

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

X.B., Appellant)	
)	
and)	Docket No. 23-0452
)	Issued: October 10, 2023
U.S. POSTAL SERVICE, U.S. POSTAL)	
INSPECTION SERVICE, Washington, DC,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 13, 2023 appellant filed a timely appeal from a January 9, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 4, 2022 employment incident.

FACTUAL HISTORY

On August 9, 2022 appellant, then a 38-year-old postal inspector, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2022 he sustained a left shoulder injury when he

¹ 5 U.S.C. § 8101 *et seq.*

was performing a shoulder press exercise on a weight machine and felt a strain and burning sensation in his left shoulder while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. He did not stop work.

In an August 8, 2022 statement, appellant reported that on August 4, 2022 he was exercising at a commercial fitness center around 7:10 a.m. and injured his left shoulder when using a machine to perform a shoulder press exercise. He asserted that he notified his supervisor on August 6, 2022 about his left shoulder injury as the pain had persisted the day following his injury.

In reports dated August 9 through 23, 2022, Dr. Michael Lopez, a treating chiropractor, documented treatment for a strain of muscle tendon and rotator cuff of the left shoulder. He provided work status reports in which he recommended work restrictions from August 9 through September 7, 2022.

In a November 29, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In a December 5, 2022 response, appellant responded to OWCP's questionnaire. He explained that he was injured in California while he was on a travel assignment assisting inspectors with an interdiction.

By decision dated January 9, 2023, OWCP accepted that the August 4, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted August 4, 2022 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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

² *Id.*

³ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

employment injury.⁴ 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.⁵

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 4, 2022 employment incident.⁹

Appellant submitted medical reports dated August 9 through 23, 2022 from Dr. Lopez, a chiropractor, documenting treatment for a left shoulder strain of muscle tendon and rotator cuff. A chiropractor is considered a physician as defined by section 8101(2) of FECA only if his or her services consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁰ As Dr. Lopez has not diagnosed subluxation based upon x-ray evidence, he is not considered a physician as defined under FECA and his medical reports do not constitute competent medical evidence.¹¹

⁴ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁵ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

⁶ *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

⁸ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

⁹ *J.D.*, Docket No. 21-0470 (issued December 2, 2022).

¹⁰ 5 U.S.C. § 8101(2). *See also S.L.*, Docket No. 21-0760 (issued January 6, 2022); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

¹¹ *J.D.*, Docket No. 22-0240 (issued June 8, 2022); *R.P.*, Docket No. 19-0271 (issued July 24, 2019).

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted August 4, 2022 employment incident, 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 diagnosed medical condition in connection with the accepted August 4, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2023
Washington, DC

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

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

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