United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
	)	
and	)	**Docket No. 20-1266**
	)	**Issued: September 13, 2022**
DEPARTMENT OF VETERANS AFFAIRS, HAMPTON VA MEDICAL CENTER, Hampton, VA, Employer	)	

Appearances:
Shannon Bravo, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 11, 2020 appellant, through counsel, filed a timely appeal from a May 22, 2020 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 right shoulder condition causally related to the accepted August 28, 2018 employment incident.

FACTUAL HISTORY

On September 27, 2018 appellant, then a 49-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2018 he sustained a right shoulder injury when he was repairing a weed trimmer while in the performance of duty. He explained that as he pulled the cord to start the engine, the recoil pulled and it "[f]elt like something ripped in the middle of my right shoulder."

A March 18, 2019 magnetic resonance imaging (MRI) scan, reviewed by Dr. Bruce Sandow, a diagnostic radiologist, noted that appellant had an acute onset of pain in August 2018 while pulling on a starter cord lawn mower. Dr. Sandow diagnosed a complete rotator cuff tear involving the anterior fibers of the infraspinatus tendon with retraction of tendon to level of acromion and moderate infraspinatus atrophy, tendinosis and or partial tears of supraspinatus and subscapularis tendons, small subacromial deltoid bursal effusion and small joint effusion, and moderate acromioclavicular (AC) joint degenerative changes. He compared the findings to an August 28, 2018 right shoulder x-ray, which revealed a complete tear of the anterior fibers of the infraspinatus tendon with retraction of the tendon to the level of the acromion. Dr. Sandow also noted tendinosis and or partial tears of the supraspinatus and subscapularis tendons, small subacromial subdeltoid bursal effusion and small joint effusion, and moderate AC joint degenerative changes.

In a report dated May 3, 2019, Dr. John McGee, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of pain and weakness in his right shoulder, which he had experienced since the prior summer. He indicated that appellant injured his shoulder while pulling a starter on a small motor. Dr. McGee reviewed the MRI scan and diagnosed a right rotator cuff tear.

OWCP received reports of appellant's emergency treatment dated August 29, 2018 and September 26, 2018, signed by a nurse practitioner. The reports indicated that appellant could continue working light duty with restrictions to the right shoulder.

In a development letter dated May 22, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a January 24, 2019 report, Dr. McGee noted that appellant had right shoulder pain since August 2018. He indicated that appellant sustained an injury while trying to start a lawnmower. Dr. McGee related that appellant was pulling on the lawnmower cord and had a sudden onset of sharp right shoulder pain. He noted that appellant had one previous injury to the shoulder "all on active duty." Dr. McGee advised that at the time of the prior injury, appellant underwent physical therapy and his shoulder improved, but appellant still had some residual pain. He also noted that

appellant denied pain radiating down to the arm, numbness, and tingling, and appellant denied having a previous dislocation. Dr. McGee diagnosed a possible right rotator cuff tear.

In a May 28, 2019 response to OWCP's development questionnaire, appellant indicated that he had not sustained any subsequent injuries either on or off duty.

By decision dated June 26, 2019, OWCP denied appellant's traumatic injury claim. It found that, while the August 28, 2018 employment incident occurred as alleged, the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed right rotator cuff tear and the accepted employment incident.

On July 8, 2019 OWCP received a request for a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a September 6, 2019 report, Dr. McGee opined that appellant injured his right shoulder on the job in August 2018. He explained that appellant was pulling a lawn mower starter cord as part of his normal occupational activity when he experienced acute onset of sharp pain in his right shoulder. Dr. McGee related that further evaluation revealed this to be a full-thickness tear of appellant's right rotator cuff. He opined "this injury occurred on the job, is directly related to his normal activities on the job, and subsequent treatment and injury is directly related to the injury which occurred on the job. I do not know how to more clearly state this fact."

By decision dated October 9, 2019, OWCP's hearing representative affirmed the June 26, 2019 decision.

On February 5, 2020 appellant, through counsel, requested reconsideration.

OWCP received an August 28, 2018 treatment note from a physician assistant who indicated that appellant started a chainsaw that morning, pulled back hard on the string, and it did not give, causing him to have a sharp pain in the right shoulder. The physician assistant diagnosed a right shoulder strain.

In an October 30, 2018 treatment note, Dr. Helina Amare, a Board-certified internist, noted appellant was seen for right shoulder pain and limitation of movement since a sprain while trying to start a chainsaw at work on August 28, 2018.

On March 3, 2020 appellant, through counsel, requested reconsideration.

By decision dated April 23, 2020, OWCP denied modification of the October 9, 2019 decision.

On May 18, 2020 appellant, through counsel, requested reconsideration.

In a May 18, 2020 attending physician's report (Form CA-20), Dr. McGee noted that on August 28, 2018, appellant experienced a sharp pain in his right shoulder after pulling on a weed trimmer starter cord at his work station. He related that appellant had a preexisting combat injury to the right shoulder on August 18, 2011. Dr. McGee noted that an MRI scan revealed a full-thickness tear of the anterior supraspinatus tendon in the right shoulder (length of 1.1 centimeters

and a tendon gap from 1 centimeter). He found subacromial bursitis, rotator cuff tendinitis, and impingement of complete tear of rotator. Dr. McGee marked the box "Yes" in response to whether he believed the condition(s) found were caused or aggravated by an employment activity. He noted that appellant injured his right shoulder "on the job August 2018, pulling a cord that jammed."

Appellant provided a May 6, 2020 supplemental response to OWCP's questionnaire. He described the injury at work on August 28, 2018. Appellant indicated that when he pulled on the starter cord, it did not recoil, he pulled his arm/shoulder, and he felt immediate pain and "a sensation like something had ripped in the middle of [his] right shoulder." He noted his supervisor was there at the time of the injury, he denied any other injuries, and confirmed he did not sustain any other injuries between the time he reported the injury to his supervisor or the occupational clinic. In response to whether he had any similar injuries, appellant described his prior service-related injury to the right shoulder, which was diagnosed as a strain. He indicated that after undergoing physical therapy, he had no further treatment.

By decision dated May 22, 2020, OWCP denied modification of the April 23, 2020 decision.

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 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] 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, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

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[3] 5 U.S.C. § 8101 *et seq.*

[4] *See V.S.*, Docket No. 20-1034 (issued November 25, 2020); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.R.,* Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted August 28, 2018 employment incident.

In support of his claim, appellant submitted reports from Dr. McGee. In a January 24, 2019 report, Dr. McGee related that appellant sustained an injury while trying to start a lawnmower in August 2018. He diagnosed a "possible" right rotator cuff tear. In a May 3, 2019 report, Dr. McGee reviewed the March 18, 2019 MRI scan, diagnosed a right rotator cuff tear, and related that appellant injured his shoulder while pulling a starter on a small motor. However, while Dr. McGee related appellant's history of injury, he did not offer his own opinion on causal relationship. As the Board has held, medical evidence which 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] These reports are therefore insufficient to establish appellant's claim.

In a September 6, 2019 report, Dr. McGee related that appellant was pulling a lawn mower starter cord when he experienced acute onset of sharp pain in his right shoulder. He opined "this injury occurred on the job, is directly related to his normal activities on the job, and subsequent treatment and injury is directly related to the injury which occurred on the job. I do not know how to more clearly state this fact." The Board has held that an opinion which is conclusory and fails

[7] *T.J.,* Docket No. 19-0461 (issued August 11, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *D.M.*, Docket No. 20-0386 (issued August 10, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *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).

[10] *N.D.,* Docket No. 20-0091 (issued January 12, 2021); *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).

[11] *See L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

to provide a rationalized explanation as to how the work injury caused the diagnosed condition is of limited probative value.[12] This report is therefore insufficient to establish appellant's claim.

In a May 18, 2020 Form CA-20, Dr. McGee related that appellant injured his right shoulder "on the job August 2018, pulling a cord that jammed." He noted that an MRI scan revealed a full-thickness tear of the anterior supraspinatus tendon in the right shoulder, subacromial bursitis, rotator cuff tendinitis, and impingement of complete tear of rotator. Dr. McGee checked the box marked "Yes" in response to whether he believed the condition(s) found were caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship which consists of a physician checking a box in response to a form question, without supporting medical rationale explaining how the employment activity caused the diagnosed condition, is of limited probative value.[13]

In an October 30, 2018 treatment note, Dr. Amare related that appellant was seen for right shoulder pain and limitation of movement when trying to start a chainsaw at work on August 28, 2018. She did not offer her own opinion on causal relationship. 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.[14] As such, the treatment note from Dr. Amare is insufficient to meet appellant's burden of proof.

The remaining evidence of record consists of the March 18, 2019 MRI scan, August 29 and September 26, 2018 notes from a nurse practitioner, and an August 28, 2018 note from a physician assistant. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.[15] In addition, certain healthcare providers such as physician assistants and nurse practitioners are not considered physicians as defined under FECA.[16] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician,

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[12] *See E.M.*, Docket No. 20-0738 (issued June 22, 2022); *E.M.,* Docket No. 18-0454 (issued February 20, 2020); *see also J.J.,* Docket No. 15-1329 (issued December 18, 2015).

[13] *See O.N.*, Docket No. 20-0902 (issued May 21, 2021); *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

[14] *Supra* note 12; *see also S.H.*, Docket No. 22-0391 (issued June 29, 2022).

[15] *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).

[16] Section 8101(2) of FECA 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." 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); *A.Z.*, Docket No. 21-1355 (issued May 19, 2022) (nurse practitioners are not physicians under FECA); *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).

will not suffice for purposes of establishing entitlement to FECA benefits.[17] Consequently, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant 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 right shoulder condition causally related to the accepted August 28, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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[17] *Id.*