

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

_____)	
B.R., Appellant)	
)	
and)	Docket No. 21-1109
)	Issued: December 28, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, North Canton, OH,)	
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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 11, 2021 appellant filed a timely appeal from a June 17, 2021 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 September 5, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 5, 2018 appellant, then a 54-year-old supervisory transportation security specialist, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his left upper arm when clearing lodged baggage in a tunnel while in the performance of duty. He did not stop work.

In support of his claim, appellant submitted a report of magnetic resonance imaging (MRI) scan of the left shoulder dated September 10, 2020, which demonstrated tendinosis and partial tears of the supraspinatus, infraspinatus, and subscapularis tendons, a partial tear of the superior labrum, and a mild partial tear of the posterior band of the inferior glenohumeral ligament.

On October 25, 2020 appellant filed a notice of recurrence (Form CA-2a), indicating that on July 26, 2020 he experienced a recurrence of pain in the left upper arm. He noted that he was originally injured on September 5, 2018 and following the initial injury, his pain had been controlled with medication. Appellant alleged that over time his pain worsened and that what he initially believed to have been a minor tear in the muscle of his rotator cuff had advanced to three tears.

In a November 4, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a July 31, 2020 medical note from Amy Beth Firrell, a nurse practitioner, who indicated that appellant reported weakness and pain in his neck and left shoulder when lifting. Ms. Firrell noted that he related that these symptoms had been present for approximately one month, but denied trauma or injury.

An MRI scan of the cervical spine dated September 10, 2020 demonstrated mild degenerative changes.

In a September 11, 2020 note from Mathew Moughiman, a physical therapist, appellant related a history of an insidious onset of left shoulder pain which had been increasing for the past two to three months. Mr. Moughiman performed a physical examination and recommended scapular stabilization therapy and rotator cuff strengthening for six weeks.

In an October 29, 2020 medical report, Dr. Emmanuel Yanelli, a Board-certified internal medicine specialist, noted appellant's complaints of worsening left shoulder pain which appellant attributed to moving luggage at the airport in 2018. He performed a physical examination of the left shoulder and documented reduced range of motion with abduction and extension. Dr. Yanelli related that appellant had received a steroid injection to the shoulder and had undergone an MRI scan, which revealed three torn rotator cuff muscles. He diagnosed acute on chronic rotator cuff tendinitis and recommended that appellant refrain from lifting baggage greater than 20 to 40 pounds and that appellant avoid overhead activities and excessive jerking or lifting motions with the left shoulder. Dr. Yanelli opined that appellant had a chronic shoulder condition due to an injury appellant sustained while carrying and distributing luggage in 2018.

In a November 22, 2020 statement, appellant explained that, in September 2018, he experienced left shoulder pain with radiation into the left arm due to moving and searching passenger property. He related that he sought medical care and was advised that the injury would take some time to heal, but that he was not prescribed any diagnostic testing or given any lifting restrictions at that time. Appellant asserted that he thereafter experienced an increase in irritation in the left shoulder in the summer of 2020, which prompted him to seek further medical care, including an MRI scan and a cortisone injection.

By decision dated January 8, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted September 5, 2018 employment incident.

On March 30, 2021 appellant requested reconsideration.

In support of his request, appellant submitted a February 10, 2021 medical report from Dr. Robert Urchek, an orthopedic surgeon, who detailed appellant's history of injuring his left shoulder at work on September 5, 2018 followed by progressively worsening pain. He noted that the pain increased in July 2020, especially with activities of reaching, lifting, sleeping on his left side, and reaching behind his back. Dr. Urchek performed a physical examination and noted positive Neer's and Hawkin's tests and reduced range of motion. He obtained x-rays during the visit and also reviewed the September 10, 2020 MRI scan of the left shoulder. Dr. Urchek diagnosed an incomplete tear of the rotator cuff and biceps tendinitis of the left shoulder. He opined that appellant's condition started after a work-related injury "a number of years ago," and that appellant reported his shoulder pain had progressed over time. Dr. Urchek explained that appellant's job involved repetitive motion while lifting luggage, and that it was reasonable to find that appellant's current symptoms and MRI scan findings were related to his employment.

By decision dated June 17, 2021, OWCP denied modification of its January 8, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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

² *Id.*

³ *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.⁴ 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.⁵

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 a personal injury and can be established only by medical evidence.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment incident.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted September 5, 2018 employment incident.

Dr. Yanelli, in his October 29, 2020 medical report, diagnosed acute on chronic rotator cuff tendinitis, and found that appellant had a chronic shoulder condition since the original injury in 2018. He opined that appellant's left shoulder condition was due to carrying and distributing luggage. However, Dr. Yanelli failed to explain, with rationale, how the accepted employment incident either caused or contributed to appellant's left shoulder condition. The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Id.*

aggravated the diagnosed conditions.¹⁰ Therefore, the Board finds that the October 29, 2020 medical report from Dr. Yanelli is insufficient to establish causal relationship.

Similarly, in his February 10, 2021 medical report, Dr. Urchek diagnosed an incomplete tear of the rotator cuff and biceps tendinitis of the left shoulder. He opined that appellant's condition started after a work-related injury, that appellant's job involved repetitive motion while lifting luggage, and that appellant's symptoms were consistent with his work-related activities. However, Dr. Urchek failed to explain, with rationale, how the accepted employment incident either caused or contributed to appellant's left shoulder condition. Thus, the Board finds that the February 10, 2021 medical report of Dr. Urchek is also insufficient to establish causal relationship.

The remaining evidence of record consists of diagnostic testing reports and notes from a physical therapist and a nurse practitioner. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.¹¹ In addition, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹² Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's left shoulder condition and the accepted September 5, 2018 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 not met his burden of proof to establish a left shoulder condition causally related to the accepted September 5, 2018 employment incident.

¹⁰ *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

¹¹ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹² Section 8101(2) of FECA provides that 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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). *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹³ *K.A., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 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