United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 17-1039**
	)	**Issued: October 6, 2017**
DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CEMETERY ADMINISTRATION, Beaufort, SC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 12, 2017 appellant, through counsel, filed a timely appeal from a February 9, 2017 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.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury on January 21, 2016 causally related to the accepted employment incident.

[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.*

FACTUAL HISTORY

On January 28, 2016 appellant then a 46-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on January 21, 2016, while lifting a front deck on an Exmork lawnmower, he felt a sharp pain in his shoulders. He listed the nature of his injury as numbness in left shoulder and left palm, and right shoulder pain radiating to his elbow. Appellant did not stop work.

In a January 22, 2016 report, Dr. William O'Quinn, a Board-certified family practitioner, noted that appellant injured his left shoulder at work the prior day. He noted that appellant's right shoulder was previously injured, but that appellant now had numbness in his left arm. Dr. O'Quinn noted that the pain occurred shortly after lifting a mower at work the previous day. He diagnosed appellant with left shoulder pain and shoulder strain. In a January 25, 2016 follow-up note, Dr. O'Quinn diagnosed left shoulder strain and noted concern for internal derangement or rotator cuff tear. He indicated that he would refer appellant for a magnetic resonance imaging (MRI) scan and continued pain medication.

By report dated February 1, 2016, Dr. Curtis Franke, a Board-certified family practitioner, diagnosed left shoulder strain. He placed appellant off work pending a bilateral shoulder MRI scan.

In a February 18, 2016 note, Dr. Gus Katsigiorgis, a Board-certified orthopedic surgeon, noted that appellant was involved in an employment-related injury on January 21, 2016 while trying to lift the front deck of a lawn mower at which time he felt pain in the left shoulder. He noted that within 24 hours appellant started having pain in the right shoulder as well. Dr. Katsigiorgis noted that appellant had a prior right shoulder injury. He assessed appellant with left shoulder pain, right shoulder pain, rule out tearing. Dr. Katsigiorgis related that appellant was disabled from work activities. Dr. Katsigiorgis noted that an x-ray taken on February 18, 2016 of the right shoulders revealed no fractures.

A right upper extremity MRI scan was completed on February 19, 2016 and was interpreted by Dr. Russell Weinstein, a Board-certified radiologist, as showing glenohumeral joint space narrowing with irregular periarfloular osteophyte formation, chronic Hill-Sachs deformity difficult to exclude, one centimeter cystic lesion along the superior posterior rim of the glenoid likely representing a paralabral cyst, and suspected labral tear. A left upper extremity scan taken on February 22, 2016 was interpreted by Dr. Weinstein as showing tear of the inferior glenoid labrum, and chronic Hill-Sachs deformity of the humerus with subchondral fibrocystic changes of the glenoid.

On February 25, 2016 Dr. Katsigiorgis injected appellant's right shoulder with a cortisone injection. In a February 26, 2016 note, he assessed pain of right and left arm. Dr. Katsigiorgis ordered physical therapy and restricted activities.

Appellant also submitted physical therapy notes dated from February 25 through April 6, 2016.

In a decision dated April 28, 2016, OWCP denied appellant's claim, finding that appellant had not established a causal relationship between the accepted employment incident and the medical diagnoses.

Appellant submitted additional physical therapy notes, dated from April 14 and 28, 2016.

On May 9, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a May 10, 2016 progress note, Dr. Katsigiorgis related that appellant had pain in both arms. He noted that appellant had failed conservative care consisting of physical therapy and cortisone, and that appellant had chosen to proceed with a right shoulder arthroscopy with possible arthrotomy.

At the hearing held on December 22, 2016, counsel argued that the evidence of record was overwhelming in support of the diagnosis of left shoulder strain and that the MRI scan supported this conclusion. Appellant testified that he had no problems with his left shoulder before this accident. He noted that while working for the employing establishment he slipped and hit his right shoulder, that he filed a workers' compensation claim for that particular incident, but it was not developed because he was only out of work for a day or two and returned to full duty without issues. Appellant described the work incident and noted that it was not so much the weight of deck, but more the difficulty in trying to get parts of the lawn mower into position that caused the injury. He noted that he had surgery on both shoulders, utilizing his own health insurance and that he stopped physical therapy because he could not afford it, and that he quit his job in June 2016 because he did not want to be fired due to injury. Appellant testified that he tried to work at Sam's Club for about a week in August 2016, but that he had not worked since that time.

On February 9, 2017 the hearing representative affirmed the April 28, 2016 decision. He found that there was insufficient medical evidence of record to establish a causal relationship between the January 21, 2016 accepted employment incident and appellant's diagnosed bilateral shoulder conditions.

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, that an injury was caused in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every

[3] *Id*.

[4] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 must first be determined whether a 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, place, and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[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 the specific employment factors identified by the employee.[8] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

OWCP accepted that the employment incident occurred as alleged and that appellant established medical diagnoses. However, it denied appellant's claim as the medical evidence of record failed to establish that his diagnosed shoulder conditions were causally related to the accepted employment incident.

The Board finds that appellant has not established an injury on January 21, 2016 causally related to the accepted employment incident.

Causal relationship is a medical question that must be established by a probative medical opinion from a physician.[10] Appellant failed to submit a rationalized medical opinion establishing a causal relationship between the accepted January 21, 2016 incident and his diagnosed bilateral shoulder conditions.

Appellant submitted reports by Dr. O'Quinn indicating that he examined appellant on January 22, 2016, the day after the January 21, 2016 work incident, as well as on January 25, 2016. Dr. O'Quinn diagnosed left shoulder strain. Although Dr. O'Quinn noted that appellant hurt his left shoulder at work the day before, he never provided a well-reasoned opinion linking the medical diagnosis to this employment incident. A physician must provide a

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id.*

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* n. 5.

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *C.S.*, Docket No. 17-0399 (issued June 19, 2017).

reasoned opinion on whether the employment incident described caused or contributed to the diagnosed medical condition.[11] As Dr. O'Quinn's report lacked the necessary medical rationale, it was of little probative value.

Dr. Franke diagnosed left shoulder strain, but did not address causation. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] The mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[13]

Dr. Katsigiorgis noted that appellant was involved in an employment-related work incident and described the incident. He also diagnosed pain in the right and left shoulders. The Board notes that pain is a symptom, not a specific medical diagnosis.[14] Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted employment incident could have resulted in a diagnosed condition is not sufficient to meet a claimant's burden of proof.[15]

Appellant also submitted results of MRI scans interpreted by Dr. Weinstein on February 19 and 22, 2016. However, these diagnostic studies are of limited probative value as they do not address whether the January 21, 2016 work incident caused any of the diagnosed conditions.[16]

Finally, appellant submitted multiple reports from his physical therapist dated February 25 through April 28, 2016. Reports by a physical therapist have no probative value as physical therapists are not considered physicians as defined by FECA.[17] Therefore, the reports by appellant's physical therapist do not constitute relevant and pertinent medical evidence.[18]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[19] Medical opinion evidence should reflect a correct history and offer a medically-sound explanation of how the specific employment incident

[11] *John W. Montoya*, 54 ECAB 306 (2003).

[12] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1998).

[13] *K.W.*, Docket No. 17-0205 (issued June 12, 2017).

[14] *See C.L.*, Docket No. 17-0249 (issued June 22, 2017).

[15] *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

[16] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[17] The term 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. § 8102(2); *J.G.*, Docket No. 15-0251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not considered physicians as defined under FECA).

[18] *L.W.*, Docket No. 16-1317 (issued June 21, 2017).

[19] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

physiologically caused injury.[20] None of the reports of record addressed appellant's history of prior shoulder injury and explained why the January 21, 2016 incident caused or aggravated his shoulder conditions.[21] As appellant did not submit the necessary rationalized medical opinion evidence, he did not meet 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 an injury on January 21, 2016 causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 9, 2017 is affirmed.

Issued: October 6, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

[20] *M.A.*, Docket No. 17-0122 (issued May 2, 2017).

[21] *Supra* note 8.