United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 21-1307**
	)	**Issued: March 22, 2022**
DEPARTMENT OF THE NAVY, FLEET READINESS CENTER SOUTHWEST, San Diego, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 August 30, 2021 appellant, through counsel, filed a timely appeal from an August 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 January 29, 2021 employment incident.

FACTUAL HISTORY

On February 18, 2021 appellant, then a 50-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2021 he overstretched the ligaments in his neck and left arm when torquing drone shafts while in the performance of duty. He asserted that he experienced extreme pain from the base of his cranium to the tips of the fingers on his left hand. On the reverse side of the claim form, C.S., an employing establishment supervisor, contended that appellant's condition may not have been the result of a traumatic incident. Appellant did not stop work.

In an attached statement, C.S. further explained that appellant called out of work on January 28 and 29, 2021 due to shoulder pain and was advised to return to work with a physician's note indicating that it was safe for him to return to his regular duties. The following day, appellant reported that his physician held him out of work February 1 through 5, 2021. On February 8, 2021 he returned to work with a physician's note releasing him to full duty. However, later that day, at 2:50 p.m., appellant asserted that he reinjured his shoulder and stopped work.

In February 23, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and requested a narrative medical report from his treating physician containing a detailed description of findings and a diagnosis, explaining how his work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In an undated statement, appellant explained that on January 28, 2021 he was installing a right-sided engine driveshaft, which required him to contort the left side of his body and lean into the engine in order to reach the bolts and nuts. He related that he felt a click in his neck and shoulder, followed by a sharp pain in his left arm, shoulder, and neck. Appellant sought emergency treatment that night and notified his supervisor the following morning. He noted that he attempted to return to work one week later and experienced excruciating pain while completing another drive shaft. Appellant recounted that he immediately notified his supervisor and sought additional medical care.

In a return to work note, Sherri McCarty, a nurse practitioner, indicated that she held appellant off from work until further notice.

By decision dated April 1, 2021, OWCP accepted that the January 29, 2021 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that he had not met the requirements to establish an injury as defined by FECA.

On April 8, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive evidence. On April 7, 2021 appellant sought treatment with Dr. Maxsimo Torres, a family medicine specialist, with complaints of left shoulder and neck pain with numbness related to a work injury he sustained while installing a drive shaft. Dr. Torres performed a physical examination and documented tenderness of the left acromioclavicular (AC) and glenohumeral joints, bicipital groove, and shoulder. He diagnosed joint pain, osteoarthritis, adhesive capsulitis, and articular cartilage disorder of the left shoulder and recommended an orthopedic evaluation, medication, an x-ray of the cervical spine, magnetic resonance imaging (MRI) scan of the left shoulder, and a rheumatology panel.

In an attending physician's report (Form CA-20) also dated April 7, 2021, Dr. Torres noted that appellant sustained an injury to his left shoulder on January 29, 2021. He checked a box marked "Yes" indicating that the condition was caused or aggravated by an employment activity.

By decision dated August 20, 2021, OWCP's hearing representative modified the April 1, 2021 decision, finding that appellant had established a medical diagnosis in connection with the accepted January 29, 2021 employment incident. However, the claim remained denied, because the evidence of record was insufficient to establish causal relationship between the accepted January 29, 2021 employment incident and his diagnosed left shoulder conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[3] *Id*.

[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).

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 the specific employment incident identified by the claimant.[9]

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.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 29, 2021 employment incident.

In his narrative report dated April 7, 2021, Dr. Torres noted that appellant related a history of an injury to his left shoulder while installing a drive shaft at work on the date of the alleged injury. He diagnosed joint pain, osteoarthritis, adhesive capsulitis, and articular cartilage disorder of the left shoulder. Dr. Torres did not, however, offer an opinion as to whether these diagnosed conditions were causally related to the accepted employment injury. 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.[11] Therefore, Dr. Torres' April 7, 2021 report is insufficient to establish appellant's claim.

In a Form CA-20 dated April 7, 2021, Dr. Torres noted appellant's January 29, 2021 left shoulder injury. He checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity. While the Form CA-20 provided an affirmative opinion which supported causal relationship, Dr. Torres did not provide a pathophysiological explanation

[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] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[11] *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.[12] The Board has held that when a physician's opinion as to the cause of a condition consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[13] Therefore, the April 7, 2021 Form CA-20 is also insufficient to establish appellant's claim.

The remaining medical evidence of record consists of a return-to-work note signed by a nurse practitioner. Nurse practitioners are not considered "physician[s]" as defined under FECA and thus their reports do not constitute competent medical opinion evidence.[14]

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted January 29, 2021 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 January 29, 2021 employment incident.

[12] *Id.*; *J.G.*, Docket No. 20-0009 (issued September 28, 2020).

[13] *See A.C.*, Docket No. 21-0087 (issued November 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

[14] Section 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 10 at 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 D.S.*, Docket No. 19-1657 (issued July 20, 2020) (nurse practitioners and registered nurses are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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