

from work commencing August 10, 2019, causally related to the accepted June 27, 2019 employment injury.

FACTUAL HISTORY

On June 27, 2019 appellant, then a 67-year-old ramp clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his left upper arm when pushing empty all-purpose container (APC) cages while in the performance of duty. He stopped work on the claimed date of injury.

On June 28, 2019 Dr. Kwame A. Donkor, Board-certified in emergency medicine and internal medicine, noted a date of injury of June 27, 2019 and diagnosed a left biceps injury. He recommended that appellant remain off work through June 30, 2019.

In a duty status report (Form CA-17) dated July 3, 2019, Dr. Basimah Khulusi, a Board-certified physiatrist, indicated that appellant was totally disabled.

In a report dated July 23, 2019, Dr. Khulusi related appellant's complaints of left shoulder pain due to a June 27, 2019 employment injury. During a physical examination of the left upper extremity, where she observed improved range of motion and a biceps Popeye deformity. Dr. Khulusi diagnosed a tear of the long head of the left biceps and prescribed multi-modality physical therapy treatment.

In Forms CA-17 dated July 23 and August 13, 2019, Dr. Khulusi advised that appellant should continue to remain off work.

In an August 22, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a report dated July 3, 2019 from Dr. Khulusi, who noted that appellant related complaints of severe pain in the left upper arm, which she attributed to pushing APCs at work on June 27, 2019. Dr. Khulusi performed a physical examination of the left arm and documented pain and reduced range of motion with elevation, flexion, and extension, tenderness in the proximal aspect of the biceps tendon anteriorly, pain with any passive movement of the shoulder joint, and a biceps Popeye deformity. She diagnosed a tear of the long head of the left biceps due to the June 27, 2019 employment incident and recommended, x-rays, magnetic resonance imaging (MRI) scan, physical therapy, and an orthopedic consultation.

An MRI scan of the left shoulder dated July 22, 2019 demonstrated tendinosis of the supraspinatus, infraspinatus, subscapularis, and long head biceps, osteoarthritis of the glenohumeral and acromioclavicular (AC) joints, adhesive capsulitis, joint effusion, and subcoracoid bursitis.

In a medical report dated July 30, 2019, Dr. Charles Herring, a Board-certified orthopedic surgeon, evaluated appellant for injuries to his left shoulder and biceps. He noted that on June 27, 2019 appellant pushed an APC that was stuck and experienced the sudden onset of severe pain in

the left shoulder and bicep. Dr. Herring performed a physical examination, which revealed pain with palpation over the anterior and posterior capsules, AC joint, proximal biceps, and bicipital tuberosity region; positive impingement signs; reduced range of motion; and positive Speed and Yorgason tests. He reviewed the left shoulder MRI scan and Dr. Khulusi's reports and noted that, although appellant demonstrated a biceps Popeye deformity on examination, the MRI scan clearly demonstrated that the biceps tendon was within the bicipital groove region and therefore he did not believe that there was a complete tear. Dr. Herring diagnosed left shoulder impingement syndrome and aggravations of left shoulder subacromial bursitis, AC joint arthrosis, and bicipital tendinitis. He noted that appellant had no prior left shoulder injury, but that he did have advanced preexisting AC joint osteoarthritis which was aggravated by the employment injury. Dr. Herring recommended therapy and possible cortisone injections. He opined that appellant was temporarily totally disabled per his primary treating physician.

In a report dated August 13, 2019, Dr. Khulusi related that appellant continued to report pain that made it difficult for him to focus. On examination, she documented severe pain with any active movement of the left arm, reduced range of motion, and use of a sling. Dr. Khulusi diagnosed left shoulder impingement syndrome and aggravations of subacromial bursitis, AC joint arthrosis, and bicipital tendinosis of the left shoulder due to the June 27, 2019 employment incident.

Beginning August 23, 2019, appellant filed claims for compensation (Form CA-7) for disability from work commencing August 10, 2019.

In an August 28, 2019 response to OWCP's development questionnaire, appellant indicated that he had no prior injuries to his left shoulder area.

In a report and Form CA-17, also dated August 28, 2019, Dr. Khulusi recommended ongoing physical therapy and advised that appellant remain off work.

In a September 11, 2019 medical report, Dr. Joline Tilly, a family medicine specialist, noted appellant's ongoing complaints and examination findings. She recommended that he continue physical therapy and advised that he remain out of work for two weeks.

On September 26, 2019 OWCP accepted the claim for strain of the muscle, fascia, and tendon of the long head of the left biceps. It noted that the medical evidence of record also addressed several preexisting conditions; however, it was insufficient to establish causal relationship between those additional conditions and the accepted June 27, 2019 employment injury.

In a development letter dated October 2, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation commencing August 10, 2019. It requested that he submit medical evidence from his physician explaining how his accepted employment-related condition caused or contributed to his inability to work during the claimed period.

In a report also dated October 2, 2019, Dr. Khulusi noted that appellant's range of motion had improved, but that he continued to complain of significant pain. In a Form CA-17 of even date, she continued to hold him off work.

Dr. Khulusi, in a narrative report dated October 17, 2019, outlined appellant's complaints and examination findings and the results of his MRI scan and orthopedic evaluation. She explained that he was totally disabled from work due to his need to wear a shoulder sling to support the weight of his arm and to control the symptoms in the left shoulder. Dr. Khulusi advised that objective findings on MRI scan showed "significant pathology with inflammation of the bursa and the synovium which is the membrane that surrounds the shoulder joint area." She indicated that appellant should not be using his left arm, except while in physical therapy. Dr. Khulusi further recommended against right-arm only work so that he "would not be at the mercy of a job that will force [appellant] to move the right arm and move the torso, which will entail movement of the left shoulder when the job requires it."

By decision dated November 5, 2019, OWCP denied appellant's claim for compensation, finding that he had not submitted sufficient medical evidence to establish disability from work commencing August 10, 2019 due to the accepted June 27, 2019 employment injury.

In a November 4, 2019 medical report, Dr. Khulusi released appellant to return to modified-duty work, with no lifting greater than five pounds, no pushing or pulling greater than 25 pounds on wheels, and no reaching above the left shoulder.

On November 5, 2019 appellant accepted a full-time, modified ramp clerk position. The duties of the position included up to eight hours of expediting paperwork, checking tarmac, and monitoring mail operations. With regard to physical requirements, it required pushing and pulling no more than 25 pounds on wheels, intermittent lifting/carrying of no more than five pounds, and up to eight hours of intermittent walking, standing, climbing, bending, stooping, and grasping.

In reports dated December 4, 2019 and January 8, 2020, Dr. Khulusi continued the same restrictions and indicated that appellant had been working full time within the restrictions without any aggravation to his left shoulder.

On February 4, 2020 Dr. Khulusi noted improvement in appellant's condition. She released him to return to work, with no lifting greater than 10 pounds, no pushing/pulling greater than 50 pounds on wheels, and no reaching above the left shoulder.

On March 16, 2020 Dr. Khulusi released appellant to return to work with no lifting greater than 15 pounds, no pushing/pulling greater than 100 pounds on wheels, and no reaching above the left shoulder.

On July 1, 2020 appellant requested reconsideration of OWCP's November 5, 2019 decision. In support thereof, he submitted a June 22, 2020 narrative report by Dr. Khulusi, who continued to opine that he remain off work because he was not able to move his body without causing severe pain in the left arm. Dr. Khulusi further noted appellant's examination findings, which were corroborated by Dr. Herring, including tenderness, limited range of motion, and positive clinical tests for tendinitis, impingement, and bursitis.

By decision dated July 31, 2020, OWCP denied modification of its November 5, 2019 decision.

On September 23, 2020 appellant requested reconsideration of OWCP's July 31, 2020 decision. In support of the request, he submitted a September 21, 2020 narrative report by Dr. Khulusi, who reiterated her opinion regarding his disability and requested that the acceptance of his claim be expanded to include left shoulder impingement syndrome and aggravations of subacromial bursitis, AC joint arthrosis, and bicipital tendinitis of the left shoulder. Appellant also submitted a September 15, 2020 letter by Dr. Herring, who clarified his October 29, 2019 report, noting that he agreed with Dr. Khulusi's opinion that appellant was unable to work following the injury.

By decision dated December 21, 2020, OWCP denied modification of its July 31, 2020 decision, finding that appellant had not submitted sufficient medical evidence to establish disability from work during the claimed period due to the accepted June 27, 2019 employment injury. It further denied expansion of its acceptance of the claim to include additional employment-related conditions.

OWCP thereafter received physical therapy notes dated from October 7 through 23, 2020, and a November 2, 2020 report by Dr. Khulusi, who continued appellant's previous restrictions.

On March 2, 2021 appellant requested reconsideration of OWCP's December 21, 2020 decision. In support of the request, he submitted a March 1, 2021 narrative report by Dr. Khulusi, who explained that, when the wheel of the APC became stuck, there was a sudden stop while he simultaneously continued to push on the APC with his left arm. Dr. Khulusi noted that this created forces that, could have dislocated the shoulder joint, and, as a result, the muscles around the shoulder joint area suddenly and severely contracted, which caused sprain and strain of the shoulder structures. She indicated that appellant had significant preexisting degeneration and tendinosis in the left shoulder joint and opined that the sudden pull on the diseased structures caused significant inflammation and effusion to occur in the joint, as seen on the MRI scan. Dr. Khulusi opined that the June 27, 2019 employment incident caused left shoulder impingement syndrome and aggravations of subacromial bursitis, AC joint arthrosis, and bicipital tendinitis of the left shoulder. She requested that OWCP expand the acceptance of the claim to include these additional conditions. Dr. Khulusi noted that she originally diagnosed a rupture of the head of the left biceps, but corrected the diagnoses after appellant underwent the MRI scan and orthopedic consultation with Dr. Herring.

By decision dated March 17, 2021, OWCP denied modification of its December 21, 2020 decision.

OWCP continued to receive evidence, including reports dated February 8, June 7, and December 6, 2021 by Dr. Khulusi, who noted that appellant was working full time and related that his shoulder was stable with intermittent symptoms. Dr. Khulusi maintained his work restrictions.

On February 2, 2022 appellant requested reconsideration of OWCP's March 17, 2021 decision. In support thereof, he submitted a February 1, 2022 narrative report by Dr. Herring, who requested that the acceptance of the claim be expanded to include left shoulder impingement syndrome and temporary aggravations of subacromial bursitis, AC joint arthrosis, and bicipital tendinitis of the left shoulder. Dr. Herring opined that it was reasonable for Dr. Khulusi to place

appellant off work for the period July 3 through November 3, 2019, in order to allow the left biceps and shoulder to heal with immobilization and rest.

By decision dated May 3, 2022, OWCP denied modification of its March 17, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ Where 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.⁵

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.⁷

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

Dr. Khulusi provided reports dated August 13, 2019 through September 21, 2020, supporting a causal relationship between appellant's diagnosed conditions of left shoulder impingement syndrome and aggravations of subacromial bursitis, AC joint arthrosis, and bicipital tendinitis of the left shoulder and his accepted June 27, 2019 employment injury. In her March 1, 2021 narrative report, she noted that she originally diagnosed a rupture of the head of the left biceps, but corrected the diagnoses after he underwent an MRI scan and the orthopedic consultation with Dr. Herring. Dr. Khulusi explained that, when the wheel of the APC became stuck, there was a sudden stop while appellant simultaneously continued to push on the APC with his left arm. She noted that this created forces that, could have dislocated the shoulder joint, and, as a result, the muscles around the shoulder joint area suddenly and severely contracted, which caused sprain and strain to the shoulder structures. Dr. Khulusi further noted that appellant had

³ *Supra* note 1.

⁴ *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁵ *O.R.*, Docket No. 23-0157 (issued July 25, 2023); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁷ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

significant preexisting degeneration and tendinosis in the left shoulder joint. She opined that the sudden pull on the diseased structures caused significant inflammation and effusion to occur in the joint, as seen on the MRI scan.

The Board notes that proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.⁸ The Board finds that, while Dr. Khulusi's opinion is insufficient to meet appellant's burden of proof regarding his expansion and claim, it is sufficient to require further development.⁹

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record, and a statement of accepted facts, for an examination and a rationalized medical opinion regarding whether the acceptance of the claim should be expanded to include additional medical conditions causally related to his accepted June 27, 2019 employment injury.¹⁰ If the second opinion physician disagrees with the opinion of Dr. Khulusi, he or she must provide a fully-rationalized explanation as to why the accepted employment injury was insufficient to have caused or aggravated appellant's diagnosed conditions.¹¹ After this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹² has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹³ Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁴ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁵ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁶ When, however, the medical evidence establishes that the residuals

⁸ See *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

⁹ See *R.N.*, Docket No. 21-0948 (issued August 18, 2022); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *I.T.*, Docket No. 20-0001 (issued July 1, 2021).

¹¹ *Id.*

¹² *Supra* note 1.

¹³ See *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁴ 20 C.F.R. § 10.5(f).

¹⁵ See *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁶ See *H.B.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹⁷

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.¹⁸

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish disability from work commencing August 10, 2019, causally related to the accepted June 27, 2019 employment injury.

In her October 17, 2019 narrative report, Dr. Khulusi opined that appellant was totally disabled from work due to his need to wear a shoulder sling to support the weight of his arm and to control the symptoms in the left shoulder, which she attributed to inflammation of the bursa and the synovial membrane around the shoulder joint area. However, she did not provide an opinion regarding disability due to the accepted employment-related conditions. The Board has held that medical evidence that does not provide an opinion as to whether the claimed disability is due to the accepted employment-related conditions is of no probative value and is therefore insufficient to meet a claimant's burden of proof.²⁰

In medical reports and Forms CA-17 dated July 3 through 30, 2019, Dr. Khulusi and Dr. Herring opined that appellant was totally disabled from work. These reports did not, however, provide an opinion on causal relationship. As discussed, medical evidence that does not address whether the claimed disability is causally related to the accepted employment-related conditions

¹⁷ See *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *L.S.*, Docket No. 22-0821 (issued March 20, 2023); *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁸ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020); *I.J.*, 59 ECAB 408 (2008).

¹⁹ See *S.W.*, Docket No. 21-1227 (issued July 13, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

²⁰ See *A.S.*, *supra* note 17; *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

is of no probative value.²¹ Therefore, these reports are insufficient to establish appellant's disability claim.

In medical reports and Forms CA-17 dated August 13 through October 2, 2019, Dr. Khulusi opined that appellant was totally disabled from work. Dr. Tilley, in her September 11, 2019 report, indicated that he was totally disabled. Neither physician, however, provided an opinion on disability due to the accepted employment-related conditions.²² For these reasons, these reports are insufficient to establish his disability claim.

Dr. Herring, in his October 29, 2019 medical report, noted appellant's work status as "per the primary treating physician." In an addendum report dated September 15, 2020, he explained that "per the primary treating physician," meant that he "agreed with the primary treating physician's decision." Dr. Herring did not, however, provide an opinion on causal relationship.²³ As such, his reports are of no probative value and are insufficient to establish appellant's disability claim.

Appellant submitted results from diagnostic testing. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment injury caused him to be disabled during the claimed period.²⁴

OWCP also received physical therapy reports. However, certain healthcare providers such as physical therapists are not considered qualified physicians as defined under FECA.²⁵ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.²⁶ These reports are therefore insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between the claimed period of disability and the accepted employment injury, the Board finds that he has not met his burden of proof.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *See supra* note 6.

²⁵ 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *H.A.*, Docket No. 24-0004 (physical therapists are not considered qualified physicians as defined 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).

²⁶ *Id.*

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 the case is not in posture for decision with regard to expansion of the acceptance of appellant's claim. The Board further finds that he has not met his burden of proof to establish disability from work commencing August 10, 2019, causally related to the accepted June 27, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2022 decision of the Office of Workers' Compensation Programs is set aside, in part, and affirmed, in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 27, 2024
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