

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

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R.K., Appellant))	
and))	Docket No. 24-0545
DEPARTMENT OF THE INTERIOR,))	Issued: June 28, 2024
NATIONAL PARK SERVICE, Deer Lodge, MT,))	
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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 29, 2024 appellant filed a timely appeal from a March 1, 2024 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted April 5, 2023 employment incident.

FACTUAL HISTORY

On May 1, 2023 appellant, then a 65-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 5, 2023 he injured his left shoulder while in the performance of duty. He noted that he initially injured his shoulder while moving materials to be

¹ 5 U.S.C. § 8101 *et seq.*

fork-lifted out of ice and, the following Monday, he dropped a window and “pulled it worse.” Appellant stopped work on April 6, 2023, and returned to full-time modified-duty work with restrictions on April 10, 2023.

An April 25, 2023 medical status form, bearing an illegible signature, indicated that appellant had been released to return to work with restrictions of no lifting with the left arm and lifting no more than 10 pounds with the right arm. The note reflected an April 13, 2023 date of injury.

An employing establishment alternative work assignment form dated May 18, 2023 signed by appellant and his supervisor, indicated that he had been assigned a modified-duty position performing shop and go-fer work and operating equipment, effective April 25, 2023.

A June 13, 2023 report of a magnetic resonance imaging (MRI) arthrogram scan of the left shoulder demonstrated a massive rotator cuff tear with complete full-thickness involvement of the supraspinatus and infraspinatus tendons and near complete involvement of the subscapularis tendon with associated mild chronic muscle volume loss; complete full-thickness tear of the intra-articular long head biceps tendon which was retracted beyond the field-of-view; a superior through posterosuperior labral tear; and early mild glenohumeral joint osteoarthritis and moderate acromioclavicular (AC) joint osteoarthritis.

In a June 13, 2023 note, Melissa Lynne Blue, a nurse practitioner, noted that appellant related a history of a lifting and traction injury to the left shoulder at his construction job. She reviewed the results of the MRI arthrogram and diagnosed acute pain of the left shoulder and traumatic tear of left rotator cuff of unspecified extent.

In an August 2, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP thereafter received a July 25, 2023 physical therapy referral by Dr. Nicholas Blavatsky, a Board-certified orthopedic surgeon, who diagnosed acute pain of left shoulder, traumatic tear of left rotator cuff, and primary osteoarthritis of the left shoulder.

By decision dated October 6, 2023, OWCP accepted that the April 5, 2023 employment incident occurred, as alleged. However, it denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted April 5, 2023 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 28, 2024 appellant requested reconsideration of OWCP’s October 6, 2023 decision. In support of his request, he submitted an April 17, 2023 incident report, which indicated that on April 5, 2023 he pulled his shoulder out of place while picking up materials, and on April 14, 2023 he tried to catch a window and tore his shoulder again.

In a July 25, 2023 medical report, Dr. Blavatsky noted that appellant complained of left shoulder pain, which he attributed to a left shoulder injury months ago. He performed a physical examination, which revealed pain, reduced range of motion, and marked parascapular muscular

atrophy most visible at the supra- and infraspinatus shoulder. Dr. Blavatsky reviewed the arthrogram and diagnosed acute pain of the left shoulder, traumatic tear of the left rotator cuff, and primary osteoarthritis of the left shoulder.

In a December 30, 2023 witness statement, A.L., appellant's coworker, indicated that he was working in a barn on the floor below appellant and heard a crash. He asked if appellant had fallen from a ladder, and he answered that he had lost control of a window and hurt his arm while attempting to keep it from breaking.

In a January 22, 2024 response to OWCP's development questionnaire, appellant noted that after the employment incident he could not lift anything without experiencing a lot of pain.

By decision dated March 1, 2024, OWCP modified the October 6, 2023 decision, finding that the medical reports established diagnoses of traumatic tear of left rotator cuff and osteoarthritis of left shoulder in connection with the accepted April 5, 2023 employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted April 5, 2023 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,² that the claim was timely filed within the applicable time limitation period of FECA, 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.³ 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.⁴

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.⁵

² *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁵ *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).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁶ 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 incident identified by the employee.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted April 5, 2023 employment incident.

In support of his claim, appellant submitted a July 25, 2023 medical report and physical therapy referral by Dr. Blavatsky who diagnosed a traumatic tear of the left rotator cuff and primary osteoarthritis of the left shoulder. However, Dr. Blavatsky did not offer an opinion regarding the cause of these conditions. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.⁸ Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted a report by Ms. Blue, a nurse practitioner. Certain healthcare providers such as nurses and physician assistants are not considered "physician[s]" as defined under FECA.⁹ Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁰

OWCP also received an April 25, 2023 medical status form, bearing an illegible signature. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification¹¹ as the author cannot be identified as a physician.¹²

⁶ *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).

⁷ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.* Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No. 17-1549 (issued July 6, 2018).

⁹ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 *supra* note 8 at Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹⁰ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

¹¹ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹² *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

The remaining evidence of record consisted of an MRI arthrogram report. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹³ Therefore, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a causal relationship between his diagnosed left shoulder conditions and the accepted April 5, 2023 employment incident, the Board finds that he has not met his burden of proof to establish his claim.¹⁴

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 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 April 5, 2023 employment incident.

¹³ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

¹⁴ *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board