

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted January 24, 2018 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 24, 2018 appellant, then a 37-year-old cemetery caretaker, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced radiating right shoulder pain while tamping dirt around a headstone in the performance of duty. He stopped work on January 24, 2018.

The employing establishment executed an authorization for examination and/or treatment (Form CA-16) dated January 24, 2018, which noted that appellant was authorized to receive treatment for right shoulder pain.

A January 24, 2018 x-ray of appellant's right shoulder revealed no acute fracture or dislocation.

In a January 24, 2018 medical report, Dr. David Lawrence, Board-certified in emergency medicine, noted that appellant presented with right shoulder pain, which occurred while at work. Appellant reported that his job required repetitive motion of the right arm and shoulder and indicated that he felt a pop in the right shoulder and radiating pain down the humerus. Dr. Lawrence diagnosed right shoulder strain.

On February 1, 2018 appellant was treated by Dr. Manish Chadha, a Board-certified internist, who placed him on light duty pending an evaluation by an orthopedist.

On February 9, 2018 Dr. Richard M. Savino, a Board-certified orthopedic surgeon treated appellant for right shoulder pain, which he developed at work on January 24, 2018 and diagnosed acute pain and primary osteoarthritis of the right shoulder.

A February 20, 2018 magnetic resonance imaging (MRI) scan of the right shoulder revealed significant narrowing of the glenohumeral joint with posterior subluxation of the humeral head, circumferential labral tear with diffuse biceps tendinopathy, adhesive capsulitis, and acromioclavicular joint hypertrophy with rotator cuff tendinopathy.

In a February 28, 2018 report, Dr. Savino diagnosed primary osteoarthritis of the right shoulder, acute pain of the right shoulder, and tear of the right glenoid labrum. He opined that appellant's right shoulder preexisting condition was exacerbated by the work injury. Dr. Savino

³ Docket No. 19-1906 (issued April 1, 2020).

concluded that appellant's work was physical which "could have accelerated the wearing of the shoulder, but did not cause premature wearing of the shoulder."

In medical reports dated March 28 and April 25, 2018, Dr. Savino reiterated his diagnoses of primary osteoarthritis of the right shoulder, acute pain of the right shoulder, and tear of the right glenoid labrum, and returned appellant to full-duty work.

By decision dated May 10, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted January 24, 2018 employment incident.

In medical reports dated August 15 and September 11, 2018, Dr. Savino reiterated his diagnoses. He opined that appellant had a degenerative process in the right shoulder which was preexisting at the time of the injury and was exacerbated by his work injury. Dr. Savino explained that the work injury could have caused a torn labrum; however, labral tears also occur over time with degenerative shoulders and it was "hard to say if the injury caused it."

On April 24, 2019 appellant through counsel, requested reconsideration and submitted additional medical evidence.

In a March 27, 2019 medical report, Dr. Eric Keefer, a Board-certified orthopedist, diagnosed a tear of the right glenoid labrum and primary osteoarthritis of the right shoulder. He also noted that appellant had mild asymptomatic shoulder cartilage wear prior to the January 24, 2018 employment incident and opined that repetitive aggressive use of the shoulder relating to setting headstones caused the tear.

By decision dated July 23, 2019, OWCP denied modification of the May 10, 2018 decision.

On September 17, 2019 appellant, through counsel, appealed to the Board. By decision dated April 1, 2020, the Board affirmed OWCP's July 23, 2019 decision.⁴

On June 17, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a May 6, 2020 medical report, Dr. Keefer diagnosed tear of the right glenoid labrum and again noted that appellant had mild asymptomatic shoulder cartilage wear prior to the January 24, 2018 employment incident. He again opined that repetitive aggressive use of the shoulder relating to setting headstones caused the tear. Dr. Keefer explained that setting and lifting headstones placed a significant traction force on the shoulder and labrum which "can certainly cause the labral damage demonstrated" on the MRI scan. He further explained that, after appellant placed the headstones on the ground, the ground had to be compressed to stabilize the headstones, which required at least 80 to 100 strikes around the headstones. Dr. Keefer noted that appellant on average set up 15 to 30 individual headstones daily. He opined that appellant's shoulder sustained

⁴ *Id.*

thousands of impacts per day that created a strain on the shoulder joint which did result in tearing of the labrum.

By decision dated September 10, 2020, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ and 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.⁷ 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.⁸

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁹ There are 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.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹² *S.S.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.¹⁴

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted January 24, 2018 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's July 23, 2019 merit decision because the Board considered that evidence in its April 1, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹⁶

Dr. Keefer, in his May 6, 2020 medical report, diagnosed tear of the right glenoid labrum and noted that appellant had mild asymptomatic shoulder cartilage wear prior to the January 24, 2018 employment incident. He opined that repetitive aggressive use of the shoulder relating to setting headstones caused the tear. Dr. Keefer explained that daily setting and lifting headstones placed a significant traction force on the shoulder and labrum, as the ground often had to be compressed with 80 to 100 strikes after appellant placed the headstones on the ground. He noted that appellant set up approximately 15 to 30 headstones each day and opined that this created a strain on the shoulder joint and resulted in tearing of the labrum. While Dr. Keefer provided affirmative opinions which supported causal relationship, he did not specifically differentiate between the effects of the accepted January 24, 2018 employment incident and appellant's preexisting condition.¹⁷ As noted above, in any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the medical evidence must provide a rationalized opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁸ Thus, Dr. Keefer's May 6, 2020 medical report is insufficient establish causal relationship.

¹⁴ *Id.*

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁶ See *P.B.*, Docket No. 20-0124 (issued March 10, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

¹⁷ See *C.B.*, Docket No. 20-1452 (issued February 24, 2021).

¹⁸ *Supra* note 13. See also *M.C.*, Docket No. 20-0125 (issued July 15, 2020).

As appellant has not submitted rationalized medical evidence establishing causal relationship between his right shoulder condition and the accepted January 24, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his claim.¹⁹

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 right shoulder condition causally related to the accepted January 24, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 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

¹⁹ The record contains page one of an authorization for examination and/or treatment (Form CA-16) dated January 24, 2018. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). *J.G.*, Docket No. 17-1062 (issued February 13, 2018).