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<b>J.N., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-843</b>
	)	<b>Issued: November 1, 2011</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Louisville, KY, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

On February 7, 2011 appellant filed a timely appeal from a January 12, 2011 merit decision of an Office of Workers' Compensation Programs (OWCP) hearing representative who denied her claim for a left shoulder condition. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant met her burden of proof to establish that her left shoulder condition was causally related to the November 18, 2008 employment injury.

On November 18, 2008 appellant, then a 57-year-old letter part-time flexible mail carrier, filed a traumatic injury claim alleging that she tripped and fell on her left forehead that day. She

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

sustained a hematoma on her forehead and cheek, bruised ribs, and swollen left eye while delivering mail on a porch when she tripped. Appellant stopped work on November 18, 2008. She submitted treatment records from the employee health unit dated November 18, 2008, which noted that appellant fell down in the morning and sustained a swollen and black eye. OWCP accepted her claim for a black eye, face, scalp, and neck contusions, fracture of her left ankle medial malleolus, and right closed acromioclavicular (AC) dislocation.

In an August 26, 2009 operative report, Dr. Ben W. Kibler, a Board-certified orthopedic surgeon, diagnosed right shoulder AC and sternoclavicular (SC) joint arthrosis and noted that appellant had a history of problems with both joints following trauma. He performed an AC joint repair and SC joint repair.

In a September 21, 2009 report, Dr. Kibler stated that appellant was recovering well from surgery and making progress. Appellant described some problems with her left shoulder.

On October 8, 2009 appellant requested authorization for medical treatment for a left shoulder condition.

In an October 30, 2009 progress report, an OWCP field nurse noted that appellant underwent surgery on August 26, 2009 and currently attended physical therapy. She still complained of pain and limited motion in the right and left shoulders.

In a November 9, 2009 report, Dr. Kibler stated that appellant was progressing well and observed that her SC and AC joints were stable. He advised that appellant's left shoulder started bothering her and observed mild impingement in forward flexion and crepitus at the AC joint with no instability.

In a November 25, 2009 progress report, an OWCP field nurse stated that based on appellant's most recent November 9, 2009 examination, she still experienced pain and limited motion in her right shoulder with some improvement in her left shoulder.

In a December 21, 2009 x-ray examination of appellant's left shoulder, Dr. Rose Marie Hackett, a diagnostic radiologist, noted appellant's complaints of chronic shoulder pain. The examination revealed moderate degenerative changes of the AC joint and minimal degenerative change of the greater tuberosity and glenohumeral joint. Dr. Hackett did not observe any acute bony trauma or evidence of soft tissue calcifications. She advised that appellant suffered from mild degenerative changes.

In a December 21, 2009 report, Dr. Kibler stated that appellant had better range of motion and stability in her right shoulder but continued to experience pain with her left shoulder. She complained of soreness and tenderness with pain, thickening, crepitus, and positive horizontal adduction weakness. Dr. Kibler pointed out that an x-ray revealed AC joint arthrosis with joint narrowing and inferior bone spur formation.

In a December 22, 2009 progress report, an OWCP nurse stated that Dr. Kibler authorized appellant to work temporary limited duty on December 21, 2009 and restricted her to no overhead activity, no lifting over five pounds, and no repetitive use of the upper extremities.

The nurse also pointed out that appellant was claiming a new injury to the left shoulder and attributed the alleged injury to the November 18, 2008 employment incident.

By letter dated January 21, 2010, OWCP advised appellant that the medical evidence submitted was insufficient to support her left shoulder claim. It requested she provide a comprehensive medical report from her treating physician, which included a history of injury, clinical findings and results, a firm diagnosis, and a physician's opinion, with stated rationale, explaining how appellant's left shoulder condition was causally related to the accepted November 18, 2008 injury.

In a January 28, 2010 report, Dr. Kibler provided a history of appellant's left shoulder injury. He initially treated appellant for a right shoulder condition that she sustained during a traumatic incident at work. As treatment progressed, appellant began to complain of problems with her left shoulder, which he first noted on November 9, 2009. On examination, Dr. Kibler observed impingement with forward flexion in her left shoulder and difficulty using her arm in the forward flexion position. X-rays also revealed AC joint arthrosis with joint narrowing and bone spur formation. Dr. Kibler explained that he did not treat appellant's left shoulder condition until November 2009 because her right shoulder condition caused her to not put her left shoulder in a position where it could be symptomatic. He stated that the left shoulder symptoms "probably were present" after her injury and opined that "these certainly could have become aggravated with the fall or with any type of trauma, or with overuse with the left arm." He explained that the "exact cause and effect relationship for this problem is not totally one-to-one."

In an April 20, 2010 letter, Dr. Kibler stated that he had only treated appellant for her right shoulder as part of the accepted injuries described. He explained that her current problem related to her left shoulder and leg and recommended surgery for her left shoulder AC joint problems.

Appellant submitted various physical therapy reports dated from September 24 to December 21, 2009.

In a decision dated July 19, 2010, OWCP denied appellant's request for medical treatment for her left shoulder condition finding that the medical evidence did not establish it was causally related to the November 18, 2008 injury. The medical evidence noted that appellant complained of a left shoulder condition beginning in November 2009, approximately one year after the date of injury, but did not provide a rationalized medical opinion from a physician to establish causal relationship.

On July 27, 2010 appellant, through her attorney, requested an oral hearing, which was held on November 1, 2010. Appellant described the history of the November 18, 2008 fall at work and subsequent treatment. Appellant sustained a black eye, contusions to her face, scalp, and neck, a fractured ankle, and a dislocated right shoulder. She later sustained a fracture to her lower left leg, which was accepted by OWCP. Appellant did not realize that her right shoulder hurt until January 2009 when she got off crutches and stopped putting all her weight on her shoulders. Appellant did not notice her left shoulder condition until May 2009 and was informed

that it probably resulted from overcompensating for her right shoulder injury. Appellant asserted her belief that her left shoulder condition resulted from the November 18, 2008 incident.

In a September 9, 2010 report, Dr. Kibler noted that appellant's current problem was her left shoulder as she continued to have AC joint findings with soreness and tenderness anteriorly, positive impingement, and weakness with horizontal adduction. Dr. Kibler recommended she undergo surgery.

In a December 6, 2010 letter to her attorney, appellant recounted a history of her November 18, 2008 injury and subsequent treatment. She stated that her left shoulder and arm were sore during the entire time frame. Appellant informed her doctor about the weakness in her left shoulder and he told her that it might be due to overcompensating for the right collarbone injury suffered on November 18, 2008. Prior to her injury she had full range of motion in both shoulders and arms and was able to complete all her mail clerk duties without assistance. Appellant also described fainting on November 21, 2008.

By decision dated January 12, 2011, OWCP's hearing representative affirmed the July 19, 2010 decision finding insufficient medical evidence to establish that appellant's left shoulder condition was causally related to the November 18, 2008 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence<sup>2</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>3</sup>

While the initial employment injury must arise out of and in the course of the claimant's federal employment, later nonindustrial injuries may also be compensable. It is an accepted principle of workers' compensation law that a second, nonindustrial injury is compensable if it is the direct and natural result of an earlier compensable injury. Where an accident is sustained as a consequence of a disabling residual of a previous industrial injury, it is compensable because of the chain of causation.<sup>4</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.<sup>5</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

<sup>4</sup> *S.M.*, 58 ECAB 166 (2006).

<sup>5</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

employee's diagnosed condition and the specified employment factors or incident.<sup>6</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 the specific employment factors identified by the employee.<sup>7</sup>

### ANALYSIS

On November 18, 2008 appellant sustained an injury when she slipped and fell off a porch when delivering mail at work. OWCP accepted her claim for a black eye, face, scalp, and neck contusions, fracture of her left ankle medial malleolus, and right closed AC dislocation. On August 26, 2009 she underwent right shoulder surgery. On October 8, 2009 appellant requested authorization for medical treatment for a left shoulder condition. OWCP denied appellant's claim for compensation for a left shoulder condition finding that the medical evidence did not adequately explain causal relation. The Board finds that the medical evidence fails to establish that appellant's left shoulder condition was causally related to the November 18, 2008 incident.

Dr. Kibler provided an accurate history of injury and conducted surgery on August 26, 2009 on appellant's right shoulder. The Board notes that appellant first complained of pain to her left shoulder in a September 21, 2009 report, 10 months after the accepted November 18, 2008 injury. Dr. Kibler's treatment of appellant until that point related to her right shoulder condition. He noted appellant's complaints of pain and discomfort with her left shoulder and pointed out that an x-ray examination revealed AC joint arthrosis with joint narrowing and inferior bone spur formation. Dr. Kibler also observed mild impingement in forward flexion and crepitus at the AC joint with no instability. He did not provide any opinion on the cause of appellant's left shoulder condition or address how the November 18, 2008 injury caused or contributed to her condition. 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>8</sup>

In a January 28, 2010 report, Dr. Kibler explained that he did not treat appellant for her left shoulder condition until November 2009 because her right shoulder condition caused her to not put her left shoulder in a position where it could be symptomatic. He noted that the left shoulder changes "probably were present" at the time of the original injury. Dr. Kibler stated that appellant's left shoulder condition could "certainly have become aggravated with the fall or with any type of trauma, or with overuse with the left arm." He concluded, however, that the "exact cause and effect relationship for this problem is not totally one to one." Dr. Kibler's opinion addressing the left shoulder condition is speculative and equivocal. The Board has generally held that opinions such as a condition is probably related, most likely related, or could

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<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>8</sup> *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

be related, are of diminished probative value.<sup>9</sup> Dr. Kibler's opinion is speculative in that he attributed appellant's condition to several causes, specifically "to the fall, or with any type of trauma, or with overuse with the left arm." While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.<sup>10</sup> Dr. Kibler did not provide adequate medical rationale for his opinion or how appellant's November 18, 2008 employment injury caused or contributed to the left shoulder condition almost a year after the fall at work.<sup>11</sup>

The additional medical evidence of record is insufficient to meet appellant's burden of proof. In a December 21, 2009 x-ray examination, Dr. Hackett noted appellant's complaints of chronic shoulder pain and opined that she suffered from mild degenerative changes. She did not provide a well-rationalized opinion regarding the cause of appellant's left shoulder condition or relate her condition to the November 18, 2008 work event. Rather, Dr. Hackett noted that appellant's left shoulder condition was a degenerative condition and not the result of a traumatic incident. Without a well-rationalized medical opinion explaining how the November 18, 2008 incident caused or contributed to appellant's back condition, this report is insufficient to meet appellant's burden of proof.<sup>12</sup>

Appellant also submitted progress reports from an OWCP field nurse and treatment records from a physical therapist. Section 8102(2) of FECA, however, provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.<sup>13</sup> As nurses and physician's assistants are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.<sup>14</sup>

In a December 6, 2010 letter and during her telephone hearing, appellant asserted that her left shoulder condition was due to falling on November 18 and 21, 2008. She stated that her left shoulder and arm were sore since the accepted event, even though the medical reports do not record any left shoulder treatments, and pointed out that she did not have any problems with her left shoulder prior to those falls. The Board finds that the fact that a condition manifests itself after an injury and was not present before an injury is not sufficient to support causal relationship.<sup>15</sup> Causal relationship is a medical issue that can only be established by the

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<sup>9</sup> *D.D.*, 57 ECAB 734 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> *A.D.*, 58 ECAB 159 (2006); *Samuel Senkow*, 50 ECAB 370 (1999).

<sup>11</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>12</sup> *S.Y.*, Docket No.11-206, (issued August 9, 2011); *J.F.*, Docket No. 10-1978 (issued May 16, 2011).

<sup>13</sup> 5 U.S.C. § 8101(2).

<sup>14</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005); *E.H.*, Docket No. 08-1862 (issued July 8, 2009).

<sup>15</sup> *Michael S. Mina*, 57 ECAB 379 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

submission of rationalized medical opinion evidence.<sup>16</sup> The record in this case does not contain such rationalized medical opinion evidence to establish that appellant's left shoulder condition was causally related to the November 18, 2008 injury. Thus, appellant did not meet her burden of proof.

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 failed to meet her burden of proof to establish that her left shoulder condition was causally related to the November 18, 2008 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> *Supra* note 9.