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

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| **T.B., Appellant** | ) | |
| **and** | ) | **Docket No. 13-70** |
| | ) | **Issued: May 20, 2013** |
| **U.S. POSTAL SERVICE, POST OFFICE, Greenville, MI, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On October 10, 2012 appellant, through her attorney, filed a timely appeal from a September 13, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 established an injury in the performance of duty on November 21, 2009.

### *FACTUAL HISTORY*

The case was before the Board on a prior appeal. By decision dated February 24, 2011, the Board affirmed OWCP's decisions dated January 15 and April 9, 2010.[2] The Board found

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 10-1574 (issued February 24, 2011).

the medical evidence of record was insufficient to establish an injury causally related to the November 21, 2009 employment incident of stacking and rearranging mail. The history of the case as set forth in the February 24, 2011 decision is incorporated herein by reference.

By letter dated April 18, 2012, appellant requested reconsideration and submitted a February 29, 2012 report from Dr. Kevin L. Trangle, a Board-certified internist, who provided a review of the November 21, 2009 incident and the medical evidence and noted the compensation proceedings. Dr. Trangle noted that appellant was not seen or examined. He opined that appellant sustained injuries while working on November 21, 2009 noting that appellant had immediate pain in the right shoulder and arm which supported causal relationship between the duties performed and his symptoms. Dr. Trangle stated that the December 9, 2009 magnetic resonance imaging scan showed a superior glenoid labral tear, and given the mechanism of injury, the tear most likely occurred *via* direct causation. According to him, the same mechanism of injury likely substantially aggravated the supraspinatus and infraspinatus tendinopathy and acromioclavicular (AC) joint arthrosis. Dr. Trangle stated that the repetitive work activities involved constant motion of the shoulder and caused impingement on the right side. As to the neck, he opined that the employment injury most likely caused a substantial aggravation of C3-4 and C5-6 intervertebral discs with radiculopathy.

By decision dated September 13, 2012, OWCP reviewed the case on its merits and denied modification. It found that the report of Dr. Trangle was insufficient to warrant modification of the prior decision.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

## ***ANALYSIS***

In the present case, appellant submitted a February 29, 2012 report from Dr. Trangle, who listed a history of the November 21, 2009 incident and reviewed medical evidence. Dr. Trangle did not, however, examine appellant or provide results on physical examination. The lack of any results on examination to support the opinion offered reduces the probative value of the medical report.[6]

Dr. Trangle provided a speculative opinion on causal relationship without providing medical rationale to support his stated conclusions. He listed a number of diagnoses, including superior glenoid labral tear, and aggravation of supraspinatus and infraspinatus tendinopathy and AC joint arthrosis, as well as aggravation of C3-4 and C5-6 intervertebral discs with radiculopathy. Dr. Trangle did not clearly address how the work activity on November 21, 2009 "likely" contributed to each of these conditions. Medical opinions that are speculative and not supported by adequate medical rationale are of diminished probative value and are insufficient to meet appellant's burden of proof.[7]

It is appellant's burden of proof to establish an injury in the performance of duty on November 21, 2009. The Board finds Dr. Trangle's report is of diminished probative value on the issue of causal relation.

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 an injury in the performance of duty on November 21, 2009.

[6] *See Dorothy M. Evans*, 36 ECAB 212 (1984).

[7] *Carolyn F. Allen*, 47 ECAB 240 (1995).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 13, 2012 is affirmed.

Issued: May 20, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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