

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

_____)
B.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Oklahoma City, OK, Employer)
_____)

Docket No. 22-0918
Issued: August 29, 2022

Appearances:

*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 31, 2022 appellant filed a timely appeal from an April 7, 2022 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.³

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 services performed on an 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.*

³ The Board notes that, following the April 7, 2022, decision, appellant submitted additional evidence to OWCP. 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 left shoulder condition causally related to the accepted November 27, 2021 employment incident.

FACTUAL HISTORY

On December 21, 2021 appellant, then a 74-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 27, 2021 he tore his left rotator cuff when he tripped on a tub and fell while carrying two trays of mail while in the performance of duty.⁴ He stopped work on November 27, 2021.

In a December 9, 2021 development letter, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Appellant submitted a November 27, 2021 note from Jeremiah Ryan Rodgers, a physician assistant, indicating that he was treated in the emergency room that day. Mr. Rogers released appellant to light-duty work with restrictions. A left shoulder x-ray scan of even date revealed degenerative changes about the glenohumeral and acromioclavicular (AC) joints, with no acute fracture or dislocation.

A follow-up x-ray of the left shoulder dated December 16, 2021 confirmed moderate degenerative changes of the AC joint and mild degeneration of the glenohumeral joint with no visible fracture or acute injury.

OWCP also received unsigned notes dated December 28, 2021, which noted a November 21, 2021 date of injury and that appellant continued to present with left shoulder pain. It further indicated that a magnetic resonance imaging (MRI) scan was scheduled for December 30, 2021.

By decision dated January 14, 2022, OWCP accepted that the November 27, 2021 employment incident occurred as alleged. However, it denied appellant's claim, finding that he had not submitted evidence of a diagnosed medical condition in connection with the accepted employment incident. Thus, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

On February 16, 2022 appellant requested reconsideration of OWCP's January 14, 2022 decision.

⁴ The record reflects that a ppellant initially filed an occupational disease claim (Form CA-2) on December 3, 2021 alleging a traumatic injury occurring on November 27, 2021. OWCP properly adjudicated the claim as a traumatic injury.

OWCP received an undated and unsigned MRI scan report of the left shoulder, which demonstrated a full thickness tear of the supraspinatus tendon, with infraspinatus and subscapular tendinosis, and moderate AC joint osteoarthritis.

In a statement dated February 3, 2022, attached to a copy of his February 16, 2022 request for reconsideration, appellant explained that, following the November 27, 2021 employment incident, he was treated in the emergency room. He noted that, thereafter, he was seen by Dr. Spencer H. Guinn, Board-certified in orthopedic surgery and sports medicine, on January 26, 2022. Appellant asserted that findings following that visit established a correlation between his diagnosed conditions and the accepted employment incident.

In a report dated January 26, 2022, Dr. Guinn noted that appellant presented with complaints of left shoulder pain, which he described as waxing and waning with a burning sensation. He related that appellant was injured at work on November 27, 2021 when he fell forward onto a counter while carrying a tray of mail. Appellant described feeling an instant snap and pain in his shoulder radiating into his elbow. Dr. Guinn further noted that appellant had no prior left shoulder injury. On physical examination he observed profound weakness and tenderness anteriorly. Dr. Guinn reviewed x-rays performed that day and an MRI scan of the left shoulder noting that it revealed a full thickness tear of the supraspinatus, moderate arthritis of the AC joint and a tear of the long head of the biceps tendon. He diagnosed an acute large full thickness work-related left rotator cuff tear and recommended an arthroscopy with rotator cuff tear repair.

By decision dated April 7, 2022, OWCP modified its prior decision to find that the evidence of record was sufficient to establish a diagnosed medical condition in connection with the accepted November 27, 2021 employment incident; however, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed left shoulder condition and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 FECA⁶, 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

⁵ *Supra* note 1.

⁶ *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).

employment injury.⁷ 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.⁸

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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁹

The evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted November 27, 2021 employment incident.

In his January 26, 2022 report, Dr. Guinn diagnosed a large full thickness left rotator cuff tear as a result of the accepted November 27, 2021 employment incident. While his report was supportive of causal relationship, he did not provide an explanation as to how appellant's diagnosed medical condition was caused or aggravated by the accepted employment incident. The Board has held that medical reports that lack a rationalized medical opinion regarding causal relationship are of diminished probative value.¹² Thus, Dr. Guinn's January 26, 2022 report is insufficient to meet appellant's burden of proof.

OWCP also received a November 27, 2021 note from Mr. Rodgers, a physician assistant. The Board has held, however, that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *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).

¹² *See A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

physicians as defined under FECA and are, therefore, not competent to provide medical opinions. As such, the November 27, 2021 note from Mr. Rodgers is also insufficient to establish appellant's claim.¹³

Appellant submitted x-rays dated November 27, 2021 and December 16, 2021, as well as an undated and unsigned MRI scan report. However, the Board has held reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹⁴

The remaining evidence of record consists of unsigned notes dated December 28, 2021. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁵ These notes are, therefore, insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish that his diagnosed left shoulder condition is causally related to the accepted November 27, 2021 employment incident, 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 of proof to establish a left shoulder condition causally related to the accepted November 27, 2021 employment incident.

¹³ Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹⁴ See *B.R.*, Docket No. 21-1109 (issued December 28, 2021); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁵ *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board