

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

_____)	
J.W., Appellant)	
)	
and)	Docket No. 18-0520
)	Issued: February 25, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Jackson, MS, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On January 17, 2018 appellant filed a timely appeal from a December 8, 2017 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence with his appeal. 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 evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On January 24, 2017 appellant, then a 50-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed pain in his left elbow and shoulder due to factors of his federal employment, including pulling heavy wires filled with magazines, hooking up containers, and driving power equipment over a period of 14 years. He indicated that he first became aware of his condition on December 26, 2016 and first realized that it was caused or aggravated by his employment on January 20, 2017. Appellant did not stop work.

Appellant submitted a position description and an accident report dated January 30, 2017 which indicated that he reported left elbow and shoulder pain due to repetitive motions that were required to perform the duties of his federal employment.

In a development letter dated February 15, 2017, OWCP advised appellant of the factual and medical deficiencies of his claim. It informed him of the evidence necessary to establish his claim. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a February 20, 2017 report from Regina Berry, a certified nurse practitioner, who noted the history of injury, performed a physical examination, and diagnosed left shoulder impingement and left elbow medial epicondylitis. Ms. Berry noted that appellant's federal employment duties required a lot of repetitive movements. She opined that appellant was totally disabled for work until he was rechecked by a physician.

In reports dated February 28, 2017, Dr. J. Randall Ramsey, a Board-certified orthopedic surgeon, diagnosed pain in left shoulder, prescribed physical therapy, and advised that appellant would be totally disabled from work for two weeks. He found that appellant had pain at the acromioclavicular (AC) joint radiating up behind his ear with cross-body adduction and with O'Brien testing and Whipple's testing. Appellant also had pain reaching behind his back. Dr. Ramsey administered a steroid injection in the AC joint and took him off work for two weeks.

Appellant further submitted a narrative statement indicating that he had pain in his shoulder and elbows over the years, but recently the pain had intensified. He submitted photographic evidence of the mail bins and mail transport equipment he used in the performance of duty.

On March 9, 2017 the employing establishment controverted appellant's claim arguing that he failed to establish fact of injury and causal relationship.

In a report dated March 21, 2017, Dr. Ramsey noted that appellant had severe pain upon impingement testing, pain and buckling on both Whipple's and O'Brien testing, and pain without buckling on supraspinatus isolation testing. Appellant reported aching in his left shoulder, even after the injection. Dr. Ramsey recommended a magnetic resonance imaging (MRI) scan to evaluate a superior labral injury versus rotator cuff injury. He advised that appellant would be disabled from work until he was rechecked in the clinic following the MRI scan.

By decision dated May 3, 2017, OWCP denied appellant's claim finding that fact of injury had not been established.

On August 21, 2017 appellant requested reconsideration and submitted additional photographic evidence of the equipment he was required to use at work.

A June 7, 2017 operation report indicated that appellant had undergone a left shoulder arthroscopic acromioplasty, distal clavicle excision, extensive arthroscopic debridement, and removal of loose bodies. The surgery was performed by Dr. Ramsey.

On June 14, 2017 Dr. Ramsey saw appellant for a postsurgical follow-up and found significant bursitis and a partial tear of the rotator cuff. In his report, he opined that appellant's duties of picking up large bags and doing repetitive lifting at work "can certainly cause or contribute" to the problem found in his shoulder at the time of surgery.

In reports dated May 18 and July 10 and 21, 2017, Dr. Ramsey noted that appellant continued to have pain trying to raise his left arm above shoulder level, but had full motion of his left shoulder and his surgical incisions had healed. It was noted that his pain had not improved despite anti-inflammatory medicines, injections, corticosteroids, activity modifications, and physical therapy.

By decision dated September 19, 2017, OWCP found that appellant had established fact of injury, but denied the claim finding that the medical evidence of record failed to establish a causal relationship between his left shoulder condition and accepted factors of his federal employment.

On November 8, 2017 appellant filed a request for reconsideration.

Appellant later submitted an October 2, 2017 report from Dr. Ramsey who diagnosed bicipital tendinitis, bursitis of shoulder, primary osteoarthritis of shoulder, and incomplete rotator cuff tear or rupture, not specified as traumatic. Dr. Ramsey indicated that appellant had shown him pictures of the heavy metal bins that he had to push, pull, and lift during the course of his daily employment and opined that now that he had seen the type of work appellant performed he could say with "complete medical certainty" that this job had contributed to his shoulder issue if not directly caused it.

By decision dated December 8, 2017, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,

³ *Id.*

⁴ *S.D.*, Docket No. 19-1240 (issued December 11, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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 employee.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted a series of medical reports from Dr. Ramsey. In two reports Dr. Ramsey discussed the issue of causal relationship. On June 7, 2017 he opined that appellant's duties of picking up large bags and doing repetitive lifting at work "can certainly cause or contribute" to the problem found in his shoulder at the time of surgery. In his October 2, 2017 report, Dr. Ramsey diagnosed bicipital tendinitis, bursitis of shoulder, primary osteoarthritis of shoulder, and incomplete rotator cuff tear or rupture, not specified as traumatic. He indicated that he had viewed pictures of the heavy metal bins that appellant had to push, pull, and lift during the course of his daily employment and opined that now that he had seen the type of work appellant performed, he could say with "complete medical certainty" that these duties had contributed to his shoulder issue if not directly caused it. While Dr. Ramsey provided generally supportive opinions

⁵ A.S., Docket No. 19-0704 (issued September 11, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ See *D.S.*, Docket No. 19-0925 (issued September 25, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁹ *E.V.*, *id.*

¹⁰ *B.J.*, Docket No. 19-0417 (issued July 11, 2019).

on the issue of causal relationship, the Board finds that he failed to provide the necessary medical rationale to explain how the accepted employment duties had either caused or contributed to appellant's diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to the accepted employment factors.¹¹ Thus, the Board finds that the reports from Dr. Ramsey are insufficient to establish that appellant sustained an employment-related injury.

In support of his claim, appellant also submitted evidence from a nurse practitioner. The February 20, 2017 nurse practitioner's report does not constitute competent medical evidence because a nurse practitioner is not considered a "physician" as defined under FECA.¹² Consequently, the nurse's medical findings and opinions will not suffice for establishing causal relationship.¹³ For these reasons, the note of the nurse practitioner is insufficient to establish appellant's burden of proof with respect to causal relationship.

As appellant has not submitted rationalized medical evidence to support his allegation that he sustained a left shoulder condition causally related to the accepted employment factors, he has not met his burden of proof to establish his claim.

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 left shoulder condition causally related to the accepted factors of his federal employment.

¹¹ *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹² Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹³ *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board