

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

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I.M., Appellant)	
)	
and)	Docket No. 19-1038
)	Issued: January 23, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Raleigh, NC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2019 appellant filed a timely appeal from a March 27, 2019 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish cervical, lumbar, or left shoulder conditions causally related to the accepted February 17, 2017 employment incident.

FACTUAL HISTORY

On March 2, 2017 appellant, then a 59-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 17, 2017 he sustained a left spine and shoulder

¹ 5 U.S.C. § 8101 *et seq.*

injury handling postcons while in the performance of duty. In a narrative statement explaining the events of February 17, 2017, appellant related that he was standing on a ramp when postcons started quickly coming off the truck trailer. He could not get out of the way in time and he was wedged between the trailer and the ramp. Appellant explained that he pulled and twisted his left side because he used his left hand to try to stop the postcons from crashing into him while still holding a container in his right hand. He then unloaded a truck full of containers and noticed left shoulder stiffness.

In support of his claim, appellant submitted a March 2, 2017 hospital visit summary which noted that he had been seen by Dr. Lawrence Kendall Conger, a specialist in emergency medicine, for a diagnosis of mid back pain.

By letter dated March 3, 2017, the employing establishment controverted the claim. It argued that appellant had a previously approved OWCP claim, File No. xxxxxx600, for which he had been on the periodic rolls for the last five years and that he had only recently returned to work on February 7, 2017 in a limited-duty assignment within his work restrictions.² The employing establishment asserted that appellant did not report his current alleged injury until 13 days following the incident and his claim should be denied.

By development letter dated March 9, 2017, OWCP informed appellant that he had not submitted sufficient factual or medical evidence to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the information. Appellant did not respond.

By decision dated April 10, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the February 17, 2017 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 26, 2018 appellant requested reconsideration of OWCP's April 10, 2017 decision. In a narrative statement dated April 14, 2017, he reported that he did not delay in filing his claim and that he had attempted to leave a message with the employing establishment's manager's office on February 21, 2017. Appellant further stated that he was provided the wrong forms at the outset of his injury which further delayed the filing of his claim.

In support of his claim, appellant submitted work restrictions from a physician assistant dated March 24 through April 11, 2017. He also submitted a September 7, 2017 note from a physician assistant which indicated that appellant's February 17, 2017 employment incident caused a whiplash injury, requiring treatment of the cervical and lumbar spine.

In a March 30, 2017 initial consult report, Dr. Cary Idler, a Board-certified orthopedic surgeon, noted appellant's February 17, 2017 employment incident, provided findings on physical

² The record reveals that appellant has filed several claims with OWCP during the period June 24, 1996 through December 19, 2007. The record before the Board contains no other information pertaining to the prior claims.

examination, and reviewed x-ray studies of the cervical, lumbar, and thoracic spine. He related appellant's complaints of neck and back pain and diagnosed low back pain with bilateral sciatica.

In a July 13, 2017 medical report, Dr. Kevin Speer, a Board-certified orthopedic surgeon, reported that appellant returned for evaluation with a chief complaint of left shoulder pain. He noted that appellant had prior degenerative findings in his left shoulder with no pain until he strained his shoulder at work on February 17, 2017. Dr. Speer reported that a magnetic resonance imaging (MRI) scan of appellant's left shoulder revealed extensive degenerative pathology and only a partial thickness supraspinatus tendon tear. He noted that appellant had severe biceps tendon extra-articular tenosynovitis. Dr. Speer diagnosed incomplete tear of left rotator cuff, and concluded that appellant's on-the-job injury strained a previously degenerative shoulder.

By decision dated June 26, 2018, OWCP affirmed the April 10, 2018 decision, as modified, finding that the evidence of record established that the February 17, 2017 employment incident occurred as alleged. It denied the claim, however, finding that appellant had not established that his diagnosed conditions were causally related to the accepted February 17, 2017 employment incident.

On January 2, 2019 appellant requested reconsideration of OWCP's decision.

OWCP thereafter received a July 26, 2018 duty status report (Form CA-17), bearing an illegible signature, which related appellant's work restrictions. It also received progress notes from a physician assistant dated May 4 through September 7, 2017 which documented appellant's treatment for lumbar radiculopathy, cervicalgia, and pain in the left shoulder.

By decision dated March 27, 2019, OWCP denied modification of the June 26, 2018 decision finding that the evidence of record was insufficient to establish that a diagnosed medical condition was causally related to the accepted February 17, 2017 employment incident.

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, and that any disability or medical condition for which compensation is claimed is causally related

³ *Supra* note 1.

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is required to establish causal relationship. 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 incident.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that cervical, lumbar, or left shoulder conditions causally related to the accepted February 17, 2017 employment incident.

In support of his claim, appellant submitted a July 13, 2017 medical report from Dr. Speer who provided a diagnosis of incomplete tear of left rotator cuff. The Board finds that the report of Dr. Speer is not well rationalized.¹¹ While the physician identified a firm medical diagnosis pertaining to the left shoulder, he failed to provide a sufficient explanation, based on medical rationale, on the cause of appellant's condition, only generally noting that appellant's on-the-job injury strained a previously degenerative shoulder.¹² A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident as sufficient to result in the diagnosed medical conclusion is insufficient to meet a claimant's burden of proof to establish a claim.¹³ The Board has found that a physician must provide a narrative description of

⁵ *T.H.*, Docket No. 18-1736 (issued March 13 2019); *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 *T.E.*, Docket No. 18-1595 (issued March 13, 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).

⁷ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, *supra* note 7; *Robert Morris*, 48 ECAB 238 (1996).

¹¹ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

¹² *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

¹³ *D.L.*, Docket No. 19-1176 (issued December 13, 2019); *F.D.*, Docket No. 19-0932 (issued October 3, 2010).

the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical conditions.¹⁴ Furthermore, Dr. Speer has indicated that appellant had a preexisting degenerative left shoulder condition, but failed to discuss appellant's medical history. A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.¹⁵ Therefore, Dr. Speer's report is insufficient to establish appellant's claim.¹⁶

The remaining medical evidence of record is also insufficient to establish appellant's traumatic injury claim. The reports from Dr. Conger and Dr. Idler simply noted pain diagnoses. The Board has held that pain is a symptom, not a compensable medical diagnosis.¹⁷ The Board has held that medical reports which do not provide a firm diagnosis and render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.¹⁸

The physician assistant notes are also of no probative value in establishing causal relationship. Such healthcare providers are not considered "physician[s]" as defined under FECA.¹⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²⁰

OWCP also received a July 26, 2018 Form CA-17 bearing an illegible signature. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²¹

The Board finds that as appellant did not submit rationalized medical evidence establishing causal relationship between the February 17, 2017 employment incident and his alleged cervical, lumbar, and left shoulder conditions, he has not met his burden of proof.²²

¹⁴ See *V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *R.E.*, Docket No. 14-0868 (issued September 24, 2014); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805(e) (January 2013).

¹⁶ *K.S.*, Docket No. 18-1781 (issued April 8, 2019).

¹⁷ *G.U.*, Docket No. 19-1002 (issued November 25, 2019).

¹⁸ *V.U.*, Docket No. 19-0755 (issued November 25, 2019); *LB.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, No. 17-1549 (issued July 6, 2018).

¹⁹ 5 U.S.C. § 8102(2) of FECA provides that 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.

²⁰ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

²¹ *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

²² *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

Appellant may submit new evidence or argument with a written request for reconsideration, to OWCP within one year of the Board's 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 that a cervical, lumbar, or left shoulder condition was causally related to the accepted February 17, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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