United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 23-0361**
	)	**Issued: September 14, 2023**
U.S. POSTAL SERVICE, GREAT BRIDGE POST OFFICE, Chesapeake, VA, 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
JANICE B. ASKIN, Judge

JURISDICTION

On January 14, 2023 appellant filed a timely appeal from a December 8, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the December 8, 2022 decision and on appeal, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Boards review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include a consequential left shoulder condition, as causally related to the accepted employment injury.

FACTUAL HISTORY

On December 1, 2008 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained pain in the right shoulder, arm, and wrist due to factors of his federal employment, including repetitive work activities. He noted that he first became aware of his condition on November 10, 2008 and realized its relationship to his federal employment on December 1, 2008. Appellant stopped work on December 1, 2008. OWCP accepted the claim for other specified disorder of bursae and tendons in the shoulder region, right; pain in joint, shoulder joint region, right; and sprain of shoulder and upper arm, rotator cuff, right. Appellant underwent OWCP-authorized right shoulder rotator cuff repair on April 6, 2009 and exploration of the right rotator cuff on August 3, 2009. He also underwent authorized right shoulder reverse total shoulder arthroplasty on December 6, 2017. OWCP paid appellant wage-loss compensation.

Appellant returned to full-time full-duty capacity work on December 28, 2009. He continued working until October 31, 2010, when he stopped work, and subsequently retired, effective that date.

In an April 21, 2020 medical report, Dr. Anthony Bevilacqua, an osteopath specializing in orthopedic surgery, noted that appellant had pain in the left shoulder; presence of a right artificial shoulder joint; injury of axillary nerve, right arm; causalgia of right upper limb; incomplete rotator cuff tear or rupture of right shoulder, not specified as traumatic; and complete rotator cuff tear or rupture of right shoulder, not specified as traumatic.

A January 29, 2021 computerized tomography (CT) scan of the right upper extremity read by Dr. Joseph S. McMonagle, a diagnostic radiology specialist, revealed an intact reverse right shoulder arthroscopy, with no evidence of hardware loosening or instability; prominent curvilinear heterotopic ossification which extended from the inferior aspect of the left glenoid and throughout the posteroinferior capsule and no evident solid osseous bridging between glenoid and humerus; and mild supraspinatus and infraspinatus muscle volume atrophy with completely torn supraspinatus and infraspinatus tendons.

In a February 2, 2021 report, Dr. Bevilacqua noted that appellant presented for follow-up evaluation of his right shoulder condition. He also noted that appellant had developing pain in the left shoulder which appellant believed resulted from right shoulder disuse. Dr. Bevilacua reviewed appellant's left shoulder x-ray results and noted "age-appropriate [acromioclavicular] narrowing, no humeral migration or other abnormalities." He diagnosed pain in the right shoulder.

On July 1, 2021 appellant filed a notice of recurrence (Form CA-2a), alleging a recurrence of disability due to a consequential left shoulder condition. In an accompanying statement dated July 1, 2021, he alleged that due to his original injury on November 10, 2008 his right arm was

not usable. Appellant explained that his left arm became his dominant arm and he believed that his left shoulder problems occurred due to the loss of use of his right arm.

In a development letter dated July 20, 2021, OWCP informed appellant of the deficiencies of his recurrence 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 respond.

Appellant subsequently submitted a July 27, 2021 report by Dr. Lisa Knust, a Board-certified family practitioner. Dr. Knust noted that appellant was seen for left shoulder and arm pain due to overuse, as his left arm was now his predominant arm due to his chronic shoulder/arm problems on the right side. She explained that his right arm was not useful for any activities, and he had to compensate with his left arm.

In a July 28, 2021 response to OWCP's development questionnaire, appellant related that his left arm was painful over the past two years. He noted that he retired in 2010 after working 35 years as he could no longer perform his expected duties. Appellant explained that after his right arm became useless, his left arm became his predominant arm.

By decision dated August 24, 2021, OWCP denied appellant's recurrence claim. It found that he had not established a return disability/increased disability as a result of a consequential injury/condition stemming from his accepted work-related conditions.

OWCP subsequently received an April 12, 2021 electromyography/nerve conduction velocity (EMG/NCV) study of the right upper extremity performed by Dr. Qingyan Zhu, a neurologist, who provided an impression of moderate idiopathic progressive neuropathy.

On January 29, 2022 appellant requested that OWCP expand the acceptance of his claim to include a consequential left arm condition. He explained that he suffered from excruciating pain that resulted from his accepted right shoulder conditions, for which he underwent three surgeries, including a reverse shoulder replacement in 2017. Appellant further explained that he had zero use of his right arm, which made his left arm his dominant arm, despite being right-handed. He noted that his physician, Dr. Loel Z. Payne, a Board-certified orthopedic surgeon, believed that his left rotator cuff was torn due to overuse, compensating for the loss of use of his right shoulder. Appellant indicated that Dr. Payne would request approval for a magnetic resonance imaging (MRI) scan to confirm his findings.

In a letter dated January 31, 2022, OWCP advised appellant that the issue of adding a left arm condition to his claim was addressed in its August 24, 2021 decision and he should review the appeal rights attached to that decision.

OWCP subsequently received a January 28, 2022 report, wherein Dr. Payne noted that appellant had a right artificial shoulder joint and a complete rotator cuff tear or rupture of the left shoulder. Dr. Payne also indicated that there was no injury to the left shoulder based on his physical examination and x-ray findings. He explained that appellant was limited in the use of his right arm and opined that he "believes the left shoulder problem is due to an overuse of the left arm" and that he "believes that this should fall under [workers' compensation] as it is directly related to the right shoulder injury and subsequent surgeries." Dr. Payne recommended an MRI scan of the left shoulder.

In a February 7, 2022 letter, appellant again requested that OWCP expand the acceptance of his claim to include a consequential left shoulder condition. In a February 7, 2022 report, Dr. Vincent Joseph, a chiropractor, noted that appellant had been under his care since December 2021 for complaints of shoulder pain. He opined that the left shoulder pain was caused by overuse syndrome due to his right shoulder surgery.

On February 9, 2022 appellant requested reconsideration of the August 24, 2021 decision. In support thereof, he resubmitted a copy of Dr. Knust's July 27, 2021 report and Dr. Payne's January 28, 2022 report.

In a subsequent letter dated February 10, 2022, appellant indicated that he returned to work on December 28, 2009 in a limited-duty capacity and subsequently retired, rather than taking a medical retirement.

Appellant resubmitted a copy of the January 29, 2021 CT scan of his right upper extremity.

By decision dated December 8, 2022, OWCP denied modification of its August 24, 2021, decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[4] A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.[5] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, which explains the nature of the relationship between the diagnosed condition and the accepted employment injury.[6]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury.[7] A claimant bears the burden of proof to establish a claim for a consequential

[3] *See D.W.*, Docket No. 22-0109 (issued May 17, 2022); *A.A.*, Docket No. 19-1165 (issued December 16, 2019); *M.B.*, Docket No. 19-0485 (issued August 22, 2019); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[5] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Id.*

[7] *R.N.*, Docket No. 21-0948 (issued August 18, 2022).

injury.[8] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the accepted employment injury.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include a consequential left shoulder condition, as causally related to the accepted employment injury.

In reports dated April 21, 2020 and February 2, 2021, Dr. Bevilacqua noted appellant's left shoulder pain, his age appropriate changes, and appellant's belief that his condition resulted from his right shoulder disuse. The Board has held that pain is a symptom and not a compensable medical diagnosis.[10] Moreover, while Dr. Bevilacqua discussed appellant's belief that his left shoulder condition was a consequence of his accepted right shoulder condition, he did not otherwise provide his own opinion relative to causal relationship.[11] For these reasons, the Board finds that Dr. Bevilacqua's reports are insufficient to meet appellant's burden of proof to expand the acceptance of his claim.

In a July 27, 2021 report, Dr. Knust noted that appellant was seen for left shoulder and arm pain and opined that his condition was caused by overuse of the left arm as it was currently the predominant arm due to his accepted chronic right shoulder/arm conditions. As noted, pain is a symptom and not a compensable diagnosis.[12] Consequently, Dr. Knust's report is insufficient to meet appellant's burden of proof to expand the acceptance of his claim.

In a January 28, 2022 report, Dr. Payne noted that appellant had a right artificial shoulder replacement and a complete rotator cuff tear or rupture of the left shoulder. He related that there was no injury to the left shoulder based on his physical examination and x-ray findings. Dr. Payne opined that appellant's left shoulder condition was caused by overuse of the left arm. He explained that the condition was directly related to the accepted work-related right shoulder injury and subsequent surgeries. Dr. Payne did not, however, explain physiologically how the accepted employment injury resulted in a left shoulder condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale

[8] *See T.S.*, Docket No. 23-0175 (issued June 23, 2023); *C.H.*, Docket No. 20-0228 (issued October 7, 2020).

[9] *Id.*

[10] *See B.A.*, Docket No. 22-0213 (issued July 26,2022); *T.B.*, Docket No. 20-0255 (issued March 11, 2022).

[11] *See D.R.*, Docket No. 21-1056 (issued April 23, 2023); *M.B.*, Docket No. 22-0422 (issued April 3, 2023).

[12] *Id*.

explaining how a given medical condition is causally related to employment injury.[13] Thus, Dr. Payne's report is insufficient to establish expansion of the acceptance of his claim.

In a February 7, 2022 report, Dr. Joseph, a chiropractor, opined that appellant's left shoulder pain was caused by overuse syndrome due to his right shoulder surgery. However, this report is of no probative medical value as he did not diagnose spinal subluxation as demonstrated by x-ray to exist.[14]

The record also contains diagnostic reports, including an April 12, 2021 EMG/NCV study and a January 29, 2021 CT scan of appellant's right upper extremity. However, 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 factors caused a diagnosed condition.[15] Consequently, this evidence is insufficient to meet appellant's burden to expand the acceptance of his claim.

As appellant has not submitted rationalized medical evidence to establish expansion of the acceptance of his claim to include a left shoulder condition as causally related to the accepted employment injury, the Board finds that he 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 expand the acceptance of his claim to include a consequential left shoulder condition, as causally related to the accepted employment injury.

[13] *See D.R.*, Docket No. 21-1056 (issued April 13, 2023); *R.B.*, Docket No. 22-0713 (issued July 26, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.S.*, Docket No. 21-0673 (issued October 10, 2021).

[14] Section 8101(2) of FECA provides that, "The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." 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); *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). Chiropractors are considered physicians under FECA only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See* 5 U.S.C. § 8101(2); *M.B.*, *supra* note 3.; *P.T.*, Docket No. 21-0110 (issued December 8, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.K.*, Docket No. 21-0520 (issued August 23, 2021).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board