

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

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<b>R.T., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0544</b>
	)	<b>Issued: December 17, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Detroit, MI, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 22, 2021 appellant filed a timely appeal from a November 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted May 17, 2020 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 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.

## **FACTUAL HISTORY**

On September 17, 2020 appellant, then a 52-year-old parcel post distributor, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2020 she sustained a left shoulder full rotator cuff tear while in the performance of duty. She explained that her injury was caused by lifting, pushing, and pulling packages with her left arm. Appellant noted that she was unable to use both arms because of a separate injury she sustained to her right arm.<sup>3</sup> On the reverse side of the claim form the employing establishment asserted that she was not in the performance of duty when her injury occurred, contending that she did not file her claim until four months after her injury occurred. Appellant stopped work on September 16, 2020.

In a September 16, 2020 medical report, Dr. Nicholas Schoch, a Board-certified orthopedic surgeon, recounted a previous evaluation of appellant's left shoulder he performed on August 19, 2020 where he diagnosed chronic impingement symptoms with parascapular myofasciitis. He administered cortisone injections to both shoulders that were found to be effective for about a week before her pain worsened. Dr. Schoch diagnosed bursitis of the left and right shoulders, right and left myofasciitis, a partial tear of the right rotator cuff, a degenerative tear of the left rotator cuff, and pain in the right and left shoulders. He scheduled for appellant to undergo surgery to treat her conditions. In a medical note of even date, Dr. Schoch indicated that she would need to be off from work for an undetermined amount of time and noted that she would be undergoing surgery on November 10, 2020. He also attached an information sheet explaining the causes of bursitis and methods to treat the condition.

In a September 16, 2020 diagnostic report, Dr. Jan Mourelatos, a Board-certified diagnostic radiologist, reviewed a magnetic resonance imaging (MRI) scan of appellant's left shoulder, which revealed partial tears of the interspace tendons.

In a September 28, 2020 duty status report (Form CA-17), Dr. Schoch diagnosed left shoulder impingement and indicated that an MRI study revealed a rotator cuff tear. He identified August 17, 2020 as the date of injury and opined that appellant was totally disabled from work.

In an October 20, 2020 development letter, OWCP advised appellant of the deficiencies of her claim, and requested additional factual and medical evidence. It afforded her 30 days to respond.

In a November 2, 2020 medical note, Dr. Schoch diagnosed left shoulder bursitis, general myofasciitis, and rotator cuff tear. He released appellant to return to work on November 11, 2020 with restrictions.

Appellant also submitted an information sheet, indicating that she would undergo surgery on January 12, 2021.

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<sup>3</sup> Appellant previously filed a traumatic injury claim on March 12, 2020 for a right shoulder injury under OWCP File No. xxxxxx318. OWCP has not issued a decision on that claim.

By decision dated November 27, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted May 17, 2020 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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 and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> 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.<sup>10</sup>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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).

<sup>6</sup> *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *V.L.*, *supra* note 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).

<sup>8</sup> *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).

<sup>9</sup> *C.H.*, *supra* note 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).

<sup>10</sup> *V.L.*, *supra* note 5; *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).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted May 17, 2020 employment incident.

In a September 16, 2020 medical report, Dr. Schoch diagnosed bursitis myofasciitis, and pain of the bilateral shoulders, a partial tear of the right rotator cuff, and a degenerative tear of the left rotator cuff. He also scheduled appellant to undergo surgery to treat her condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employment condition is of no probative value on the issue of causal relationship.<sup>11</sup> For this reason, Dr. Schoch's September 16, 2020 medical report is insufficient to meet appellant's burden of proof.

Similarly, in his medical notes dated September 16 and November 2, 2020, Dr. Schoch diagnosed left shoulder bursitis, general myofasciitis, and rotator cuff tear. He also identified work restrictions due to appellant's condition. As noted above, medical evidence that does not offer an opinion regarding the cause of an employment condition is of no probative value on the issue of causal relationship.<sup>12</sup> Accordingly, Dr. Schoch's September 16 and November 2, 2020 medical notes are also insufficient to establish appellant's claim.

Dr. Schoch's remaining medical evidence consisted of a September 28, 2020 Form CA-17. However, this evidence is inapplicable to appellant's claim as it identified August 17, 2020 as the date of injury. Consequentially, his remaining medical evidence is insufficient to meet appellant's burden of proof.

Appellant's submitted a September 16, 2020 diagnostic report in which Dr. Mourelatos reviewed an MRI scan of her left shoulder. The Board has held, however, that diagnostic test reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.<sup>13</sup> For this reason, Dr. Mourelatos' diagnostic report is insufficient to establish her claim.

OWCP also received an information sheet describing the causes of bursitis and ways to treat the condition. The Board has long held that medical texts and excerpts from publications lack probative value in establishing the causal relationship between a claimed condition and an employment incident as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>14</sup> As this information sheet was not interpreted and cited by appellant's physicians

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<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *Id.*

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

<sup>14</sup> *L.C.*, Docket No. 17-1811 (issued March 23, 2018); *N.B.*, Docket No. 14-1702 (issued December 29, 2014); *S.A.*, Docket No. 13-1551 (issued December 17, 2013); *Gloria J. McPherson*, 51 ECAB 441 (2000); *William C. Bush*, 40 ECAB 1064, 1075 (1989).

in offering a rationalized medical opinion as to how the May 17, 2020 employment incident caused her diagnosed conditions, it is insufficient to establish causal relationship.

As appellant has not submitted rationalized medical evidence establishing a left shoulder condition causally related to the accepted May 17, 2017 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 her burden of proof to establish a left shoulder condition causally related to the accepted May 17, 2020 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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