

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

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**W.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Palm Desert, CA, Employer**

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**Docket No. 14-1192  
Issued: October 17, 2014**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 28, 2014 appellant, through counsel, filed a timely appeal from a December 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a right shoulder injury causally related to factors of her federal employment.

**FACTUAL HISTORY**

On July 19, 2012 appellant, then a 56-year-old mail carrier, filed an occupational disease claim and claim for compensation (Form CA-2) alleging that she sustained a right shoulder injury causally related to repetitive right arm movements in her job duties. In a letter dated

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

July 9, 2012, she stated that she had been a city carrier until October 23, 2010, when she stopped working due to an employment injury to her back.<sup>2</sup> Appellant stated that in 2010 she experienced shoulder pain and she discussed her job duties. In a letter dated September 23, 2012, she stated that a second opinion report had stated that she had a work-related shoulder injury.

The record contains a May 26, 2011 report from Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, who noted that appellant reported pain in her right shoulder and appellant stated that it was a repetitive strain injury.

On October 2, 2012 appellant submitted a magnetic resonance imaging (MRI) scan report dated October 3, 2011 from Dr. Christian Neumann, a radiologist, which reflected an extensive partial thickness tear of the right rotator cuff. In a report dated July 18, 2012, Dr. Mark Barnhard, an osteopath, provided a history of an August 23, 2010 employment incident involving an onset of low back pain after pulling a lever. As to the right shoulder, he reported that appellant developed a gradual onset of pain in July 2010, but did not see a physician until September 2011. Dr. Barnhard indicated that appellant was given an injection in her shoulder by a physicians' assistant in October 2011. He provided results on examination and diagnosed lumbar facet arthropathy and right shoulder rotator cuff tendinopathy, stable.

By decision dated October 16, 2012, OWCP denied the claim for compensation. It indicated that appellant had referred to a second opinion report from Dr. Swartz, but this was a referral from the back injury claim and Dr. Swartz did not state that appellant had a work-related shoulder injury. OWCP found the evidence did not establish an employment-related injury.

Appellant requested reconsideration and submitted a September 27, 2013 report from Dr. Jacob Tauber, a Board-certified orthopedic surgeon, who provided a history and noted appellant's job duties. Dr. Tauber provided results on examination and diagnosed right rotator cuff tear. He stated that appellant carried out extensive strenuous and repetitive motion duties in the course of her employment, noting appellant's job duties of retrieving and casing mail. Dr. Tauber stated that appellant had a rotator cuff tear and the mechanism of injury was a "classic repetitive motion due to her impingement." He concluded that appellant's injury should be considered work related.

By decision dated December 19, 2013, OWCP reviewed the case on its merits and denied modification. It found the medical evidence was insufficient to establish the claim.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

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<sup>2</sup> The record indicates that appellant filed a traumatic injury claim for injury on August 23, 2010.

<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>5</sup> A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.<sup>6</sup> Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>7</sup>

### ANALYSIS

In the present case, appellant filed a claim alleging a right shoulder injury causally related to repetitive work activity as a city carrier. She initially submitted a July 18, 2012 report from Dr. Barnhard. This report is not sufficient to establish the claim, as Dr. Barnhard does not provide an opinion on causal relationship between a diagnosed right shoulder condition and the identified employment activity. The Board has found that reports without any opinion on causal relationship are of limited probative value.<sup>8</sup>

Appellant has also submitted a September 17, 2013 report from Dr. Tauber, who does provide an opinion that he believed repetitive job duties caused a rotator cuff tear. But identifying the diagnosis of rotator cuff tear and stating that it was the result of repetitive motion at work does not itself establish a rationalized medical opinion.<sup>9</sup> The MRI scan reporting a rotator cuff tear was dated October 3, 2011, and the record indicated that appellant had not worked since October 23, 2010.<sup>10</sup> In addition, the record indicated that appellant had not sought treatment for a right shoulder condition until September 2011. A rationalized medical opinion must discuss the relevant factual and medical history and clearly explain why the physician

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<sup>4</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>5</sup> *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *Id.*

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

<sup>9</sup> *See A.C.*, Docket No. 11-1800 (issued March 21, 2012).

<sup>10</sup> Appellant sustained a work injury on August 23, 2010, and it is not clear whether her job duties were altered prior to the work stoppage.

believes the diagnosed condition reported on October 3, 2011 was causally related to work activity prior to October 23, 2010.

It is appellant's burden of proof to establish her claim. The medical evidence of record does not contain a rationalized medical opinion on causal relationship between a diagnosed right shoulder condition and the identified employment factors.

On appeal, appellant's representative refers to a second opinion report in the record from Dr. Swartz. He notes this was from an "unrelated claim" and as such can serve no purpose in the present claim. In addition, appellant argues that OWCP should not use Dr. Swartz as a second opinion physician, citing a U.S. Court of Appeals (9<sup>th</sup> Circuit) decision. The Board notes that Dr. Swartz was not a second opinion referral physician in the present case. In his May 26, 2011 report, Dr. Swartz does not discuss a shoulder injury other than to note that appellant reported shoulder pain and appellant asserted that it was from repetitive strain. The report is of little probative value to the issues presented in this case and OWCP did not rely on the report of Dr. Swartz in denying the claim. The record indicated that it was appellant who previously argued that it supported her claim.

For the reasons noted above, appellant did not meet her burden of proof to establish a shoulder injury due to her work duties. She 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 did not establish a right shoulder injury causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 19, 2013 is affirmed.

Issued: October 17, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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