

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

K.C., Appellant	)	
	)	
and	)	<b>Docket No. 18-0529</b>
	)	<b>Issued: January 21, 2020</b>
<b>DEPARTMENT OF THE NAVY, FLEET</b>	)	
<b>READINESS CENTER, Cherry Point, NC,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 18, 2018 appellant, through counsel, filed a timely appeal from a December 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted May 30, 2013 employment incident.

## FACTUAL HISTORY

On June 3, 2013 appellant then a 62-year-old bearing worker, filed a traumatic injury claim (Form CA-1) alleging that on May 30, 2013 he injured his right shoulder when removing trays from a rack with his right hand while in the performance of duty.

A June 4, 2013 magnetic resonance imaging (MRI) scan of appellant's right shoulder interpreted by Dr. Suzette Casal, a diagnostic radiologist, revealed a chronic full-thickness tear of the supraspinatus and infraspinatus tendons and joint effusion with multiple loose bodies and moderate acromioclavicular degenerative changes with inferior osteophyte impression on the suprapinatus and a large joint effusion with multiple loose bodies. A June 4, 2013 x-ray of the right shoulder read by Dr. Randy Lao, a Board-certified diagnostic radiologist, revealed no acute bony injury and right acromioclavicular joint osteoarthritis.

In a November 8, 2013 report, Dr. Barton Arthur, a Board-certified orthopedic surgeon, explained that appellant had an onset of right shoulder pain approximately five months prior, due to lifting at work and diagnosed a rotator cuff tear. He provided a form report on February 10, 2014 advising that appellant was scheduled to undergo right shoulder surgery and would be off work for one month. Dr. Arthur provided a February 11, 2014 operative report, wherein he indicated that appellant had undergone an arthroscopy of the right shoulder. He indicated that the right rotator cuff tear was inoperable. In a March 18, 2014 report, Dr. Arthur related that appellant could return to work with restrictions.

In a development letter dated June 29, 2016, OWCP advised appellant that additional factual and medical evidence was needed to establish his claim.<sup>3</sup> It requested that he submit a report from his attending physician which included a medical opinion as to whether the alleged employment incident caused or aggravated his right shoulder medical condition(s). OWCP afforded appellant 30 days within which to submit the requested information.

Appellant provided a narrative statement dated July 27, 2016 recounting the history of the alleged May 30, 2013 employment injury, during which time he felt something ripping in his shoulder. No additional medical evidence was received.

By decision dated August 11, 2016, OWCP denied appellant's claim. It found that appellant established that the May 30, 2013 incident occurred in the performance of duty as alleged and that a medical condition was diagnosed. However, OWCP also found that causal relationship

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<sup>3</sup> In a letter dated December 11, 2015, counsel for appellant noted that medical documentation was provided. He inquired into the status of appellant's claim and whether it would be accepted for his shoulder condition. In a letter dated December 18, 2015, OWCP advised counsel that the claim was a short form closed claim. Appellant thereafter filed a notice of recurrence of disability (Form CA-2a) on February 15, 2016.

had not been established between the accepted employment incident and the diagnosed right shoulder condition.

On August 25, 2016 counsel requested a telephonic hearing before an OWCP hearing representative, which was held on April 19, 2017.

By decision dated June 6, 2017, OWCP's hearing representative affirmed the August 11, 2016 decision.

On September 29, 2017 appellant, through counsel, requested reconsideration.

In a September 6, 2016 report, Dr. Arthur explained that appellant reported that on May 30, 2013 he was lifting trays at work when he hurt his shoulder.<sup>4</sup> Dr. Barton noted that appellant had no prior shoulder problems with his right shoulder. He opined that, based upon his review of the records, the history by appellant corresponded to the injury for which he treated appellant. Dr. Barton advised that "[t]his injury would, in my opinion, be causative to this shoulder condition due to the patient's report that there was no previous shoulder problem or other injury before that."

By decision dated December 6, 2017, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the

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<sup>4</sup> The date of injury noted by Dr. Arthur, May 3, 2017 appears to be a typographical error.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>8</sup> *K.K.*, Docket No. 19-1193 (issued October 21, 2019); *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).

<sup>9</sup> *R.C.*, Docket No. 19-0376 (issued July 15, 2019). *T.H.*, 59 ECAB 388, 393-94 (2008).

employment incident at the time, place, and in the manner alleged.<sup>10</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>12</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted May 30, 2013 employment incident.

In support of his claim, appellant submitted multiple reports from Dr. Arthur. Dr. Arthur's treatment notes from November 8, 2013, contained generic descriptions of onset of right shoulder pain approximately five months prior due to lifting. The Board has held that pain is a symptom and not a compensable medical diagnosis.<sup>14</sup> Dr. Arthur also diagnosed a rotator cuff tear; however, he offered no opinion on causal relationship. 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.<sup>15</sup>

Dr. Arthur provided a form report dated February 10, 2014 advising that appellant was scheduled to undergo right shoulder surgery and that he would be off work for one month. He provided a copy of the operative report, and submitted continuing reports noting appellant's work restrictions. However, these reports are also of no probative value as they provide no opinion on causal relationship.<sup>16</sup>

In a September 6, 2016 report, Dr. Arthur recounted that appellant reported that he was at work lifting trays and hurt his right shoulder. He explained that appellant had no prior shoulder problems with his right shoulder. The Board has held that an opinion that a condition is causally

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<sup>10</sup> *C.L.*, Docket No. 18-1732 (issued April 2, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> *C.L.*, *id.*; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> *K.K.*, *supra* note 8; *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

<sup>13</sup> *K.K.*, *id.*; *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

<sup>14</sup> *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

<sup>15</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *Id.*

related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>17</sup> Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to a diagnosed condition, Dr. Arthur's opinion is of limited probative value and insufficient to establish causal relationship.<sup>18</sup>

OWCP also received a number of diagnostic studies. However, the Board has explained that diagnostic studies lack probative value as they do not address whether the accepted employment incident caused any of the diagnosed conditions.<sup>19</sup>

Because the medical reports submitted by appellant do not address how the May 30, 2013 employment incident caused or aggravated a right shoulder condition, the Board finds that appellant has not met his burden of proof.

On appeal counsel argues that the medical evidence is sufficient to establish appellant's claim. However, as explained in the above analysis, the medical evidence of record was insufficient to establish causal relationship; therefore, appellant has not established 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 established a right shoulder condition causally related to the accepted May 30, 2013 employment incident.

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<sup>17</sup> *M.B.*, Docket No. 19-0840 (issued October 2, 2019). *John F. Glynn*, 53 ECAB 562 (2002).

<sup>18</sup> *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

<sup>19</sup> *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2020  
Washington, DC

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

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

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