,)	
Employer)	
)	

Appearances:
James D. Muirhead, Esquire, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 9, 2020 appellant filed a timely appeal from an April 7, 2020 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 December 17, 2018 employment incident.

FACTUAL HISTORY

On December 21, 2018 appellant, then a 53-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 17, 2018 he experienced sudden right shoulder pain when the medication cart he was pushing became stuck on an object and pulled his right shoulder while in the performance of duty. He did not stop work.

In a December 17, 2018 note, Dr. Pratibha Kulkarni, Board- certified in internal medicine and serving as the medical officer on duty, documented that appellant reported that he was pushing a medication cart when the cart got stuck on an object, causing him to injure his right shoulder. On examination, appellant complained of pain and an inability to lift the right shoulder. Dr. Kulkarni diagnosed an injury to the right rotator cuff.

In a December 18, 2018 treatment note, Dr. Bin Yang, an occupational medicine specialist, noted that appellant reported severe pain over the right shoulder after pulling and pushing a medication cart at work on December 17, 2018. He denied any prior injuries to appellant's shoulder. On physical examination, Dr. Yang found tenderness over the anterior shoulder with limited range of motion. He diagnosed a sprain of the right shoulder and completed a work capacity evaluation form providing work restrictions of no lifting, carrying, pulling, or pushing over 10 pounds and no transferring or repositioning patients.

Appellant underwent x-rays of the right shoulder on December 20, 2018 which revealed possible mild degenerative changes in the acromioclavicular (AC) joint, calcific tendinitis along the distal supraspinatus and infraspinatus tendons, and generalized osteopenia, but no acute osseous abnormality. In a note of even date, Dr. Yang documented appellant's complaints of worsening pain after working and difficulty sleeping on his right side. He reexamined appellant, reviewed the x-ray findings, and completed an employing establishment work capacity evaluation form on December 18, 2018 providing additional restrictions.

Appellant underwent x-rays of the right humerus on December 21, 2018, which revealed bursal *versus* rotator cuff calcification superior to the greater tuberosity, but no acute fracture or dislocation. In a work capacity evaluation form of even date, Dr. Yang noted clinical findings of tenderness over the anterior and lateral right shoulder, particularly the right biceps, and very limited range of motion. He diagnosed a right shoulder sprain and tendinitis.

A December 27, 2018 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed scattered partial interstitial and intra-articular tears superimposed upon tendinopathy/tendinosis and degenerative changes of the right AC joint; suspected acute on chronic calcific tendinitis along the supraspinatus tendon with associated reactive soft tissue and bone marrow edema; and cystic bone marrow edema along the anterolateral aspects of the right humeral head. During follow-up visits on December 31, 2018 and January 2 and 3, 2019, Dr. Yang noted the December 27, 2018 MRI scan results and indicated that appellant reported

worsening pain in the right shoulder. In January 7, 14 and 28 and February 25, 2019 reports and work capacity evaluation forms, he noted ongoing pain and weakness of the right shoulder, diagnosed partial tears and calcific tenderness of the right shoulder, and provided ongoing work restrictions.

On March 11, 2019 Dr. Yang released appellant to return to full-duty work without restrictions.

In an April 19, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the factual and medical evidence necessary and also provided a questionnaire for completion. OWCP afforded appellant 30 days to respond. In the same letter, it also informed the employing establishment that, if he was treated at its medical facility for the alleged injury, it must provide treatment notes.

On January 4, 2019 Dr. Pankaj Patel, a physical medicine and rehabilitation specialist, noted that on December 17, 2018 appellant was attempting to reposition a medical cart when he experienced pain in the right shoulder. He performed a physical examination, reviewed the MRI scan results, and diagnosed subacromial bursitis with partial interstitial tears of the rotator cuff muscles. Dr. Patel also provided a steroid injection to the right subacromial bursa.

In a May 15, 2019 narrative report, Dr. Yang outlined appellant's history, complaints and office visits. He noted that appellant indicated that he injured his right shoulder on December 17, 2018 when he was pulling, pushing, turning and repositioning a medication cart while in the performance of duty. Appellant reported the incident to the medical officer on duty at that time, and came under Dr. Yang's care at the employing establishment's clinic the following day. Based upon appellant's complaints, physical examination findings, and diagnostic testing results, Dr. Yang prescribed medications, referred appellant for an injection into the shoulder, and provided work restrictions until appellant was released to full duty on March 11, 2019. He diagnosed incomplete rotator cuff tears or rupture of the right shoulder; impingement syndrome and calcific tendinitis of the right shoulder; and unspecified sprain of the right shoulder joint. Dr. Yang indicated that there was no previous history of significant pain, limited range of motion, weakness or any prior injuries in the shoulder. He opined that appellant's right shoulder symptoms and partial rotator cuff tears were caused by and connected with the injury event of pulling, pushing, turning, and repositioning a medication cart on December 17, 2018 at work.

By decision dated May 20, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not established the factual component of his claim. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On May 31, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive evidence. In an April 26, 2019 response to OWCP's development questionnaire, appellant indicated that on December 17, 2018 he was sitting with an unlocked medication cart in front of him, and was attempting to maneuver the cart into a position that would be comfortable for him to administer medications to the residents. While doing so, he was pulling the cart with his left arm while pushing the cart toward the left with an extended right

arm. The cart stopped abruptly due to the back wheel hitting plastic cups which had fallen on the floor behind the cart. Appellant reported the incident to his nursing supervisor, J.M., that same day and was subsequently seen by Dr. Kulkarni.

In an e-mail dated April 29, 2019, J.M. confirmed that appellant advised her that he had hurt his right shoulder when he was trying to move a medication cart. In an e-mail dated May 2, 2019, A.T, appellant's coworker, indicated that appellant had informed him that he hurt his right shoulder when moving a medication cart, after which he notified the nursing supervisor and saw Dr. Kulkarni.

Appellant submitted an additional statement dated May 31, 2019, noting that Dr. Yang told him that he had provided an unequivocal opinion in his report opining that his injuries were caused by the December 17, 2018 employment incident.

By decision dated August 19, 2019, OWCP's hearing representative modified the May 20, 2019 decision to find that the evidence was sufficient to establish that the December 17, 2018 incident occurred as alleged and established a diagnosed medical condition. The claim remained denied, however, because the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted employment incident.

OWCP continued to receive medical evidence. In a September 10, 2019 letter, Dr. Yang noted appellant's history of pulling a medication cart with his left arm and pushing with his right arm when the cart unexpectedly became stuck and stopped suddenly. He found that the right shoulder received the majority of impact, because appellant was using his right arm to push and reposition the cart. Dr. Yang explained that the impact force can cause partial tears of the supraspinatus and infraspinatus tendons of the right shoulder. He opined that the tears in the tendons were superimposed on chronic calcific tendinitis, which caused the tendons to be weaker and more likely to tear from an impact force transmitting from the arm onto the tendons.

On January 13, 2020 appellant requested reconsideration of OWCP's August 19, 2019 decision. With his request, he resubmitted the September 10, 2019 letter of Dr. Yang. Appellant also submitted a January 12, 2020 letter from Dr. Eric Molnar, a family practitioner, who indicated that, although he did not evaluate the claimed injury, appellant had treated with his practice since 2008 without any record of right shoulder conditions or symptoms until the December 17, 2018 injury. Dr. Molnar opined that the injury that occurred on December 17, 2018 was directly responsible for subsequent symptoms and a rotator cuff injury, but that appellant had received appropriate care and had since recovered without limitations.

By decision dated April 7, 2020, OWCP denied modification of its prior decision.

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

³ *Id.*

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 a 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 incident identified by the employee.⁹

ANALYSIS

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

In a narrative report dated May 13, 2019 and a letter dated September 10, 2019, Dr. Yang opined that appellant's partial tears of the supraspinatus and infraspinatus tendons of the right rotator cuff were causally related to the accepted December 17, 2018 employment incident. He provided a pathophysiological explanation of how the incident of December 17, 2018 resulted in appellant's diagnoses, noting that appellant's right shoulder received the majority of impact, because appellant was using his right arm to push and reposition the cart. Dr. Yang found that the tears were superimposed upon underlying chronic calcific tendinitis, which he indicated that was

⁴ *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 *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 *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 *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 *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 *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

a preexisting condition that weakens the elasticity of tendons and can cause them to tear more easily from an impact force transmitting from the arm onto the tendons.

The Board finds that, although Dr. Yang's reports are insufficient to discharge appellant's burden of proof, they provide an affirmative and rationalized opinion on causal relationship. Dr. Yang is a physician in an appropriate field of medicine and is therefore qualified to render rationalized opinions on the issue of causal relationship. He exhibited a comprehensive understanding of the medical record and case history. Dr. Yang provided a pathophysiological explanation as to how the accepted employment incident was sufficient to cause the diagnosed conditions, including the impact of appellant's underlying conditions, and his opinion was supported by his examination findings and the diagnostic testing results. As such, his reports constitute substantial, uncontradicted evidence in support of appellant's claim, and they also provide sufficient rationale to require further development of the record.¹⁰

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹¹ It has the obligation to see that justice is done.¹²

The Board will therefore remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine for a rationalized opinion as to whether his diagnosed right shoulder conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Yang. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on his claim.

CONCLUSION

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

¹⁰ *R.A.*, Docket No. 19-0650 (issued January 15, 2020); *B.M.*, Docket No. 18-0448 (issued January 2, 2020); *E.G.*, Docket No. 19-1296 (issued December 18, 2019).

¹¹ *Id.*

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2020 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: May 26, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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