

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

_____)	
W.R., Appellant)	
)	
and)	Docket No. 20-1101
)	Issued: January 26, 2021
DEPARTMENT OF THE AIR FORCE,)	
SEYMOUR JOHNSON AIR FORCE BASE, NC,)	
Employer)	
_____)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 30, 2020 appellant filed a timely appeal from an April 6, 2020 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, following the April 6, 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. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted March 27, 2019 employment incident.

FACTUAL HISTORY

On July 2, 2019 appellant, then a 28-year-old aircraft ordnance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2019 he sustained left shoulder contusion when one of the munitions he was unloading from an aircraft dropped and swung out, striking his shoulder while in the performance of duty. He stopped work on March 27, 2019 and returned to work on March 28, 2019.³

In support of his claim, appellant submitted an official copy of his aircraft ordnance systems mechanic position description and a July 8, 2018 notification of personnel action (Form SF-50).

By development letter dated July 15, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical evidence necessary to establish his claim. OWCP afforded him 30 days to submit the necessary evidence.

In a March 27, 2019 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care. In an attending physician's report, Part B of Form CA-16, of even date, John Delucas, a certified physician assistant, reported that appellant sustained a left shoulder injury while loading an aircraft at work. He indicated that appellant had no prior injury and diagnosed left shoulder contusion.

In a May 30, 2019 medical report, Dr. David M. Dare, an orthopedic surgery specialist, noted that appellant presented with shoulder pain. He reported that his left shoulder was struck by a heavy object while unloading a jet at work. Appellant recounted immediate shoulder pain after the incident. Dr. Dare indicated that appellant received a subacromial steroid injection, anti-inflammatories, and underwent physical therapy, without any relief. He conducted a physical examination and reviewed a magnetic resonance imaging (MRI) scan of the left shoulder, which revealed some superficial flaying on the articular side of the supraspinatus and irregularity of the posterior and posterior inferior labrum with a small cyst formation. Dr. Dare diagnosed left shoulder pain and possible cervical radiculopathy.

Left shoulder arthrograms dated July 10 and 19, 2019 revealed tearing of the posterior and inferior glenoid labrum, scarring of the posterior band, as well as intact rotator cuff tendons and posterior acromial downsloping.

In a July 26, 2019 witness statement, S.P, appellant's coworker, indicated that on March 27, 2019, during weapons standardization load training, he and appellant were unloading

³ In an undated work status report (Form CA-3), the employing establishment informed OWCP that appellant had stopped work on March 27, 2019 after filing his claim and returned to work without any restrictions on March 28, 2019.

an aircraft when the munition dropped, shifted, and hit appellant in the shoulder. He attested that this incident knocked appellant 5 to 10 feet to the outer side of the fuselage, causing him to land on his back. Appellant was removed from the loading pad while the munition was placed back on the storage trailer. S.P. thereafter notified their supervisor, who instructed him to drive appellant to urgent care.

In a July 26, 2019 medical report, Dr. Dare indicated that appellant's symptoms included popping, grinding, loss of motion, tingling, burning, and aching. He noted that he had no prior surgery or relevant medical history. Dr. Dare indicated that appellant elected to proceed with surgery. In a duty status report (Form CA-17) of even date, Dr. Dare diagnosed tear of the posterior and inferior labrum.

In an August 16, 2019 work status note, Dr. Dare provided work restrictions.

By decision dated August 23, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted March 27, 2019 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

A May 8, 2019 MRI scan of the left upper extremity joint revealed partial thickness undersurface tearing/fraying of much of the supraspinatus at the critical zone and extending distally. It demonstrated no full-thickness rotator cuff tear, but indicated probable posterior inferior labral tear with possible tiny paralabral cyst.

Appellant also submitted an undated Occupational Safety and Health Administration (OSHA) Injury and Illness Incident Report (OSHA Form 301).

In an August 27, 2019 statement, the employing establishment confirmed that appellant was injured on March 27, 2019 while in the performance of duty.

In an August 27, 2019 medical report, Dr. Dare diagnosed a posterior labral tear and noted that appellant developed this condition after being struck by a heavy object at work. He opined, given appellant's mechanism of injury and subsequent pain, that it was "certainly feasible" that his injury was sustained at the time of the employment incident.

On September 4, 2019 appellant requested reconsideration.

Appellant subsequently submitted an unsigned Form CA-17 dated July 26, 2019.

In a November 4, 2019 memorandum, Dr. Dare reiterated that appellant's injury occurred on March 27, 2019 when he was struck by an object while unloading a jet at work. He diagnosed other left shoulder articular cartilage disorders recurrent left shoulder dislocation. Dr. Dare indicated that appellant underwent left shoulder arthroscopic surgery on November 4, 2019. He provided work restrictions.

By decision dated November 26, 2019, OWCP affirmed, as modified, the August 23, 2019 decision, finding that, while the medical evidence of record was sufficient to establish the medical

component of fact of injury, it was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted March 27, 2019 employment incident.

On January 7, 2020 appellant requested reconsideration.

In a July 2, 2019 medical report, Dr. Dare noted that appellant was previously seen for left shoulder pain after a work-related injury on March 27, 2019. He conducted a physical examination and diagnosed left shoulder pain with possible biceps labral pathology with some possible overlying impingement.

Appellant submitted November 4, 2019 discharge instructions.

In a November 6, 2019 attending physician's report (Form CA-20), Dr. Dare diagnosed other articular cartilage disorders and checked a box marked "Yes" to indicate that appellant's conditions were caused or aggravated by an employment activity.

In a November 20, 2019 attending physician's statement of disability, Dr. Dare diagnosed other articular cartilage disorders of the left shoulder and recurrent dislocation of the left shoulder. He advised that appellant could not drive while wearing a sling.

In a December 19, 2019 letter, Dr. Dare opined that appellant's left shoulder injury was "more likely than not" caused by the accepted March 27, 2019 employment incident.

By decision dated April 6, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit

⁴ *Supra* note 1.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a left shoulder contusion causally related to the accepted March 27, 2019 employment incident.

On the date of injury, appellant was seen by Mr. Delucas, a certified physician assistant. In an attending physician's report, Part B of Form CA-16, Mr. Delucas reported that appellant had sustained a left shoulder injury while loading an aircraft at work. He indicated that appellant had no prior injury and diagnosed left shoulder contusion.

As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board finds that appellant has met his burden of proof to establish a left shoulder contusion causally related to the accepted March 27, 2019 employment incident.¹¹

The Board further finds, however, that the medical evidence of record is insufficient to establish additional left shoulder conditions causally related to the accepted employment incident.

In an August 27, 2019 medical report, Dr. Dare opined, given appellant's mechanism of injury and subsequent pain, that it was certainly feasible that he sustained a posterior labral tear when he was struck by a heavy object at work. While he referenced a work-related injury, Dr. Dare did not offer any medical rationale sufficient to explain how or why he believed the accepted March 27, 2019 employment incident could have resulted in or contributed to the posterior labral tear. The Board has consistently held that, if the physician is opining that work activity caused a diagnosed medical condition, there must be a clear explanation as to the mechanism of injury and

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

how the work activity caused the diagnosed medical condition.¹² Without explaining how being struck by a heavy object in the left shoulder caused or contributed to the diagnosed condition, this report is of limited probative value.¹³

Dr. Dare, in his December 19, 2019 letter, opined that appellant's left shoulder injury was "more likely than not" caused by the accepted March 27, 2019 employment incident. However, his opinion is speculative in nature. The Board has held that medical opinions that are speculative and equivocal are of diminished probative value.¹⁴ Moreover, Dr. Dare still failed to explain with rationale how the accepted March 27, 2019 employment incident caused a diagnosed medical condition. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value¹⁵ Therefore, Dr. Dare's December 19, 2019 letter is insufficient to establish appellant's claim.

In a November 6, 2019 Form CA-20, Dr. Dare diagnosed other articular cartilage disorders and checked a box marked "Yes" indicating that appellant's conditions were caused or aggravated by an employment activity. The Board has held, however, that medical evidence on causal relationship that consists only of a physician checking "Yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value.¹⁶ Although the Form CA-20 contains a medical diagnosis, without any explanation or rationale for the conclusion reached, this report is insufficient to establish causal relationship.¹⁷

In a July 26, 2019 Form CA-17, Dr. Dare diagnosed tear of the posterior and inferior labrum. In a November 4, 2019 memorandum and a November 20, 2019 attending physician's statement of disability, he noted that appellant was struck by an object at work while unloading a jet. Dr. Dare diagnosed other left shoulder articular cartilage disorders and recurrent left shoulder dislocation. He, however, did not provide a cause of his diagnosed conditions. 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.¹⁸ Thus, these reports are also insufficient to establish appellant's claim.

In a May 30, 2019 medical report, Dr. Dare diagnosed left shoulder pain and possible cervical radiculopathy. Likewise, in his July 2, 2019 medical report, he diagnosed left shoulder

¹² A.S., Docket No. 16-1028 (issued August 17, 2016).

¹³ See A.P., Docket No. 19-0224 (issued July 11, 2019).

¹⁴ H.A., Docket No. 18-1455 (issued August 23, 2019).

¹⁵ J.P., Docket No. 20-0381 (issued July 28, 2020); R.L., Docket No. 20-0284 (issued June 30, 2020).

¹⁶ S.F., Docket No. 16-1276 (issued October 10, 2017); N.L., Docket No. 17-0454 (issued April 6, 2017); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁷ N.V., Docket No. 17-0107 (issued July 3, 2017); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box marked "Yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

¹⁸ See R.T., Docket No. 19-1346 (issued December 4, 2019); L.B., Docket No 18-0533 (issued August 27, 2018); *Willie M. Miller*, 53 ECAB 697 (2002).

pain with possible biceps labral pathology with some possible overlying impingement. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁹ As noted, medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.²⁰ As such, these medical reports are insufficient to meet appellant's burden of proof.

In a July 26, 2019 medical report, Dr. Dare indicated that appellant had no prior surgery or relevant medical history. Similarly, in his August 16, 2019 work status note, he provided work restrictions. However, Dr. Dare failed to diagnose a medical condition.²¹ Therefore, these report and note are also insufficient to establish appellant's claim.

Appellant also submitted a July 26, 2019 Form CA-17 containing no signature. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²² Therefore, this report has no probative value and is insufficient to establish appellant's claim.

Lastly, the record contains diagnostic reports dated May 8, July 10 and 19, 2019. The Board has held that diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between the traumatic incident and the diagnosed conditions.²³ These reports are, therefore, insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing additional left shoulder conditions causally related to the accepted March 27, 2019 employment incident, the Board finds that he has not met 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 established a left shoulder contusion causally related to the accepted March 27, 2019 employment incident. The Board further finds, however, that

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

²⁰ *Supra* note 16.

²¹ *Id.*

²² *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

²³ *S.M.*, Docket No. 20-0241 (issued August 25, 2020); *K.S.*, Docket No. 19-1623 (March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

appellant has not met his burden of proof to establish other left shoulder conditions causally related to the accepted March 27, 2019 employment incident.²⁴

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: January 26, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁴ The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. §§ 10.300 and 10.304; *R. W.*, Docket No. 18-0894 (issued December 4, 2018) *Tracy P. Spillane*, 54 ECAB 608 (2003).