

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

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lancaster, PA, Employer**

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**Docket No. 11-1200
Issued: December 16, 2011**

Appearances:
Nina B. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument October 5, 2011

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 18, 2011 appellant, through her attorney, filed a timely appeal from an October 18, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof to establish that she developed a right shoulder condition on July 14, 2005 while in the performance of duty.

¹ The 180th day following the October 18, 2010 OWCP decision was April 16, 2011. As this fell on a Saturday, the period for filing the appeal ran to the next business day, Monday, April 18, 2011 rendering the appeal timely. 20 C.F.R. § 501.3(f)(2).

² 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 17, 2008 appellant, then a 63-year-old clerk, filed a claim for traumatic injury alleging that on July 14, 2008 she was pushing and pulling all purpose containers and felt a pop in her shoulder. At the time of the incident she was on light duty for a nonwork-related hip condition. Appellant stopped work on July 18, 2008.

Appellant was treated by Dr. Michael E. Brown, a Board-certified family practitioner, on July 17, 2008, who noted that she sustained an injury to her right shoulder on July 14, 2008 while working. Dr. Brown diagnosed avulsion fracture of the right shoulder and noted that she was disabled from July 17 to 23, 2008. On July 23, 2008 appellant came under the treatment of Dr. William H. Ulmer, an osteopath and Board-certified orthopedist, for right shoulder pain. Appellant reported sustaining a shoulder injury on July 14, 2008 when she was pushing heavy carts at work and felt a “pop” in her right shoulder. Dr. Ulmer noted findings upon physical examination of diffuse right shoulder girdle atrophy, mild scapular winging and limited range of motion with crepitation. He noted x-rays of the right shoulder revealed osteopenia and acromioclavicular osteoarthritis. In reports dated August 4 to September 9, 2008, Dr. Ulmer diagnosed rotator cuff tendinitis with partial interstitial tear. A July 31, 2008 magnetic resonance imaging (MRI) scan of the right shoulder revealed supraspinatus and subscapularis tendinitis with minimal interstitial partial tear, biceps tendinitis with degeneration and suspected fraying or tear of the glenoid labrum moderate subdeltoid bursitis and moderate acromioclavicular joint arthritis.

In a letter dated September 8, 2008, OWCP advised appellant of the type of factual evidence needed to establish her claim and requested that she submit such evidence.

In a statement dated October 3, 2008, appellant noted that on July 14, 2008 her work area was jammed with all-purpose containers and it was difficult to maneuver around the containers. She indicated that she started to move the containers and heard a “pop” in her shoulder but continued to work. Appellant reported increased pain and sought medical treatment. In a September 9, 2008 attending physician’s report, Dr. Ulmer diagnosed tendinitis, calcifying shoulder and mild interstitial tearing. He noted with a checkmark “yes” that appellant’s condition was caused by an employment activity and returned her to restricted duty on August 4, 2008.

In a decision dated October 10, 2008, OWCP denied appellant’s claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the factors of employment as required by FECA.³

On November 5, 2008 appellant requested an oral hearing which was held on May 27, 2009. She submitted reports from Dr. Ulmer dated October 20, 2008 to April 16, 2009, who noted that she was progressing well with physical therapy. Dr. Ulmer diagnosed rotator cuff tendinitis with moderate interstitial tearing and continued appellant’s work restrictions. He noted that she experienced an exacerbation of symptoms in November 2008 while lifting mail during the holiday season and diagnosed chronic rotator cuff tendinosis with moderate interstitial

³ *Id.*

tearing of the right shoulder, acute exacerbation. On December 8, 2008 Dr. Ulmer performed a subacromial cortisone injection. In reports dated January 14 and April 16, 2009, he noted appellant's continued right shoulder symptoms but noted that she experienced marked improvement with physical therapy. Dr. Ulmer opined that based on his evaluations over the last several months her injury was work related and secondary to her repetitive lifting, pushing and pulling duties performed at work. In a June 10, 2009 report, he noted that the physical examination was essentially unchanged and diagnosed chronic rotator cuff tendinosis with interstitial tearing of the rotator cuff, right shoulder.

By decision dated August 13, 2009, an OWCP hearing representative affirmed the denial of appellant's claim.

On October 29, 2009 appellant requested reconsideration. She submitted an August 20, 2009 report from Dr. Brown who treated her on July 17, 2008 for right shoulder pain which began on July 14, 2008 while moving heavy mail bins at work. Dr. Brown opined that to a reasonable certainty appellant's injury was new and it occurred acutely on July 14, 2008 while working at the employing establishment. He noted that this injury was not a reaggravation of an old injury or a result of repetitive motions, rather, her injury was caused by moving heavy mail bins. Also submitted was a September 10, 2009 report, from Dr. Ulmer who noted treating appellant since July 23, 2008 for a right shoulder injury. Appellant reported that her injury occurred at work on July 14, 2008. She noted that there was a lot of clutter, heavy equipment and mail bins around her workstation and she attempted to move them out of the way and felt a "pop" in her shoulder. Appellant noted continuing to work; however, her symptoms worsened and she sought treatment at the emergency room on July 17, 2008. Dr. Ulmer noted an MRI scan revealed a partial rotator cuff tear which was treated conservatively with injections and physical therapy. He noted that appellant reported a history of a prior right shoulder injury; however, this injury was resolved with no residual symptoms until her injury on July 14, 2008. Dr. Ulmer opined that to a reasonable degree of medical certainty her movement of the heavy mail bins were the cause of her current symptoms and were not an aggravation of a prior injury or due to repetitive motions. On October 13, 2009 appellant was treated by Dr. Michael B. Furman, a Board-certified orthopedist, for axial neck pain and right upper limb pain, who noted that she had a work-related right shoulder injury on July 23, 2008. Dr. Furman diagnosed myalgia and myositis, joint pain right shoulder and neck pain cervicalgia.

In a decision dated November 7, 2009, OWCP denied modification of the prior decision.

On September 20, 2010 appellant again requested reconsideration. She submitted reports from Dr. Ulmer dated January 13 to July 26, 2010, who treated her for her right shoulder injury. Dr. Ulmer noted examination of the right shoulder remained unchanged and diagnosed partial thickness tear, right shoulder and cervical degenerative disc disease.

By decision dated October 18, 2010, OWCP denied modification of the prior decision, after merit review.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing 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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.⁸ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

In the instant case, it is not disputed that appellant worked as a clerk and was moving mail carts on July 14, 2008.

⁴ *Id.*

⁵ *Gary J. Watling*, 52 ECAB 357 (2001).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Id.*

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

OWCP denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that her medical condition of right rotator cuff tendinitis with partial interstitial tear was causally related to her employment. However, the Board finds that, while the medical evidence submitted by her is not fully rationalized, it generally supports that she sustained a right shoulder injury from moving mail carts on July 14, 2008. Specifically, on July 23, 2008 Dr. Ulmer noted that appellant sustained a right shoulder injury on July 14, 2008 while pushing heavy carts at work. Appellant reported feeling a "pop" in her right shoulder. Similarly, on September 10, 2009, Dr. Ulmer noted treating her since July 23, 2008 for a right shoulder injury, which she indicated occurred on July 14, 2008 while at work. Appellant noted that there was a lot of clutter, heavy equipment and mail bins around her workstation and she attempted to push these carts out of the way and felt a "pop" in her shoulder. Dr. Ulmer opined that to a reasonable degree of medical certainty her movement of the heavy mail bins were the cause of her current symptoms and were not an aggravation of a prior injury or due to repetitive motions. Likewise, an August 20, 2009 report from Dr. Brown noted treating appellant on July 17, 2008 for right shoulder pain which began on July 14, 2008 while she was moving heavy mail bins at work. He opined that to a reasonable certainty her injury was caused by moving heavy mail bins. Although the physician's opinions are not sufficiently rationalized to carry appellant's burden of proof in establishing her claim, it is uncontroverted in the record and is, therefore, sufficient to require further development of the case by OWCP.¹⁰

In view of the above evidence, OWCP should have referred the matter to an appropriate medical specialist to determine whether appellant sustained right rotator cuff tendinitis and partial tear as a result of her employment duties.

Proceedings under FECA are not adversary 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.¹¹

Therefore, the Board finds that the case must be remanded to OWCP for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with OWCP procedures, to determine whether she sustained a right shoulder injury as a result of performing her employment duties. Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on her claim.

CONCLUSION

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

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

¹¹ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: December 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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