

<sup>2</sup> The Board notes that, following the issuance of the June 14, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

### **FACTUAL HISTORY**

On April 29, 2012 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left shoulder injury while opening up a trailer in the performance of duty on April 11, 2012.

By letter dated May 4, 2012, OWCP requested additional factual and medical evidence. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

In a May 5, 2012 narrative statement, appellant indicated that she wrote the wrong date of injury on the claim form and requested the date of injury to reflect March 15, 2012.

Appellant submitted a May 3, 2012 report by Dr. Alla Feygina, a Board-certified internist, which diagnosed shoulder pain. Dr. Feygina listed a history that appellant injured her left shoulder on March 15, 2012 while lifting a trailer door.

In a May 8, 2012 report, Dr. Christian T. Andersen, a Board-certified orthopedic surgeon, examined appellant that date and diagnosed left shoulder partial rotator cuff tear based on his review of a magnetic resonance imaging (MRI) scan of the left shoulder. He indicated that she presented a history of a left shoulder injury on March 15, 2012 after lifting a trailer door. On May 16, 2012 Dr. Andersen reiterated his diagnosis and checked a box “yes” indicating that appellant’s condition was caused or aggravated by an employment activity. He advised that she was unable to lift above the shoulders.

Appellant also submitted physical therapy notes dated May 22 and June 4, 2012.

By decision dated June 14, 2012, OWCP denied appellant’s claim on the basis that, although the incident occurred as alleged, the evidence submitted was insufficient to establish causal relationship between the diagnosed condition and the employment incident.<sup>3</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing 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, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>5</sup> was sustained in the performance of duty, as alleged,

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<sup>3</sup> OWCP identified the date of injury as April 11, 2012. The Board finds that this was harmless error since it found the incident occurred as alleged.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. 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. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 the specific employment factors identified by the employee.<sup>8</sup>

### ANALYSIS

OWCP has accepted that the employment incident of March 15, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant’s left shoulder condition resulted from the March 15, 2012 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the March 15, 2012 employment incident.

On May 8, 2012 Dr. Andersen diagnosed left shoulder partial rotator cuff tear. He indicated that appellant presented with a left shoulder injury after lifting a trailer door on March 15, 2012 and advised that she was unable to lift above the shoulders. In a May 16, 2012 report, Dr. Andersen checked a box “yes” indicating that appellant’s condition was caused or aggravated by an employment activity. Although the “yes” check mark generally indicates support for causal relationship, this report is insufficient to establish causal relationship.<sup>9</sup> The Board has held that when a physician’s opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.<sup>10</sup> Even though Dr. Andersen indicated with a check mark “yes” that appellant’s

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<sup>6</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Id.* See also *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.* See also *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant’s disability was related to the history given is of little probative value).

<sup>10</sup> See *Gary J. Watling*, 52 ECAB 278 (2001).

condition was caused or aggravated by her employment, he failed to provide a sufficient medical rationale explaining the relationship between appellant's left shoulder condition and the accepted employment incident.<sup>11</sup> Although he provided a firm diagnosis, the Board finds that he did not explain how the mechanism of the March 15, 2012 employment incident caused or aggravated appellant's condition. Dr. Andersen did not provide medical rationale explaining how appellant's left shoulder condition was caused or aggravated by lifting a trailer door on March 15, 2012. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on March 15, 2012.

On May 3, 2012 Dr. Feygina diagnosed shoulder pain and noted a history that appellant injured her left shoulder on March 15, 2012 while lifting a trailer door. She did not provide medical rationale explaining how appellant's left shoulder condition was caused or aggravated by lifting a trailer door on March 15, 2012. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>12</sup> Thus, the Board finds that appellant did not meet her burden of proof with the submission of Dr. Feygina's report.

The physical therapy notes dated May 22 and June 4, 2012 do not constitute medical evidence as they were not prepared by a physician.<sup>13</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a March 15, 2012 employment incident, she has failed to meet her burden of proof.

On appeal, appellant argues the merits of her claim. For the reasons stated above, the Board finds her arguments are not substantiated.

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 submitted sufficient rationalized medical opinion evidence to establish that her left shoulder condition was sustained on March 15, 2012 in the performance of duty, as alleged. Therefore, appellant has failed to meet her burden of proof to establish a claim for compensation.

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<sup>11</sup> See *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

<sup>12</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>13</sup> Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board