

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

M.B., Appellant)	
)	
and)	Docket No. 21-0922
)	Issued: February 2, 2022
U.S. POSTAL SERVICE, AURORA POST)	
OFFICE, Aurora, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 28, 2021 appellant, through counsel, filed a timely appeal from an April 14, 2021 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 medical condition causally related to the accepted July 2, 2019 employment incident.

FACTUAL HISTORY

On July 3, 2019 appellant, then a 57-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 2, 2019 he injured his right arm when he turned to his left to grab mail, experiencing shooting pain from his neck down to his right hand, while in the performance of duty. He stopped work on July 3, 2019.

Appellant submitted a duty status report (Form CA-17) from an unidentifiable healthcare provider.

On July 17, 2019 the employing establishment controverted continuation of pay (COP).

In a July 19, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 3, 2019 emergency department report, Dr. Ramon C. Kincade, Board-certified in emergency medicine, noted that appellant presented with right shoulder pain. He reported that he was reaching over his left shoulder to grab a 10-pound bag of mail at work when he experienced pain that began in the right trapezius and radiated down the right arm. Dr. Kincade indicated that appellant had taken anti-inflammatory medicine overnight to treat his symptoms without relief. He conducted a physical examination and diagnosed cervical radiculopathy and paresthesia of the right upper extremity.

A July 3, 2019 x-ray of the cervical spine revealed no acute osseous disease, but revealed degenerative disease of the cervical spine.

Appellant underwent physical therapy from July 9 through 29, 2019.

In an August 13, 2019 e-mail response to OWCP's development questionnaire, appellant noted that on July 2, 2019 he was reaching for a package weighing approximately 35 pounds from the driver's seat when he felt a sharp pain in his neck, shoulder, and right arm. He indicated that he sustained no other injuries since the date of injury.

By decision dated August 23, 2019, OWCP denied appellant's claim, finding that he had not established that the July 2, 2019 incident occurred as alleged. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

An August 5, 2019 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated a focal tear without significant tendon retraction involving the anterior attachment fibers of the supraspinatus tendon, tendinosis of the infraspinatus and subscapularis tendons as

well as the intra-articular long head of the biceps tendon, and moderate hypertrophic degenerative change of the acromioclavicular (AC) joint.

In an August 12, 2019 progress report, Dr. Neena S. Szuch, a Board-certified orthopedic surgeon, noted that appellant presented for an acute injury to his right shoulder. She related that he was reaching out to the side of his truck at work on July 2, 2019 when he experienced pain in his shoulder that radiated into his neck. Dr. Szuch indicated that appellant previously underwent corticosteroid injection for right shoulder impingement, but that his right shoulder pain has been worse since his recent work-related injury. She noted that his pain was consistent with an acute rotator cuff tear. Dr. Szuch noted that he would be a candidate for shoulder surgery, however, a thorough evaluation prior to proceeding with shoulder surgery was indicated.

A September 11, 2019 electromagnetic scan/nerve conduction velocity (EMG/NCV) study of the upper extremities revealed severe median compression neuropathy at the wrist with axonal loss (severe carpal tunnel syndrome), but demonstrated no evidence of cervical radiculopathy.

In a December 6, 2019 narrative report, Dr. Szuch noted appellant's history of injury and treatment. Appellant recounted that when he was reaching for a package weighing between 10 and 20 pounds with his right arm in his long-life vehicle (LLV) on July 2, 2019, he experienced an onset of the neck, shoulder, and right arm pain. Dr. Szuch indicated that appellant had a history of impingement syndrome, which was previously treated with a corticosteroid injection. She noted that he experienced worsening right shoulder pain as a result of his injury, despite modification of activities, physical therapy treatment, and nonsteroidal anti-inflammatory medication. Dr. Szuch related that activities such as driving caused pain in appellant's right upper extremity. She noted that she first evaluated him on July 29, 2019 and found evidence of both acute injury to his right shoulder and neurological involvement of his right upper extremity. Dr. Szuch indicated that the MRI scan of the cervical spine demonstrated evidence of multilevel degenerative disc disease with stenosis. She further noted that the MRI scan of the shoulder revealed an acute right rotator cuff tear with impingement syndrome, AC joint arthrosis, and rotator cuff tendinopathy. Dr. Szuch related that she evaluated appellant again on August 12, 2019 and noted that the EMG study revealed no evidence of cervical radiculopathy. She noted that he underwent surgical repair of his right shoulder on September 19, 2019, which provided him with some relief. Dr. Szuch indicated that appellant was most recently evaluated on November 11, 2019 and was diagnosed with carpal tunnel syndrome. She opined that his symptoms were caused and exacerbated by his July 2, 2019 work-related injury.

On January 28, 2020 appellant requested reconsideration.

By decision dated May 5, 2020, OWCP modified its August 23, 2019 decision to find that the new evidence submitted by appellant was sufficient to establish that the July 2, 2019 employment incident occurred as alleged. The claim remained denied, however, as the evidence of record did not include a rationalized opinion from his treating physician explaining how his diagnosed conditions were causally related to the accepted July 2, 2019 employment incident.

On February 12, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

OWCP received a January 26, 2021 anesthesia record and single/continuous nerve block placement record.

In a January 29, 2021 narrative report, Dr. Szuch reiterated her findings and conclusions from her previous December 6, 2019 narrative report. She additionally noted that appellant was seen again on December 20, 2019 and January 31, 2020 and was diagnosed again with carpal tunnel syndrome. Dr. Szuch noted that appellant successfully underwent carpal tunnel release surgery on February 4, 2020 and recovered well. Appellant returned to the clinic on March 2, 2020 for a left shoulder condition resulting from a nonwork-related injury. Based on the timing of the onset of his symptoms and the mechanism of injury, Dr. Szuch opined that the accepted July 2, 2019 employment incident caused and exacerbated appellant's symptoms.

By decision dated April 14, 2021, OWCP denied modification of the May 5, 2020 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 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 time limitation period of FECA,⁴ and 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 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.⁷ 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.⁸ The second component is whether the employment incident caused a personal injury.⁹

³ *Supra* note 2.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹ 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.¹²

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 2, 2019 employment incident.

In narrative reports dated December 6, 2019 and January 29, 2021, Dr. Szuch noted the history of the accepted July 2, 2019 employment incident and provided diagnoses. She indicated that appellant had a history of preexisting impingement syndrome, which was previously treated, but had worsened as a result of the July 2, 2019 employment incident. Dr. Szuch opined, that based on the timing of the onset of his symptoms and the mechanism of injury, that the accepted July 2, 2019 employment incident caused and exacerbated his symptoms. While she provided an affirmative opinion that supported causal relationship, Dr. Szuch provided no medical reasoning explaining how the accepted July 2, 2019 employment incident of reaching for a package would cause or aggravate a diagnosed medical condition.¹⁴ The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁵ Furthermore, Dr. Szuch failed to distinguish between the effects of the work-related injury and appellant's preexisting shoulder impingement syndrome. The Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part, and has required medical rationale differentiating between the effects of the

¹⁰ *S.S.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Id.*

¹³ 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).

¹⁴ *See R.B.*, Docket No. 20-1066 (issued June 7, 2021); *J.B.*, Docket No. 18-1006 (issued May 3, 2019).

¹⁵ *See L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

work-related injury and the preexisting condition in such cases.¹⁶ For these reasons, Dr. Szuch's narrative reports are insufficient to establish appellant's claim.

In a July 3, 2019 emergency department report, Dr. Kincade noted the history of injury and diagnosed cervical radiculopathy and paresthesia of the right upper extremity. Dr. Szuch, in her August 12, 2019 progress report, also noted appellant's history of injury and diagnosed an acute rotator cuff tear. However, these reports are of no probative value as neither physician provided an opinion regarding the cause of the right shoulder 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.¹⁷ Thus, these reports are insufficient to meet appellant's burden of proof.

OWCP also received physical therapy reports dated July 9 to 29, 2019. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

The record also contains a Form CA-17 from an unidentifiable healthcare provider. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.²⁰ Therefore, this report is insufficient to establish appellant's claim.

Lastly, appellant submitted multiple diagnostic reports including a cervical spine x-ray, right shoulder MRI scan, an EMG/NCV study, and anesthesia and single/continuous nerve block placement records. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²¹ As such, these diagnostic reports are also insufficient to establish appellant's claim.

¹⁶ *Supra* note 13. See also *O.N.*, Docket No. 20-0902 (issued May 21, 2021).

¹⁷ See *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *T.S.*, Docket No. 20-0968 (issued August 17, 2021); *L.D.*, *supra* note 15.

¹⁸ 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, *supra* note 13; *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 *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

¹⁹ *Id.* See also *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019).

²⁰ *A.B.*, Docket No. 20-0971 (issued January 26, 2021); *J.P.*, Docket No. 19-0197 (issued June 21, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²¹ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship between a right shoulder condition and the accepted July 2, 2019 employment incident, the Board finds that he has not met his burden of proof.²²

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 medical condition causally related to the accepted July 2, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²² See *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019).