

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

H.G., Appellant)	
)	
and)	Docket No. 22-0587
)	Issued: August 24, 2022
DEPARTMENT OF THE NAVY, NAVAL AIR)	
SYSTEMS COMMAND, FLEET READINESS)	
CENTER SOUTHWEST, San Diego, CA,)	
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
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 10, 2022 appellant filed a timely appeal from an October 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 6, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right upper extremity condition causally related to the accepted April 21, 2021 employment incident.

FACTUAL HISTORY

On April 30, 2021 appellant, then a 58-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2021 he ruptured his right tricep when he lost balance working above ceiling level and fell while in the performance of duty. He explained that he attempted to grab a beam to prevent his fall, but was only able to grab the beam with three fingers. Appellant did not stop work.

In a medical note dated April 30, 2021, Gina Kim, a registered nurse, noted a date of injury of April 21, 2021 and referred him for physical therapy.

A form note dated April 28, 2021 from Dr. Sean Sheppard, a Board-certified orthopedist, released appellant to work with modified duties, including no use of the right extremity.

On April 30, 2021 Dr. Bryce Lokey, a Board-certified internist, performed a magnetic resonance imaging (MRI) scan of appellant's arm, which demonstrated a high-grade partial tear of the lateral and long heads triceps tendon and a possible partial tear of a radial collateral ligament.

In a medical report dated May 17, 2021, appellant was seen by Dr. Sheppard for an evaluation of his right arm. He related that appellant had been experiencing pain despite wearing a brace. Dr. Sheppard diagnosed a partial tear of the lateral and long head of the triceps tendon. In a medical note of even date, he restricted appellant to heavy or repetitive lifting of no greater than five pounds and no use or lifting of the right arm.

In a medical report dated May 17, 2021, Dr. Benjamin Wheatley, a Board-certified orthopedic surgeon, related that on April 21, 2021 appellant felt a "pop" when he slipped and attempted to hold onto a beam with his right arm. He indicated that appellant developed swelling of the triceps as a result of the employment incident. In physical therapy notes of even date, an unidentifiable health care provider noted a diagnosis of spontaneous rupture of tendons in the upper arm.

On May 25, 2021 the employing establishment indicated that appellant was unable to perform his modified duties due to the physical requirements of his official duties as a maintenance mechanic. As a result, it placed him in a continuation of pay status until June 5, 2021.

In a development letter dated August 26, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP received additional evidence. In a return to work note dated April 21, 2021, Dr. Steven Portouw, a Board-certified emergency medicine physician, released appellant to work on April 23, 2021 with restrictions.

On August 30, 2021 appellant responded to OWCP's development questionnaire. He explained that on the date of injury, he was tasked to disassemble an air handler in an attic by using a ladder while carrying items in both hands. Appellant asserted that, as he was walking on a wooden joist to reach the attic, his right foot slid off and in order to prevent a fall, he managed to use three fingers to grab onto the beam, which caused his right arm to snap. He noted that he began to develop right arm pain following the employment incident. Appellant indicated that he did not have any previous injury or condition to his right arm or triceps.

In a hospital note dated September 11, 2021, an unidentifiable health care provider diagnosed a partial tendon triceps tear and restricted appellant to no repetitive motion of the right elbow and no work with the right hand and wrist.

By decision dated October 6, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed right upper extremity condition was causally related to the accepted April 21, 2021 employment incident

LEGAL PRECEDENT

A claimant 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. The first component is that 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.⁷

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 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).

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right upper extremity condition causally related to the accepted April 21, 2021 employment incident.

In medical reports dated May 17 and 18, 2021, Drs. Sheppard and Wheatley both diagnosed a partial tear and division of the triceps tendon. However, neither physician provided an opinion explaining the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ These reports, therefore, are insufficient to establish appellant's burden of proof.

Appellant submitted an MRI scan report dated April 30, 2021 from Dr. Lokey. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment incident and a diagnosed condition.¹¹ As such, Dr. Lokey's report is insufficient to meet appellant's burden of proof.

OWCP also received a series of notes providing work restrictions. As these notes did not address causal relationship they are of no probative value regarding the issue of causal relationship.¹²

OWCP received reports from unidentifiable providers. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered

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 *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).

¹⁰ *See M.G.*, Docket No. 21-0747 (issued October 15, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020).

¹² *See A.W.*, Docket No. 19-0327 (issued July 19, 2019); *see also id.*

probative medical evidence as the author cannot be identified as a physician.¹³ Therefore, these reports are insufficient to establish appellant's claim.

As there is no rationalized medical evidence explaining how the accepted April 21, 2021 employment incident caused or aggravated appellant's diagnosed right arm condition, the Board finds that he has not met his burden of proof.

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 his burden proof to establish a right arm condition causally related to the accepted April 21, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2022
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

¹³ *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021) *Merton J. Sills*, 39 ECAB 572, 575 (1988).