

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Marietta, GA, Employer**

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**Docket No. 21-0992
Issued: December 16, 2021**

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 June 16, 2021 appellant filed a timely appeal from an April 13, 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 her burden of proof to establish a right shoulder condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 25, 2021 appellant, then a 44-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced pain in her right shoulder and a decreased range of motion after unloading her vehicle while in the performance of duty. She noted that she first

¹ 5 U.S.C. § 8101 *et seq.*

became aware of her condition on January 18, 2021 and realized its relation to her federal employment on February 8, 2021. Appellant explained that her right shoulder had been sore since the week of January 18, 2021 and on February 7, 2021 her pain worsened when she attempted to lift an oversized box, with the assistance of a coworker, and the box fell from her hands when she turned to load it on her work vehicle. She asserted that she was unable to move her right arm the following day. Appellant stopped work on February 7, 2021.

On February 8, 2021 Jamar Brown, a physician assistant, held appellant off from work through February 12, 2021. In a referral note of even date, he referred her to an orthopedic physician for complaints of pain and tenderness in the right rotator cuff. Mr. Brown diagnosed pain in the right shoulder.

On February 9, 2021 Dr. John P. Gira, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's right shoulder, which revealed supraspinatus tendinosis with a partial two-millimeter intrasubstance tear, mild infraspinatus tendinosis, and a small subacromial subdeltoid bursal effusion.

A February 11, 2021 return to work note from Dr. Arthur Raines, a Board-certified orthopedic surgeon, noted that appellant was seen that day and could return to work with restrictions of no overhead lifting and no lifting over 10 pounds. In a referral order of the same date, Dr. Raines referred appellant to physical therapy for tendinitis of the right shoulder.

In an undated statement received by OWCP on February 25, 2021 appellant reiterated the details of the pain she experienced due to her employment activities, which culminated on February 7, 2021, the employment incident where she attempted to lift and load an oversized box into her work vehicle. She related that thereafter, she experienced severe pain and decreased range of motion in her right shoulder. The next day appellant sought medical care and called off from work.

On March 10, 2021 OWCP received a duplicate copy of appellant's undated statement, along with a February 23, 2021 employing establishment accident report noting a February 7, 2021 date of injury and finding that she failed to comply with rules and improperly lifted a parcel weighing up to 20 pounds.

In a March 11, 2021 development letter, OWCP informed appellant that it had received insufficient evidence in support of her occupational disease claim. It advised her of the evidence necessary to establish her claim and provided a questionnaire for her completion regarding her employment activities. OWCP also requested a narrative medical report from appellant's treating physician, which contains a detailed description of findings and a diagnosis, explaining how the claimed employment factors caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence

On March 30, 2021 appellant was seen by Dr. Raines with ongoing complaints of pain in her right shoulder when performing overhead and cross-body movements. A physical examination revealed continued tenderness and reduced range of motion of the right shoulder. Dr. Raines provided an impression of right partial rotator cuff tear and subdeltoid tendinitis. He found that appellant could perform light-duty work with no overhead lifting of greater than five pounds.

Dr. Raines opined that it was entirely possible that her symptoms were caused by repetitive work factors, but he could not be certain.

In an April 9, 2021 response to OWCP's development questionnaire, appellant detailed her job responsibilities which included driving, loading her vehicle, overhead lifting tubs of mail, pushing large hampers of packages, and delivering mail. She noted that her shifts ranged between 13 to 16 hours per day, 6 days a week. Appellant related that she first noticed her shoulder pain on January 18, 2021 and on February 7, 2021 experienced severe pain after attempting to pick up a package. On February 8, 2021 she stopped work and sought medical care.

By decision dated April 13, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her right shoulder condition was causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT

A claimant 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 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 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 identified employment factors.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by

² *Id.*

³ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.⁷

ANALYSIS

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

In support of her claim, appellant submitted a report from Dr. Raines dated March 30, 2021 wherein he noted her ongoing complaints of shoulder pain from overhead and cross-body motions and provided an impression of tendinitis and partial right rotator cuff tear. Dr. Raines opined that it was “possible” that her condition was caused by her work duties, but that he could not be certain. The Board finds that his opinion that appellant’s condition was possibly caused by the accepted factors of her federal employment is speculative and equivocal and therefore, insufficient to establish her burden of proof.⁸

In his February 11, 2021 referral order and work status form, Dr. Raines did not provide an opinion as to the cause of appellant’s condition. Medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of no probative value.⁹ Therefore, these reports are insufficient to establish appellant’s claim.

OWCP also received reports dated February 8, 2021 from Mr. Brown, a physician assistant. Certain healthcare providers, such as physician assistants, are not considered “physician[s]” as defined under FECA.¹⁰ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹¹

The remaining evidence of record includes Dr. Gira’s February 9, 2021 MRI scan report. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors, and

⁷ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁸ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

⁹ *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *see L.B.*, *supra* note 7; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹¹ 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. *Id.* at § 8101(2); *id.* at § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, 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); *see also E.T.*, Docket No. 21-0014 (issued May 20, 2021); *K.W.*, 59 ECAB 271, 279 (2007).

a diagnosed condition.¹² For this reason, this report is insufficient to meet appellant's burden of proof.

As there is no rationalized medical evidence explaining how appellant's employment duties caused or aggravated her diagnosed conditions, she has not met her burden of proof to establish that her medical conditions were causally related to the accepted factors of her federal employment.

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 right shoulder condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 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

¹² See *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).