

from the postcon. He submitted a July 3, 2012 personal statement and a July 2, 2012 note from Dr. Reena J. Jacob, a Board-certified internist, who requested that appellant be excused from work from July 2 through 11, 2012.

In a July 17, 2012 letter, OWCP advised appellant of the deficiencies in his claim and provided him the opportunity to submit additional evidence. Appellant was asked to submit a medical diagnosis of a condition resulting from his injury together with a physician's opinion as to how his injury was causally related to the June 30, 2012 incident. He was accorded 30 days to submit additional evidence.

In response, OWCP received a July 25, 2012 statement from appellant, who returned to full-duty work on July 6, 2012. A July 2, 2012 x-ray of the right shoulder found no acute abnormality. A July 12, 2012 note from Dr. Jacob excused appellant from work July 12 through 25, 2012.

In a July 20, 2012 report, Dr. Harry Goldmark, a Board-certified orthopedic surgeon, noted that on June 30, 2012 appellant injured his right shoulder at work while performing lifting and external rotation. He provided examination findings and listed an impression of right shoulder strain and possible labral tear. In a July 23, 2013 form report, Dr. Goldmark noted the injury occurred on June 30, 2012 while appellant was at work. He diagnosed a coracoclavicular sprain which he opined, with a check mark "yes," that the incident appellant described was the competent medical cause of this injury/illness.

By decision dated August 27, 2012, OWCP denied appellant's claim. It accepted that the June 30, 2012 incident occurred as alleged but found that the medical evidence was insufficient to establish causal relation.

On September 17, 2012 appellant requested reconsideration. He submitted a July 16, 2012 magnetic resonance imaging (MRI) scan of the right shoulder. In a July 2, 2012 treatment note, Dr. Jacob noted a history of the injury and diagnosed right shoulder pain. In July 12, 2012 treatment notes, he listed a diagnosis of right shoulder pain. In a July 20, 2012 treatment note, tendinitis and labral tear were diagnosed.

In an October 17, 2012 report, Dr. Jacob stated that appellant's treatment notes reflected her opinion that the work incident caused or aggravated an injury. On July 12, 2012 appellant informed her that he injured his right shoulder on June 30, 2012 while unloading mail. He had containers in his hands and, while he was trying to stop a mail tub from falling, his arm became twisted and he experienced severe pain. Dr. Jacob diagnosed pain and an x-ray showed no abnormality. She placed appellant out of work due to pain. The July 16, 2012 MRI scan showed tendinitis and was consistent with a labral tear of the posterior superior labrum with associated paralabral cyst in the spinoglenoid notch. Dr. Jacob referred appellant to an orthopedic surgeon for treatment of the labral tear.

By decision dated December 26, 2012, OWCP denied modification of the August 27, 2012 decision.

On March 8, 2013 appellant requested reconsideration. He submitted a March 8, 2013 statement, indicating that his diagnosis had been established and that he had no prior injuries to

his right shoulder. Appellant submitted duplicative copies of medical evidence already of record.

In a February 15, 2013 letter, Dr. Jacob advised that appellant sustained a right shoulder injury at work on June 30, 2012. She stated that the MRI scan of the right shoulder revealed tendinitis and labral tear of the posterior superior labrum, which she believed resulted from the incident at work. Dr. Jacob noted that appellant was never evaluated in her office with right shoulder pain/injury prior to July 2, 2012.

By decision dated June 4, 2013, OWCP denied modification of the December 26, 2012 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.² 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.³

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.⁴

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁵ 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.⁶ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed

² C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

³ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁵ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thomas*, 56 ECAB 511 (2005).

⁶ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

in support of the physician's opinion.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

The Board finds that this case is not in posture for decision.

OWCP accepted that on June 30, 2012 appellant was moving flat tubs from the postcon. The Board finds that the medical evidence of record, while not sufficient to discharge his burden of proof, is sufficient to require further development.

In a July 20, 2012 report, Dr. Goldmark noted the history of injury and provided an impression of right shoulder strain and possible labral tear. In a July 23, 2013 report, he diagnosed a coracoclavicular sprain which he opined, with a check mark "yes," that the incident appellant described was the competent medical cause of this injury/illness. Dr. Goldmark failed to explain how the diagnosed coracoclavicular sprain was caused or aggravated by the accepted employment incident.

The treatment notes of Dr. Jacob provided an accurate history of the June 30, 2012 incident at work. Following diagnostic testing appellant was diagnosed with tendinitis and labral tear. On October 17, 2012 Dr. Jacob stated that her treatment notes reflected that her opinion that the work incident caused or aggravated the claimed injury. She related appellant's history of the June 30, 2012 incident noted that an x-ray showed no abnormality but the July 16, 2012 MRI scan showed tendinitis and was consistent with a labral tear of the posterior superior labrum with associated paralabral cyst in the spinoglenoid notch. Appellant had never been treated in Dr. Jacob's office for a right shoulder injury prior to July 2, 2012. Dr. Jacob examined him and made diagnoses related to the June 30, 2012 employment incident. Although her reports are insufficient to establish appellant's claim as they are lacking in medical rationale to establish causal relationship between his right shoulder conditions and the accepted employment incident, they are sufficient to require further development of the case record by OWCP. There was no contrary medical evidence in the record.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁹ While the medical records do not provide sufficient rationale to discharge appellant's burden of proof that the June 30, 2012 incident caused an injury, the reports raise an inference of

⁷ *James Mack*, 43 ECAB 321, 329 (1991).

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

⁹ *L.C.*, Docket No. 12-941 (issued October 1, 2012); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

injury and causal relationship sufficient to require further development of the case record by OWCP.¹⁰

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to the appropriate specialist for an evaluation and a rationalized medical condition regarding his condition. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.¹¹

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Issued: June 11, 2014
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

¹⁰ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹¹ Due to the disposition of this case, appellant's arguments on appeal will not be addressed.