

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

_____)	
A.F., Appellant)	
)	
and)	Docket No. 20-0985
)	Issued: December 17, 2020
DEPARTMENT OF THE AIR FORCE, JOINT)	
BASE SAN ANTONIO-RANDOLPH AIR)	
FORCE BASE, Randolph, TX, 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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 7, 2020 appellant filed a timely appeal from a March 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder injury causally related to the accepted October 16, 2019 employment incident.

¹ The Board notes that, following the March 11, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's 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.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 24, 2019 appellant, then a 60-year-old aircraft sheet mechanic, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2019 he injured his right shoulder while in the performance of duty. He explained that he was preparing to perform a check for a horizontal stabilizer of an F-16 and, as he was tipping the horizontal stabilizer upside down, he felt a pull and pain in his right shoulder. Appellant stopped work on October 21, 2019.

Appellant also submitted a position description of his duties as an aircraft sheet metal mechanic.

In a development letter dated October 31, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion seeking additional information concerning the alleged October 16, 2019 employment incident. OWCP afforded appellant 30 days to submit the requested information.

OWCP subsequently received an October 22, 2019 progress note by Dr. Enrique Baires, Board-certified in family medicine, who evaluated appellant for right shoulder pain. Dr. Baires noted that appellant first injured his shoulder in August at work and injured it again on October 16, 2019 when he was pushing and flipping a heavy object and felt something pop. He diagnosed unspecified type hypertension and acute pain of the right shoulder. Dr. Baires also scheduled appellant to undergo a magnetic resonance imaging (MRI) scan of his right shoulder for further evaluation.

In an October 28, 2019 diagnostic report, Dr. Trenton Wright, a Board-certified diagnostic radiologist, performed an MRI scan of appellant's right shoulder. He found a focal linear full-thickness tear involving the supraspinatus tendon anteriorly, irregular degenerative fraying/tearing involving the superior, anterior and posterior inferior glenoid labrum, moderate changes of the glenohumeral degenerative joint disease with full-thickness articular cartilage thinning and subchondral cystic change involving the posterior inferior glenoid, as well as mild-to-moderate changes of acromioclavicular (AC) joint arthropathy with undersurface spurring.

Appellant also submitted an October 30, 2019 referral note with an illegible signature diagnosing right shoulder pain and indicating physical therapy to treat his injury.

In a November 5, 2019 medical report, Scott Roberts, a physical therapist, evaluated appellant for his right shoulder pain. Appellant informed Mr. Roberts that he injured his shoulder at work on October 16, 2019 when he was lifting a heavy part and felt a pop. He stated that he initially felt pain in August 2019, but told his supervisor that he felt he could continue working until his October 16, 2019 injury caused much worse pain. On evaluation Mr. Roberts provided an assessment of right shoulder pain and provided a physical therapy treatment plan.

In work status forms dated October 21 to November 4, 2019, Rickie Johnson, a physician assistant, noted appellant's October 16, 2019 right shoulder injury and provided that appellant could return to work with restrictions.

OWCP also received a November 7, 2019 work status form, indicating that appellant returned to work full time with restrictions on October 22, 2019. In a progress report of even date, Mr. Roberts provided updates for appellant's treatment related to his right shoulder pain.

In a November 18, 2019 medical report, Dr. Daniel Tensmeyer, a Board-certified orthopedic surgeon, discussed an October 22, 2019 x-ray and an October 28, 2019 MRI scan of appellant's right shoulder and diagnosed a right rotator cuff tear, arthritis of the right AC joint, a degenerative tear of the glenoid labrum of the right shoulder and glenoid chondromalacia of the right shoulder. He referenced the history of appellant's injuries and noted that appellant first injured his shoulder in August 2019 and reinjured it on October 16, 2019 when he was lifting at work. Dr. Tensmeyer scheduled appellant to undergo five surgical procedures in order to address appellant's right shoulder conditions.

By decision dated December 6, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It explained that he did not respond to its October 31, 2019 development questionnaire seeking further details concerning the alleged October 16, 2019 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an August 21, 2019 statement, appellant explained that, on August 20, 2019 he was working with R.S. and J.R., two of appellant's coworkers, while lifting, he felt a sharp pain in his right shoulder. He reported it to his supervisor who instructed him to wait a day to see if the pain was still present.

In an October 21, 2019 incident report, appellant informed Mr. Johnson that he injured his right shoulder on August 20 and October 16, 2019 while lifting a horizontal stabilizer with two other employees. He stated that he felt a sharp pain at the time of the August 20, 2019 incident, and a pop in his right shoulder at the time of the October 16, 2019 incident.

Appellant submitted an illegible October 22, 2019 physician's initial report of work injury or occupational disease form signed by Dr. Baires.

In an October 30, 2019 new patient form with an illegible signature, appellant indicated that he injured his right shoulder on October 16, 2019. In a medical report of even date, Dr. Tensmeyer diagnosed a right rotator cuff tear, arthritis of the right AC joint, a degenerative tear of the glenoid labrum of the right shoulder and glenoid chondromalacia of the right shoulder. He indicated that appellant originally felt pain in his right shoulder in August 2019 and reinjured the same shoulder on October 16, 2019 while at work. .

In a November 21, 2019 letter, Dr. Tensmeyer indicated that appellant would undergo surgery on December 3, 2019 to treat his right shoulder injury and recommended work restrictions for him to follow.

In a November 26, 2019 letter, Dr. Baires indicated that appellant's surgery would be delayed two months due to uncontrolled diabetes. He recommended that appellant be placed on light duty with no use of his right arm until after his surgery.

Dr. Tensmeyer, in a December 16, 2019 letter, indicated that appellant was seen on November 18, 2019 and recommended additional work restrictions for his right upper extremity.

In a personal statement of even date, appellant again explained the events of the August 20, 2019 employment incident in which he injured his right shoulder while lifting a horizontal stabilizer. He also restated the events of the October 16, 2019 employment incident in which he again injured his right shoulder while lifting a horizontal stabilizer. Appellant claimed that he was the second person to injure himself while lifting a horizontal stabilizer.

Appellant also submitted work status forms dated from October 21 to December 17, 2019 in which Mr. Johnson provided updated medical restrictions related to his right shoulder injury.

On December 19, 2019 appellant requested reconsideration of OWCP's December 6, 2019 decision and submitted additional medical evidence.

In an October 21, 2019 medical report, Dr. Eryn Stansfield, Board-certified in occupational medicine, evaluated appellant for his right shoulder injury. Appellant detailed the history of his alleged August 20 and October 16, 2019³ employment injuries in which he injured his right shoulder while lifting a horizontal stabilizer. Dr. Stansfield diagnosed an unspecified sprain of the right shoulder joint. On the second page of appellant's October 21, 2019 incident report she stated that appellant reinjured his right shoulder on October 16, 2019 while lifting a horizontal stabilizer and provided that he could return to work with limited duty for seven days.

In an October 22, 2019 diagnostic report, Dr. Jason Lance, a Board-certified diagnostic radiologist, performed an x-ray of appellant's right shoulder and found moderate glenohumeral and mild AC joint osteoarthritis.

Mr. Roberts provided an update on appellant's therapy sessions to treat his right shoulder pain in a November 11, 2019 progress note.

Dr. Tensmeyer indicated in a November 18, 2019 diagnostic report that an x-ray of appellant's right shoulder revealed mild narrowing of the glenohumeral joint with small osteophyte of the inferior glenoid, subchondral sclerosis, and cystic changes on the glenoid. He also reported that no fractures were seen.

In a November 19, 2019 progress note, Rodney Grogan, a physician assistant, performed a preoperative general physical examination in relation to appellant's diabetes. In a November 26, 2019 progress note, Nurse Shanafelt reported that his surgery would need to be delayed until his Hemoglobin A1C was below an eight.

In a February 10, 2020 medical report, Dr. Tensmeyer again diagnosed a right rotator cuff tear, arthritis of the right AC joint, a degenerative tear of the glenoid labrum of the right shoulder and glenoid chondromalacia of the right shoulder, and related the injuries to appellant's August 20

³ The report indicated that appellant injured his right shoulder on October 10, 2019; however, this appears to be a typographical error.

and October 16, 2019 employment injuries. He also indicated that appellant's Hemoglobin A1C had improved and that he was prepared to go forward with surgery.

By decision dated March 11, 2020, OWCP modified the December 6, 2019 decision to accept that the October 16, 2019 employment incident occurred as alleged. However, the claim remained denied as the evidence of record was insufficient to establish that his diagnosed right shoulder conditions were causally related to the accepted October 16, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,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 must first be determined whether fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background, 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.¹¹

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹¹ *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder injury causally related to the accepted October 16, 2019 employment incident.

In medical reports dated from October 30, 2019 to February 10, 2020, Dr. Tensmeyer diagnosed a right rotator cuff tear, arthritis of the right AC joint, a degenerative tear of the glenoid labrum of the right shoulder and glenoid chondromalacia of the right shoulder, and related the injuries to the accepted October 16, 2019 employment incident in which appellant was lifting. He also indicated that appellant would undergo surgical procedures to treat his conditions. While Dr. Tensmeyer provided an affirmative opinion on causal relationship, he did not offer any medical rationale sufficient to explain why he believed that the October 16, 2019 employment incident could have resulted in or contributed to appellant's diagnosed conditions. Without explaining how lifting caused or aggravated his medical conditions, Dr. Tensmeyer's medical reports are of limited probative value.¹²

Dr. Tensmeyer indicated in his November 18, 2019 diagnostic report that an x-ray of appellant's right shoulder revealed mild narrowing of the glenohumeral joint with small osteophyte of the inferior glenoid, subchondral sclerosis, and cystic changes on the glenoid. The Board has held, however, that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment incident and a diagnosed condition.¹³ For this reason, Dr. Tensmeyer's November 18, 2019 diagnostic report is insufficient to meet appellant's burden of proof.

Dr. Tensmeyer's remaining medical evidence consisted of letters dated November 21 and December 16, 2019 in which he provided that appellant would undergo surgery to treat his right shoulder injuries and recommended work restrictions for him to follow. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ For this reason, Dr. Tensmeyer's remaining medical evidence is insufficient to meet appellant's burden of proof.

In medical evidence dated October 21, 2019, appellant informed Dr. Stansfield of the history of his right shoulder injury. She diagnosed an unspecified sprain of the right shoulder joint and noted that he injured his shoulder on October 16, 2019 while lifting a horizontal stabilizer. As stated previously, without explaining how lifting a horizontal stabilizer caused or aggravated appellant's right shoulder condition, Dr. Stansfield's October 21, 2019 medical evidence is of limited probative value.¹⁵

Dr. Baires provided in his October 22, 2019 progress note that appellant first injured his right shoulder in August 2019 at work and injured it again on October 16, 2019 when he was

¹² See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

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

¹⁴ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Supra* note 12.

pushing and flipping a heavy object and felt something pop. He diagnosed unspecified type hypertension and acute pain of the right shoulder and schedule appellant to undergo an MRI scan of appellant's right shoulder for further evaluation. However, the Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁶ For this reason, Dr. Baires' October 22, 2019 progress note is of limited probative value.

In his letter of November 26, 2019, Dr. Baires indicated that appellant's surgery would be delayed two months due to uncontrolled diabetes and recommended that he be placed on light duty with no use of his right arm. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.¹⁷ For this reason, Dr. Baires' November 26, 2019 letter is insufficient to meet appellant's burden of proof.

Dr. Baires' remaining medical evidence consisted of an illegible October 22, 2019 physician's initial report of work injury or occupational disease form. However, the Board has held that medical evidence which is illegible is of no probative value.¹⁸ For this reason, Dr. Baires' remaining evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted diagnostic reports dated October 22 and 28, 2019 from Drs. Lance and Wright, respectively. However, as stated above, the Board has held that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.¹⁹

The remaining evidence consisted of multiple medical reports and forms authored by various physician assistants, nurses and physical therapists. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.²⁰ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing that his right shoulder conditions are causally related to the accepted October 16, 2019 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

¹⁶ See *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁷ *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

¹⁸ See *E.V.*, 18-1617 (issued February 26, 2019).

¹⁹ *Supra* note 13.

²⁰ 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); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *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).

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 10.607.²¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder injury causally related to the accepted October 16, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

²¹ The Board also notes that the medical evidence of record also discusses a separate August 20, 2019 employment incident resulting in a right shoulder injury. Appellant may file a separate claim with regard to his earlier right shoulder injury.