

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

S.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
White Plains, NY, Employer**

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**Docket No. 13-1921
Issued: February 7, 2014**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 19, 2013 appellant, through her attorney, filed a timely appeal from a May 22, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that her right shoulder condition is causally related to a November 14, 2009 employment incident.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 14, 2009 appellant, then a 51-year-old part-time flexible rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her neck and right shoulder during a slip and fall while delivering packages that day. She indicated that the fall occurred on her right side. Appellant did not stop work.

In an October 26, 2012 Form CA-16 Authorization for Examination and Treatment, Dr. Joel Buchalter, a Board-certified orthopedic surgeon, noted that appellant fell in a customer's driveway on November 14, 2009.² He diagnosed shoulder impingement and opined with a check mark "yes" that the condition was caused or aggravated by the employment activity. Dr. Buchalter also opined that appellant was totally disabled from July 21, 2012 onward and would eventually require shoulder arthroscopy. In an October 26, 2012 report, he stated that she was initially seen for right shoulder pain on May 4, 2012 and that she provided a history of her November 14, 2009 work injury and that her right arm had been bothering her since that time. Dr. Buchalter indicated that appellant's right shoulder impingement had become worse since the November 14, 2009 injury. He opined that her right shoulder pain and injury are from the November 14, 2009 work injury and her case should be open for treatment and possible surgery.

In a December 6, 2012 letter, OWCP notified appellant of the deficiencies in her claim and requested additional factual and medical information. It noted that as it appeared to be a minor injury with minimal or no time lost, a limited amount of expenses were administratively approved. The claim was reopened because of the request to authorize surgery. Appellant was afforded 40 days to submit additional evidence and respond to OWCP's inquiries. No further evidence was received.

By decision dated January 9, 2013, OWCP denied appellant's claim. It found that the incident of November 14, 2009 occurred as alleged but the medical evidence was insufficient to substantiate the causal relationship between her right shoulder condition or need for surgery and the November 14, 2009 incident.

On January 12, 2013 appellant requested reconsideration. No additional evidence was submitted. By decision dated February 5, 2013, OWCP denied appellant's reconsideration request on the grounds that she did not raise a substantive legal question or include new and relevant evidence.

In a February 5, 2013 letter, appellant, through counsel, requested a telephonic hearing.

In a January 28, 2013 report, Dr. Buchalter noted appellant's medical treatment to the right shoulder since May 2012 and presented examination findings. He reported that in July 2012, she injured her shoulder while unloading her truck, having a twisting injury to her

² While a properly completed CA-16 form can create a contractual agreement for payment of medical treatment even if the claim is not ultimately accepted, this form was not properly completed. *See Tracy P. Spillane*, 54 ECAB 608 (2003). 20 C.F.R. § 10.300(b) states that the employer shall issue the CA-16 form within four hours of the claimed injury. This regulation also limits the authorization for treatment to a period of 60 days from the date of injury. The October 26, 2012 CA-16 form was completed over two years following the date of injury.

ankle and falling on her shoulder and elbows. Dr. Buchalter reported that since that period of time appellant had increasing pain in the shoulder region and difficulty with overhead activities. He opined that she had an injury in July 2012 in which she suffered shoulder pain and continues to have pain despite repeat injections to the shoulder. Dr. Buchalter opined that appellant is a candidate for arthroscopic surgery and submitted authorization for such surgery.

By decision dated February 26, 2013, OWCP denied appellant's request for a hearing on the grounds that she previously requested reconsideration and the issue could be equally addressed by requesting reconsideration and submitting evidence not previously considered which established causal relationship.

In a March 11, 2013 letter, appellant, through counsel, requested reconsideration. Medical reports regarding her right ankle, including a September 5, 2012 magnetic resonance imaging (MRI) scan, several fracture/dislocation care forms and a November 1, 2012 surgical booking sheet were submitted with additional reports from Dr. Buchalter.

In medical reports dated May 4, 2012 to January 28, 2013, Dr. Buchalter discussed appellant's right shoulder condition. He noted that, on his initial treatment, appellant related shoulder pain since her fall on November 14, 2009. Dr. Buchalter felt that her right shoulder pain was due to injuries arising from the November 14, 2009 work injury. He noted that appellant's examination of May 4, 2012 showed significant signs of shoulder impingement and the May 10, 2012 MRI scan showed evidence of extensive supraspinatus tendinosis, mild infraspinatus tendinosis, degenerative foreshortening of the superior and posterior labra and mild acromioclavicular joint hypertrophy. Based on the clinical examination and diagnostic testing that appellant had extensive rotator cuff tendinitis and shoulder impingement arising from her November 14, 2009 shoulder injury when she fell in a customer's driveway. Dr. Buchalter also diagnosed left knee degenerative joint disease, bilateral shoulder impingement, rule out rotator cuff tear. For the history of injury, he noted that appellant fell two times, one time three years prior and again two years ago, injuring both of her shoulders as well as her left hip. Dr. Buchalter noted that the left hip was injured after the second fall. In medical reports dated from July 26, 2012 to March 6, 2013, he discussed an ankle injury.

By decision dated May 22, 2013, OWCP denied modification of its January 9, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the

employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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. First, 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. Second, the employee must 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.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

OWCP accepted that the employment incident of November 14, 2009 occurred at the time, place and in the manner alleged. The issue is whether appellant's claimed right shoulder condition resulted from the November 14, 2009 employment incident. The Board finds that she did not meet her burden of proof to establish the causal relationship between her claimed condition and the employment incident.

Dr. Buchalter attributed appellant's right shoulder condition and need for surgery to the November 14, 2009 employment incident. However, he did not support his condition with adequate medical rationale explaining how her current shoulder condition was related to the November 14, 2009 employment incident. Dr. Buchalter first saw appellant on May 4, 2012 over two years after the incident at work. While he provided a history of the November 14, 2009 employment incident in his October 26, 2012 report and opined that her right shoulder impingement was the result of that injury, he failed to account for the two-year gap between the incident and his first evaluation of May 4, 2012. Dr. Buchalter did not provide sufficient

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

findings or medical rationale to substantiate the causal relationship between the shoulder condition and the November 14, 2009 incident.⁹ In a December 14, 2012 report, he concluded, based on clinical examination and diagnostic testing, that appellant's extensive rotator cuff tendinitis and shoulder impingement arose from her November 14, 2009 shoulder injury as her shoulder had bothered her since that time. Again, Dr. Buchalter failed to provide a sufficient medical rationale addressing the relationship between her shoulder condition in 2012 and the November 14, 2009 employment incident.¹⁰ The Board finds that he did not explain how the mechanism of the November 14, 2009 employment incident caused or aggravated appellant's right shoulder conditions. Furthermore, the Board notes that Dr. Buchalter notes in his reports of May 4, 2012 and January 28, 2013, an intervening employment event of July 2012 wherein appellant injured both of her shoulders, in addition to other injuries.

The medical records pertaining to appellant's other medical conditions, such as her right ankle, are not related to the claimed condition in the current claim and thus are irrelevant. Likewise, the diagnostic studies submitted do not address causal relationship and are irrelevant.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained a right shoulder condition causally related to the November 14, 2009 employment incident, she has failed to meet her burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds that the attorney's 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.

⁹ See *Thomas L. Hogan*, 47 ECAB 323 (1996).

¹⁰ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her right shoulder condition is causally related to a November 14, 2009 employment incident, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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