

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

_____)
A.M., Appellant)

and)

**DEPARTMENT OF THE AIR FORCE, ROBINS)
AIR FORCE BASE, Warner Robins, GA,)
Employer**)
_____)

**Docket No. 22-0668
Issued: September 6, 2022**

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 March 30, 2022 appellant, through counsel, filed a timely appeal from a February 17, 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.

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 rotator cuff tear causally related to the accepted May 20, 2021 employment incident.

FACTUAL HISTORY

On May 25, 2021 appellant, then a 41-year-old nondestructive tester, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 2021 he injured his right shoulder and left hip when he fell after exiting a bathroom break trailer while in the performance of duty. He explained that he missed the last step of the trailer stairs and fell onto his right elbow and both knees. Appellant stopped work that day and resumed work on May 21, 2021, with restrictions.

Appellant submitted with his claim a notification of personnel action form (Standard Form (SF)-50) dated August 16, 2020, a position description for a nondestructive tester dated August 31, 2016, and a Position Designation Record dated November 16, 2016.

OWCP also received a May 20, 2021 form report in which Dr. Nathan Jones, a Board-certified occupational medicine specialist, noted that appellant was involved in an “occupational incident” on May 20, 2021 and recommended that he return to work with temporary restrictions of no use of his right arm. Within four weeks thereafter, appellant could return to full duty.

Appellant submitted an undated and unsigned witness statement from a coworker, B.G., who recounted that on May 20, 2021 he observed appellant fall down the stairs when leaving the bathroom. He noted that he landed on the concrete, hitting his shoulder and side.

A visit note dated June 3, 2021 indicated that appellant was evaluated by Josh Young, a nurse practitioner, for right shoulder and elbow pain after falling down the stairs and landing on a bent elbow. Mr. Young diagnosed a partial right rotator cuff tear.

In a June 3, 2021 letter, the employing establishment clarified that the employment incident occurred on May 21, 2021, a few minutes before the start of appellant’s shift. It further noted that he had to walk between the parking lot and duty station to use the bathroom and this is where he had fallen down the stairs.

In a June 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 provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received additional evidence including a June 7, 2021 return-to-work note from Mr. Young providing work restrictions of no pushing, pulling or lifting with the right upper extremity greater than five pounds.

A summary report from a June 14, 2021 encounter indicated that Dr. William Barnes, Board-certified in orthopedic surgery and sports medicine, treated appellant and diagnosed a complete right rotator cuff tear. Dr. Barnes recommended right arthroscopic rotator cuff repair,

subacromial decompression, biceps tenodesis, and Mumford procedure. In a summary report of even date, Christina Peppers, a nurse practitioner, reiterated Dr. Barnes' diagnosis.

In a return-to-work note dated June 17, 2021, Dr. Barnes noted that appellant had been provided pain medication to take as needed from June 10 to 23, 2021.

OWCP also received a June 24, 2021 report of work status (Form CA-3) indicating that appellant stopped work on May 20, 2021, after his Form CA-1 was filed, and returned to work on May 21, 2021 with restrictions.

On July 7, 2021 Ms. Peppers documented a tendon injury of the rotator cuff and a full-thickness rotator cuff tear. In a note of even date, she provided work restrictions of no climbing/ladder or overhead activities, and limited use of his right upper extremity.

In a note dated July 19, 2021, Dr. Barnes provided work restrictions of no driving or use of the right upper extremity.

In a July 23, 2021 response to OWCP's development questionnaire, appellant explained that he arrived to work approximately 20 minutes prior to the start of his work shift on the date of his injury. While walking to his duty station from the parking lot, he stopped to use the bathroom and upon exiting, he walked down the steps, missing the last step, and fell.

By decision dated August 5, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a causal relationship between his diagnosed condition of right rotator cuff tear and the accepted May 20, 2021 employment incident.

On August 25, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held telephonically on December 7, 2021.

In support of the request, appellant continued to submit medical evidence, including a June 9, 2021 magnetic resonance imaging (MRI) scan report signed by Dr. Andrew Wade, a Board-certified radiologist. Dr. Wade noted an impression of subacute full-thickness tear of the anterior supraspinatus tendon and mild partial interstitial tears of the anterior infraspinatus tendon critical zone and upper subscapularis tendon critical zone.

OWCP also received a June 14, 2021 visit note from Dr. Barnes noting that appellant presented for follow up after he was diagnosed with a rotator cuff tear, partial on June 3, 2021. Dr. Barnes related that appellant reported sustaining the injury in a fall. He reviewed the findings of the June 9, 2021 MRI scan and recommended right shoulder arthroscopic rotator cuff repair. In a note of even date, Ms. Peppers noted that appellant presented for a preoperative evaluation ahead of his scheduled June 23, 2021 right shoulder arthroscopy. She reiterated the findings of the June 9, 2021 MRI scan and provided a diagnosis of a right complete rotator cuff tear.

In an operative report dated June 23, 2021, Dr. Barnes documented that he performed an arthroscopy on appellant's right shoulder with repair of the rotator cuff, as well as an arthroscopic subacromial decompression and bursectomy.

Visit notes from a July 7, 2021 postoperative encounter with Ms. Peppers noted that appellant was progressing as expected following surgery.

In a July 13, 2021 form report, Dr. Jones recommended that appellant return to work with temporary medical restrictions of no use of the right upper extremity, climbing/ladders or overhead reaching, pending anticipated return to full duty.

Appellant presented on July 19, 2021 for a postoperative evaluation with Dr. Barnes, who noted that appellant was healing well and with minimal pain.

On August 2, 2021 Kevin McCrary, a physical therapist, evaluated appellant status post rotator cuff repair and recommended six weeks of physical therapy.

By decision dated February 17, 2022, OWCP's hearing representative affirmed the August 5, 2021 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 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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

³ *Supra* note 1.

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).

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 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

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder rotator cuff tear causally related to the accepted May 20, 2021 employment incident.

In support of his claim, appellant submitted June 14, 2021 notes from Dr. Barnes wherein he indicated that appellant had been diagnosed with a right rotator cuff tear on June 3, 2021, which was subsequently confirmed by a June 9, 2021 MRI scan of the right shoulder. Dr. Barnes further indicated that appellant related that he sustained the injury in a fall. However, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. Likewise, Dr. Barnes did not provide an opinion on the cause of appellant's condition in his summary report of even date. The Board has held that a medical report lacking an opinion on causal relationship is of no probative value.¹⁰ Thus, Dr. Barnes' June 14, 2021 reports are insufficient to establish appellant's claim.

Similarly, Dr. Barnes' June 23, 2021 operative report and his July 19, 2021 postoperative notes do not contain an opinion on the cause of appellant's condition. As such, these reports are also insufficient to establish appellant's claim.¹¹

OWCP received return-to-work notes providing work restrictions from Drs. Barnes and Jones dated May 20, June 17 and July 19, 2021. Neither physician addressed causal relationship. Thus, these reports are also of no probative value on the issue of causation.¹²

Appellant further submitted a June 9, 2021 MRI scan report from Dr. Wade. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident

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 *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Id.*

¹² *Id.*

caused a diagnosed condition.¹³ For this reason, Dr. Wade’s June 9, 2021 MRI scan report is insufficient to establish appellant’s claim.

The remaining evidence of records includes notes dated June 3, 7, 14, 19 and July 7, 2021 from Mr. Young and Ms. Peppers, nurse practitioners, and an August 2, 2021 note from Mr. McCrary, a physical therapist. Certain healthcare providers, such as nurse practitioners and physical therapists are not considered “physician[s]” as defined under FECA.¹⁴ Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵

As appellant has not submitted rationalized medical opinion evidence establishing that his diagnosed conditions are causally related to the accepted May 20, 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 right shoulder rotator cuff tear causally related to the accepted May 20, 2021 employment incident.

¹³ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

¹⁴ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁵ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 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