United States Department of Labor
Employees' Compensation Appeals Board

O.N., Appellant	)	
and	)	**Docket No. 20-0902**
	)	**Issued: May 21, 2021**
U.S. POSTAL SERVICE, JAF/MORGAN PROCESSING & DISTRIBUTION CENTER, New York, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2020 appellant, through counsel, filed a timely appeal from a February 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the February 27, 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 right shoulder condition causally related to the accepted May 3, 2019 employment incident.

FACTUAL HISTORY

On July 2, 2019 appellant, then a 60-year-old building equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2019 he injured his right shoulder when removing a cooking tower fan guard that slipped out of his hand while in the performance of duty. He stopped work on May 7, 2019.

In an undated narrative statement, appellant explained that he was assigned to work without a partner and was instructed to check a cooling tower. He related that, in the course of the inspection, the tower fell and when he tried to grab it, he pulled his right arm and shoulder. Appellant explained that the initial pain was minimal; however, as time progressed, he was unable to move his arm without pain. He noted that he remained off work until May 28, 2019.

Dr. Joseph Quist, Board-certified in critical care medicine, provided a series reports. In a May 13, 2019 work excuse note, he indicated that appellant could return to work on May 29, 2019 following a right shoulder injury. In a May 20, 2019 work excuse note, Dr. Quist advised that appellant had pain in his right shoulder and difficulty lifting heavy objects, and that appellant could return to work on May 28, 2019. In a July 3, 2019 work excuse, he noted that appellant had restrictions regarding heavy lifting.

In a July 12, 2019 disability certificate, Dr. Shahid Mian, a Board-certified orthopedic surgeon, advised that appellant should remain off work. In a separate disability certificate also dated July 12, 2019, he indicated that appellant was temporarily totally disabled from July 13 to 26, 2019.

In a July 26, 2019 duty status report (Form CA-17), Dr. Mian related appellant's history of injury. He noted appellant's physical findings including tenderness in his right shoulder and decreased range of motion (ROM). In response to a question as to the diagnosis due to injury, Dr. Mian indicated a tear of rotator cuff and impingement syndrome. He provided a separate work excuse also dated July 26, 2019, and indicated that appellant was unable to return to work. Dr. Mian requested authorization for arthroscopic surgery of the right shoulder.

On July 29, 2019 appellant filed a notice of recurrence of medical treatment (Form CA-2a), alleging a recurrence on July 2, 2019.

In an August 2, 2019 development letter, OWCP advised appellant that, when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. It requested that he submit factual and medical information, including a comprehensive report from his physician regarding how a specific work incident contributed to his claimed injury. OWCP provided appellant with a questionnaire for completion and afforded him 30 days to submit the

necessary evidence. It requested that he clarify whether he was filing a traumatic injury or occupational disease claim.[4]

OWCP received a May 6, 2019 x-ray of appellant's right shoulder which revealed acromioclavicular (AC) osteoarthritis. A July 17, 2019 magnetic resonance image (MRI) scan of the right shoulder revealed findings to include a full-thickness tear of the supraspinatus tendon, an intermediate grade partial thickness tear of the infraspinatus, an intermediate grade partial thickness tear of the subscapularis, a type II superior labrum anterior superior (SLAP) tear, bursitis, muscle atrophy, and edema.

In a July 26, 2019, report, Dr. Mian diagnosed a tear of the rotator cuff, shoulder labrum SLAP tear, bursitis, tenosynovitis, and impingement syndrome, right shoulder.

In an August 8, 2019 response to OWCP's questionnaire, appellant denied any other injuries prior to, or after the work injury. He confirmed that he was filing a traumatic injury claim.

In an August 27, 2019 attending physician's report (Form CA-20), Dr. Mian noted the history of appellant's injury, physical examination findings including right shoulder joint stiffness, and diagnoses of a right torn rotator cuff, SLAP tear and bursitis. He checked a box marked "Yes" in response to whether he believed that the conditions found were caused or aggravated by an employment activity.

By decision dated September 3, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not established a causal relationship between his diagnosed right shoulder rotator cuff tear, SLAP tear, and bursitis and the accepted May 3, 2019 employment incident. It noted that Dr. Mian failed to consider appellant's preexisting conditions or explain how the underlying conditions were aggravated or precipitated by the employment incident.[5]

On September 11, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on January 14, 2020. Appellant's counsel noted that appellant had a prior work injury in 2004 which involved a motor vehicle accident. Appellant explained that he was examined as a precaution following the 2004 motor vehicle accident, but that he did not sustain a right shoulder injury. He noted that he only had one emergency room visit and no follow-up or additional treatment following that event.

In a July 12, 2019 report, Dr. Mian noted that, on May 3, 2019 appellant was removing a metal guard of a cooling tower fan when a piece slipped out of his hand, he was trying to hold on to it, and felt a sharp pain with a pulling sensation in the right shoulder. He indicated the pain worsened and a few days later, appellant sought treatment at an emergency room. Dr. Mian

[4] In a separate letter also dated August 2, 2019, OWCP explained that no further action would be taken on the claim for recurrence, as his initial claim was under development.

[5] OWCP referred to a prior claim OWCP File No. xxxxxx431 with a July 15, 2004 date of injury. It noted that appellant's vehicle was rear-ended by another vehicle and appellant claimed an injury to his right arm/shoulder. OWCP noted that he was prescribed Naprosyn and explained that this was typically used to treat pain or inflammation caused by conditions such as rheumatoid arthritis, osteoarthritis, ankylosing spondylitis, tendinitis, and bursitis. It explained that it was unclear whether the alleged May 3, 2019 work injury caused or contributed to the diagnosed conditions or if they were the result of a preexisting condition.

examined appellant's right shoulder and provided findings which included tenderness to the AC joint, greater tuberosity, positive impingement sign, apprehension test, cross-arm test, clicking on abduction and O'Brien's test, and decreased ROM. He diagnosed tear of the right rotator cuff and impingement syndrome. Dr. Mian noted that appellant stopped working after July 3, 2019, because the employing establishment did not accept appellant's limited-duty work restrictions.

In July 26, 2019 notes, Dr. Mian reported the results of the July 17, 2019 MRI scan and updated the diagnoses to a tear of the right rotator cuff, a right SLAP tear, right bursitis, right tenosynovitis, and right impingement syndrome. He requested authorization for right shoulder arthroscopy and opined that appellant was temporarily totally disabled.

Dr. Mian continued to treat appellant on September 6, October 18, and November 22, 2019. He reiterated his prior findings and diagnoses to include tear of right rotator cuff, SLAP tear, bursitis, tenosynovitis, and impingement syndrome. Dr. Mian indicated that appellant was temporarily totally disabled and was awaiting authorization for physical therapy and surgery.

In a January 27, 2020 report, Dr. Mian noted appellant's symptoms, functional difficulties, positive findings upon examination, and MRI scan results. He diagnosed a right shoulder rotator cuff tear, Type 2 SLAP tear, biceps tendon tear, and bursitis. Dr. Mian recommended physical therapy and surgical arthroscopy and advised that appellant was temporarily totally disabled. He provided an opinion on causal relationship and explained that appellant worked as a mechanic with duties that included fixing and building machinery, boilers, changing air condition filters, mailboxes, and lockers. Dr. Mian explained that appellant's duties required frequent lifting, carrying, pulling, and pushing. He noted the history of injury and related that appellant reported that "while removing the metal guard of a cooling tower fan which according to the patient is heavy, it slipped out of [appellant's] hand, pulling right arm causing severe pain to right shoulder." Dr. Mian opined that appellant's right shoulder injury was causally related to May 3, 2019 accident.

By decision dated February 27, 2020, an OWCP hearing representative affirmed the September 3, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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

[6] *See supra* note 2.

[7] *See A.O.*, Docket No. 20-0038 (issued August 26, 2020); *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).

employment injury.[8] 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.[9]

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 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.[10]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] 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.[12]

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.[13]

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 3, 2019 employment incident.

OWCP received work excuse notes from Dr. Quist dated May 13 and 20 and July 3, 2019. It also received disability certificates from Dr. Mian dated July 12 and 26, 2019, as well as reports dated July 12 and 26, September 6, October 18, and November 22, 2019. Dr. Mian provided diagnoses including tear of right rotator cuff, type II SLAP tear, bursitis, muscle atrophy and edema, tenosynovitis, and impingement syndrome. However, neither Dr. Quist nor Dr. Mian addressed causation in these reports. The Board has held that medical evidence that does not offer

[8] *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).

[9] *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).

[10] *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).

[11] *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).

[12] *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).

[13] 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).

an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] Consequently, these reports are insufficient to establish appellant's claim.

In an August 27, 2019 Form CA-20, Dr. Mian checked a box marked "Yes" in response to a question as to whether he believed that the conditions found were caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking a box in response to a form question, without more by way of medical rationale, is of little probative value.[15] Dr. Mian did not provide any rationale in support of his response. This report is, therefore, of diminished probative value and insufficient to establish that appellant's diagnosed conditions should be accepted as employment related.[16]

In a January 27, 2020 report, Dr. Mian noted that appellant reported "that while removing the metal guard of a cooling tower fan which according to the patient is heavy, it slipped out of [appellant's] hand, pulling right arm causing severe pain to right shoulder." He opined that appellant's right shoulder injury was causally related to the May 3, 2019 employment incident. However, this report is conclusory. The Board has held that a medical opinion is of limited value if it is conclusory in nature.[17] A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[18] This is particularly important as the May 6, 2019 x-ray of the right shoulder revealed preexisting AC osteoarthritis. Dr. Mian did not explain with medical rationale how he concluded that the preexisting conditions could have been aggravated by the May 3, 2019 incident at work.[19] His reports are, therefore, insufficient to meet appellant's burden of proof.

Appellant also submitted the results of diagnostic studies, including the May 6, 2019 x-ray and July 17, 2019 MRI scan of the right shoulder. The Board has held that reports of diagnostic tests standing alone lack probative value on the issue of causal relationship as they do not address whether the employment factors caused the diagnosed condition.[20]

The Board finds that appellant has not submitted sufficient medical evidence to establish an injury causally related to the accepted May 3, 2019 employment incident and thus has not met his burden of proof to establish his claim.[21]

---

[14] *See R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *See A.R.*, Docket No. 19-0465 (issued August 10, 2020); *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

[16] *Id.*

[17] *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *C.D.*, Docket No. 17-0292 (issued June 19, 2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

[18] *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

[19] *Supra* note 13.

[20] *See R.S.*, *supra* note 18; *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[21] *C.T.*, *supra* note 15; *S.H.*, Docket No. 19-1897 (issued April 21, 2020).

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 May 3, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT March 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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