

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

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F.J., Appellant)	
)	
and)	Docket No. 20-0912
)	Issued: February 2, 2021
DEPARTMENT OF AGRICULTURE, FOOD & INSPECTION SERVICE, Minneapolis, MN,)	
Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 March 23, 2020 appellant, through counsel, filed a timely appeal from a January 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish left shoulder conditions causally related to the accepted February 13, 2018 employment incident.

FACTUAL HISTORY

On February 22, 2018 appellant, then a 49-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2018 he sustained a partial bicep tendon tear and torn labrum in his left shoulder due to repetitive lifting of animal organs from a low level while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he was injured in the performance of duty on February 13, 2018 and stopped work on February 17, 2018. It indicated that medical reports showed that appellant was disabled from work.

A February 17, 2018 work status note containing an illegible signature indicated that appellant could return to work in one week.

Dr. Christopher Martella, an osteopath Board-certified in emergency medicine, indicated in a February 23, 2018 note that appellant's shoulder injury required work restrictions on the use of his left arm including no lifting over 10 pounds and no repetitive lifting over 5 pounds. He also indicated that these restrictions would continue until appellant was seen by an orthopedic surgeon.

In a March 23, 2018 development letter, OWCP informed appellant that additional evidence was needed in support of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

By decision dated May 7, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 18, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive medical evidence. February 17, 2018 unsigned hospital discharge instructions indicated that appellant was treated by Dr. Martella and was provided information on shoulder pain and rotator cuff injury.

A February 20, 2018 magnetic resonance imaging (MRI) scan of appellant's left shoulder interpreted by Dr. David Wang, a Board-certified radiologist, displayed a partial split tear of the long head of the biceps tendon at the level of the lesser tuberosity, a thickened and degenerated intra-articular biceps tendon, an anterior labral tear, a thickened inferior labrum, and moderate glenohumeral joint degenerative changes.

In April 6, 2018 progress notes, Dr. Robyn Peckham, a Board-certified orthopedic surgeon, indicated that appellant presented with left shoulder pain that started approximately one month

prior at work. Appellant had related that he engaged in repetitive lifting of up to 10 pounds at work. Dr. Peckham reviewed his medical history and conducted a physical examination of his left shoulder, which revealed external rotation and abduction weakness and pain reproduction with effort. She stated that appellant's left shoulder MRI scan revealed glenohumeral osteoarthritis with chondral thinning and inferior osteophyte, partial-thickness tearing of the rotator cuff, biceps tendinopathy, and rotator cuff tendinopathy. Dr. Peckham diagnosed a left shoulder partial thickness rotator cuff tear and osteoarthritis.

In a May 14, 2018 supplemental statement, appellant explained that during the week of February 11 through 17, 2018 he was assigned to a detail to work at a private slaughtering facility. He related that the facility's "gut table" was lower than the "gut tables" he was used to working on and on February 13, 2018 while lifting a large cow heart from the "gut table" he felt a pull in his left shoulder and he continued to experience pain the next day. Lifting appellant's arm caused pain and weakness in his left shoulder. He continued to work and experienced significant pain, especially when lifting hearts from the "gut table." Appellant additionally experienced pain at night and when lying down.

A June 7, 2018 work status note by Dr. Peckham indicated that appellant was under surgical care for shoulder arthritis and a partial rotator cuff tear and could return to work without limitations on June 13, 2018.

By decision dated October 1, 2018, OWCP's hearing representative set aside OWCP's May 7, 2018 decision, finding that OWCP had not sent its development letter to appellant's correct address, and remanded the case to OWCP for proper development to be followed by the issuance of a *de novo* decision.

In a development letter dated October 10, 2018, OWCP informed appellant that additional evidence was needed in support of his claim. It advised him of the type of medical evidence necessary to establish his claim. OWCP afforded appellant 30 days to submit the requested evidence.

By decision dated November 14, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted February 13, 2018 employment incident.

On November 4, 2019 appellant, through counsel, requested reconsideration and submitted a report from Dr. Sami Moufawad, Board-certified in physical medical and rehabilitation, dated October 21, 2019.

In the October 21, 2019 report, Dr. Moufawad related that appellant presented with stabbing left shoulder pain that extended into appellant's biceps and left shoulder weakness. Appellant related that his left shoulder pain affected his ability to reach overhead, work, sleep, and perform activities of daily living. Dr. Moufawad noted that on February 13, 2018 appellant was lifting items weighing 10 to 15 pounds from a table at work when he felt severe pain in his left shoulder. Appellant was treated with injections and returned to work on June 6, 2018 however he continued to experience left shoulder pain. Dr. Moufawad related extensive findings regarding appellant's left shoulder physical examination. He reviewed appellant's medical records and

diagnostic imaging and diagnosed a partial tear of the supraspinatus of the left rotator cuff, a partial tear of the long head of the left biceps, an anterior labral tear, and moderate glenohumeral arthritis of the left shoulder. Dr. Moufawad opined that appellant's February 13, 2018 lifting injury caused appellant's supraspinatus tear because he had degenerative changes that predisposed a tendinous structure to tear while lifting repetitively at work. He also related that appellant's February 13, 2018 lifting injury caused the partial tear of his biceps. Dr. Moufawad explained that the use of the shoulder required the use of the rotator cuff tendons to stabilize the humeral head in the glenoid cavity for the surrounding larger muscle. He further explained that degenerative changes in these tendons and the repetitive lifting motion appellant performed at work caused appellant's supraspinatus and biceps tears. Dr. Moufawad related that appellant's repeated motion and lifting caused appellant's anterior tear of the labrum, and he explained that the labrum's function is to keep the humeral head congruent with the glenoid cavity by deepening it. He indicated that appellant's moderate osteoarthritis of the glenohumeral joint was preexisting, and he opined that the repeated motion and lifting and work caused the aggravation of appellant's glenohumeral joint osteoarthritis.

By decision dated January 22, 2020, OWCP denied modification of its November 14, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

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. 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

³ *Id.*

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 the specific employment factors identified by the claimant.⁹

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.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

Dr. Moufawad's October 21, 2019 narrative medical report indicated that appellant presented with stabbing left shoulder pain, and he related that on February 13, 2018 appellant was lifting items weighing 10 to 15 pounds from a table at work when appellant felt severe pain in his left shoulder. He reviewed appellant's medical records and diagnostic imaging, conducted a physical examination, and diagnosed a partial tear of the supraspinatus of the left rotator cuff, a partial tear of the long head of the left biceps, an anterior labral tear, and moderate glenohumeral arthritis of the left shoulder. Dr. Moufawad explained that appellant's February 13, 2018 lifting injury caused appellant's supraspinatus tear because he had preexisting degenerative changes that predisposed a tendinous structure to tear while lifting repetitively at work. He also stated that appellant's February 13, 2018 lifting injury caused the partial tear of his biceps and explained that the use of the shoulder required the use of the rotator cuff tendons to stabilize the humeral head in the glenoid cavity for use by the surrounding larger muscle. Dr. Moufawad opined that degenerative changes in these tendons and repetitive lifting motion led to the supraspinatus and biceps tears. He further opined that appellant's repeated motion and lifting caused appellant's anterior labrum tear, and he explained that labrum's function is to keep the humeral head congruent with the glenoid cavity by deepening it. Dr. Moufawad also indicated that appellant's moderate osteoarthritis of the glenohumeral joint was preexisting, and he opined that the repeated motion and lifting at work caused the aggravation of appellant's glenohumeral joint osteoarthritis.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

¹¹ *C.C.*, *id.*

The Board finds that, although Dr. Moufawad's October 21, 2019 medical report is insufficiently rationalized to meet appellant's burden of proof to establish appellant's claim, it is relevant evidence in support of appellant's claim explaining a physiological process by which appellant's accepted factors of federal employment could have caused or aggravated his diagnosed shoulder conditions.¹² Further development of appellant's claim is therefore required.¹³

On remand, OWCP shall prepare a statement of accepted facts concerning appellant's employment factors and refer him to a second opinion physician in the appropriate field of medicine to determine whether appellant's accepted February 13, 2018 employment incident either caused or aggravated his shoulder conditions.¹⁴ The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Moufawad. After this and other such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² See *A.T.*, Docket No. 19-1972 (issued June 25, 2020).

¹³ See *K.T.*, Docket No 19-1436 (issued February 21, 2020).

¹⁴ *Supra* note 10 at Chapter 2.805.3e (January 2013); see also *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 2, 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