

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

R.F., Appellant)	
)	
and)	Docket No. 24-0112
)	Issued: April 15, 2024
U.S. POSTAL SERVICE, CHICAGO)	
INTERNATIONAL SERVICE CENTER,)	
O'HARE INTERNATIONAL AIRPORT,)	
Chicago, IL, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 17, 2023 appellant filed a timely appeal from a September 21, 2023 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 issuance of the September 21, 2023 decision, appellant submitted additional evidence to OWCP. 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 factors of his federal employment.

FACTUAL HISTORY

On June 4, 2023 appellant, then a 35-year-old mail recovery clerk, filed an occupational disease claim (Form CA-2) alleging that he developed left rotator cuff tear or rupture, upper extremity nerve condition, upper limb paresthesia, and pain in the left foot due to factors of his federal employment. He indicated that on October 27, 2022 he was working in the military rack room when his arm began to hurt badly, causing inflammation, strains, and excruciating pain. Appellant reported that he was sent to other units to lift more sacks and was ordered to lift sacks weighing more than 100 pounds over his head and push and pull equipment filled with sacks, which caused ongoing pain. He indicated that he first became aware of his condition on October 27, 2022 and realized its relationship to factors of his federal employment on May 15, 2023. On the reverse side of the claim form, J.P., appellant's supervisor, indicated that appellant stopped work on May 18, 2023, and that he was last exposed to the conditions alleged to have caused the condition on May 15, 2023.

Appellant submitted a partial report dated October 31, 2022 by Sara Miranda, an advanced practice nurse, who noted diagnoses of post-traumatic stress disorder (PTSD), normal body mass index, and left shoulder joint pain. In a February 6, 2023 return to work note, Ms. Miranda indicated that appellant could work with restrictions.

In a work status note dated May 15, 2023, Chandra Matteson, an advanced practice nurse, indicated that appellant was unable to lift any weight at work until he was seen by an orthopedic surgeon.

Appellant submitted an employee accident interview worksheet dated May 20, 2023. It noted that appellant had an accident to his left rotator cuff tear. The interviewer indicated that appellant was advised about working in an unsafe manner and failure to file an accident report in a timely manner.

In a statement dated May 21, 2023, K.P., a manager of distribution operations (MDO), reported that on May 17, 2023 appellant submitted a doctor's statement indicating that he was unable to lift anything due to an accident that occurred on October 31, 2022 in the military rack room. He indicated that L.H., a MDO, and U.C., a supervisor of distribution operations (SDO), told him that appellant had not informed either of them of the accident. In an e-mail dated May 25, 2023, L.H. explained that she was MDO on October 31, 2022 and that appellant never informed her about any accident or injury. In a statement dated May 28, 2023, S.L., a Tour 1 SDO, indicated that appellant had previously stated that he had an ongoing issue with his shoulder and that the injury did not occur at the employing establishment. In an undated statement, M.S. described that he saw appellant grabbing his shoulder in discomfort while rotating his arm in a windmill motion. He indicated that he asked appellant if he had injured himself at the workplace and appellant responded "No, it didn't happen here." In a statement dated May 30, 2023, L.G., a safety official for the employing establishment, challenged appellant's claim for an alleged injury on

October 31, 2022. She indicated that two supervisors provided letters, which confirmed that they were not informed of an alleged injury on that date.

In work restriction notes dated May 31, 2023, Ms. Matteson indicated that appellant was unable to lift anything at work until he was seen by an orthopedic surgeon. She also noted that the cause of appellant's need for a restricted work assignment was left arm/shoulder injury/pain.

In a June 14, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. By separate development letter of the same date, OWCP requested additional information from the employing establishment. It afforded both parties 60 days to respond.³

OWCP received a November 17, 2022 work status note by Dr. Lauren Splittgerber, a Board-certified physiatrist, who indicated that appellant could work with restrictions.

Appellant also submitted a left shoulder magnetic resonance imaging (MRI) scan dated December 6, 2022, which demonstrated a supraspinatus tendon tear.

In a report dated February 7, 2023, Ms. Miranda noted that appellant was evaluated to review imaging results for left shoulder pain. On March 17, 2023 she indicated that appellant could work with restrictions of no lifting, pushing, or pulling more than five pounds with the left arm, no overhead activities or reaching with the left arm, and no ladders or climbing.

OWCP received a handwritten statement dated June 5, 2023 by an employing establishment supervisor with an illegible signature, who indicated that appellant was one of the employees in the military rack room and that his duties included checking and verifying military rack bags.

Appellant submitted an attending physician's report (Form CA-20) dated June 8, 2023 by Ms. Matteson, who indicated that appellant began experiencing pain while at work lifting and that the pain worsened while he was expected to do lifting despite his light-duty request. She diagnosed left shoulder injury/torn supraspinatus tendon. Ms. Matteson checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity. In a work status note dated June 8, 2023, she indicated that appellant was currently under her care for a torn supraspinatus ligament in his left shoulder. Ms. Matteson noted that appellant was incapacitated and unable to lift due to his injury.

In June 6 and 20, 2023 responses to OWCP's development letter, appellant indicated that the tear in his shoulder was caused by "gatekeeping" in military racks, which consisted of rechecking everyone's sacks and rethrowing them onto equipment. Appellant alleged that they were overfilled for most of the time and heavy for one person to throw. He described tasks of lifting, pushing, pulling, bending, and stooping. Appellant noted that he worked eight-hour shifts

³ In a June 14, 2023 letter, OWCP informed appellant that it had determined that three separate case files had been created for the same injury. It advised him that it had deleted OWCP File Nos. xxxxxx322 and xxxxxx591, and that all documents had been moved to the current case file.

and that up to 27 employees were in the rack room all filling sacks repeatedly for one “gate keeper.” He indicated that he lifted hundreds of large sacks of military mail a night. Appellant also asserted that his first supervisor, S.D., did not submit the proper paperwork for his claim and did not communicate well when he informed her of his work restrictions. He reported that he did not do much outside of his employment, except for work a couple of days a week as a line cook.

Appellant submitted a June 10, 2023 notice in which the employing establishment requested he appear for an investigatory interview, and an undated employing establishment form in which he further described his work duties and physical symptoms.

OWCP received a work status note dated June 22, 2023 wherein Mr. Douglas T. Johnson, a physician assistant, indicated that appellant was unable to work until July 18, 2023.

In a letter dated June 27, 2023, L.G. responded to OWCP’s June 14, 2023 development letter on behalf of the employing establishment. She described that appellant’s tasks working in the manual military rack unit involved sorting packages into bags on a rack and lifting the bags when they were full. L.G. reported that appellant worked five days a week for seven hours per day and provided a copy of the position description for a mail processing clerk.

In a June 28, 2023 work status note, Ms. Matteson indicated that appellant was still incapacitated and unable to use his left arm. In a work status note dated July 20, 2023, Mr. Johnson indicated that appellant was unable to work until August 21, 2023. In a letter dated August 10, 2023, Ms. Matteson indicated that appellant was currently under her care for treatment for a torn supraspinatus ligament in his left shoulder. She noted that appellant was currently incapacitated and unable to lift due to his injury.

By decision dated September 5, 2023, OWCP denied appellant’s occupational disease claim. It accepted appellant’s employment factors, but denied the claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of employment. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

On September 19, 2023 appellant requested reconsideration.

Appellant submitted a report dated March 15, 2023 by an unknown provider. It noted that appellant was evaluated for follow-up of left shoulder pain (supraspinatus tear). The report indicated that appellant “continues to experience significant pain due to the nature of his job, constantly having to lift and pull heavy bags of mail.” Appellant was diagnosed with left shoulder supraspinatus tear and left foot pain.

In a note dated August 16, 2023, Dr. Jenny Kim, a Board-certified family practitioner, indicated that appellant had been under her medical care since August 16, 2023 and was waiting for several evaluations, including a physical therapy evaluation, second opinion with a sports medicine physician, and follow-up appointment with an orthopedic physician. She noted that appellant was fully incapacitated until these evaluations were completed.

In a report dated August 28, 2023, Dr. Splittgerber indicated that appellant was first treated in her office on November 17, 2022 for a left shoulder issue. She recounted that at the time,

appellant had complained of left shoulder pain for about 3½ months after first feeling a “pop” in his shoulder and experiencing pain and weakness in the left shoulder with overhead activities. Dr. Splittgerber reported that appellant eventually underwent a left shoulder MRI scan, which revealed interstitial supraspinatus tear and subacromial bursitis. She discussed the medical treatment that appellant received, including intra-articular injections, additional testing, and physical therapy. Dr. Splittgerber recounted that, upon current evaluation, appellant still complained of left shoulder pain radiating down the lateral upper extremity to the hand along with numbness to the second and third digits. On physical examination, she observed pain with limited range of motion. Hawkins’ and empty can tests were positive, suggestive of ongoing rotator cuff tendinopathy. Dr. Splittgerber reported that physical examination findings also suggested superimposed left cervical radiculopathy with a positive Spurling’s test. She concluded that there were ongoing symptoms related to left rotator cuff tendinopathy that were consistent with a work-related shoulder injury sustained in the last year, as well as superimposed cervical radiculitis. Dr. Splittgerber noted that appellant was unable to perform his job duties due to limited function and range of motion in the left upper extremity. She also explained that further attempts at overhead activities and/or lifting with the left upper extremity would likely exacerbate appellant’s injuries.

In a statement dated September 21, 2023, appellant explained that his activities outside of his federal employment included light work at a restaurant, which began in February 2023. He indicated that he did not lift anything heavy and did not engage in overhead lifting due to his left shoulder. Appellant also alleged that five MDOs provided false accusations regarding his claim.

By decision dated September 21, 2023, OWCP modified its September 5, 2023 decision to find that appellant had submitted medical evidence diagnosing a medical condition in connection with the accepted employment factors. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between his diagnosed left shoulder condition and the accepted factors of employment.

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

⁴ *Supra* note 1.

⁵ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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 specific employment factors identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors, is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

In a report dated August 28, 2023, Dr. Splittgerber noted that she first treated appellant on November 17, 2022 for left shoulder symptoms. She described that appellant had complained of left shoulder pain for about 3½ months and pain and weakness in the left shoulder with overhead activities. Dr. Splittgerber reported that a left shoulder MRI scan revealed interstitial supraspinatus tear and subacromial bursitis and provided examination findings. She concluded that there were ongoing symptoms related to left rotator cuff tendinopathy that were consistent with a work-related injury to the shoulder in the prior year. While Dr. Splittgerber attributed appellant's left shoulder symptoms to a work-related shoulder injury, she provided no discussion of appellant's work duties

⁶ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

⁸ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *I.J.*, 59 ECAB 408 (2008); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

or a pathophysiological explanation of how these specific duties either caused or contributed to his left shoulder condition.¹² Accordingly, this report is insufficient to establish appellant's claim.

Appellant submitted a November 17, 2022 work status note by Dr. Splittgerber who indicated that appellant could work with restrictions. Dr. Splittgerber did not, however, provide an opinion addressing the cause of appellant's work restrictions or medical condition. Likewise, in an August 16, 2023 note, Dr. Kim indicated that appellant was fully incapacitated until several medical evaluations were completed. She did not, however, opine on the cause of appellant's condition. 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.¹³ Accordingly, these reports are insufficient to meet appellant's burden of proof.

In a note dated August 16, 2023, Dr. Kim indicated that appellant had been under her medical care since August 16, 2023, and was waiting for several evaluations. She noted that appellant was fully incapacitated until these evaluations were completed. The Board has held that medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused injury.¹⁴ Consequently, Dr. Kim's letter is insufficient to establish appellant's claim.

Appellant also submitted several reports from Ms. Miranda and Ms. Matteson, both advanced practice nurses, and Mr. Johnson, a physician assistant. However, nurse practitioners and physician assistants are not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹⁵ These reports, therefore, are insufficient to establish appellant's claim.

The evidence of record also contains a March 15, 2023 report by a provider with an illegible signature. The Board has found that medical evidence lacking proper identification is of no probative medical value and are insufficient to meet appellant's burden of proof.¹⁶

¹² See *B.W.*, Docket No. 18-1674 (issued May 7, 2020); see also *B.T.*, Docket No. 13-138 (issued March 20, 2013).

¹³ *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *F.C.*, Docket No. 23-0132 (issued May 25, 2023); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁵ Section 8101(2) of FECA provides as follows: 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. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *N.C.*, Docket No. 21-0934 (issued February 7, 2022) (nurse practitioners and physical therapists are not considered physicians as defined under FECA); *P.H.*, Docket No. 19-0119 (issued July 5, 2019) (physician assistants are not physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

¹⁶ *T.S.*, Docket No. 23-0772 (issued March 28, 2024); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004), *Merton J. Sills*, 39 ECAB 572, 575 (1988).

The December 6, 2022 MRI scan is likewise insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between his employment duties and the diagnosed condition.¹⁷

As the medical evidence of record is insufficient to establish causal relationship between a left shoulder condition and the accepted factors of federal employment, the Board finds that appellant 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 not met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2024
Washington, DC

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

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

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

¹⁷ *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).