

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

P.C., Appellant)	
)	
and)	Docket No. 11-40
)	Issued: September 7, 2011
U.S. POSTAL SERVICE, NETWORK)	
DISTRIBUTION CENTER, Springfield, MA,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2010 appellant filed a timely appeal from an August 19, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease claim in the performance of duty.

FACTUAL HISTORY

On March 5, 2010 appellant, then a 57-year-old flat sorter clerk, filed an occupational disease claim alleging that she sustained a left shoulder injury as a result of feeding mail into a

¹ 5 U.S.C. § 8101 *et seq.*

delivery bar code sorter. She became aware of her condition and its relationship to her employment on February 20, 2010. Appellant did not stop work.

OWCP informed appellant in a March 10, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a statement describing the employment factors that contributed to her condition and medical reports offering a physician's reasoned opinion as to how the identified factors caused or aggravated an injury.

In medical records dated March 18, 19 and 31, 2010, a physician assistant advised that appellant worked for the employing establishment and sustained left shoulder soreness on February 20, 2010 due to feeding the delivery bar code sorter. He diagnosed calcific tendinitis of the left shoulder. An April 19, 2010 follow-up note from the physician assistant released appellant to modified duty.²

By decision dated April 27, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that employment activity caused or aggravated a left shoulder condition.

Appellant requested reconsideration on May 27, 2010. She stated that she began working for the employing establishment on June 20, 1987 and held a manual flats bid. In 1999, appellant was diagnosed with right shoulder tendinitis and temporarily placed on light duty. During this period, she cased mail with her left arm and subsequently experienced left shoulder pain.³ After 2006, appellant was trained to "sweep" mail from the delivery bar code sorter, which entailed retrieval of mail from the topmost row of stackers and placement into corresponding trays. Around the beginning of 2010, she worked with these machines more frequently and for prolonged intervals. Appellant recalled that she started to have left shoulder pain on February 20, 2010 due to the repetitive movements involved with delivery bar code sorter duty. Her condition worsened to the extent that she was unable to move her left arm by March 1, 2010. Appellant received a cortisone injection on March 18, 2010. Although she initially returned to modified duty on April 20, 2010, she was off work effective May 14, 2010.

A March 18, 2010 left shoulder x-ray report from Dr. Sanford Smoot, a Board-certified diagnostic radiologist, found degenerative changes of the acromioclavicular joint and extensive calcific tendinitis.

In a March 18, 2010 report signed by the physician assistant and Dr. Richard M. Kane, a Board-certified orthopedic surgeon, appellant related that she injured her left shoulder at work on February 20, 2010 after repetitively lifting trays and sorting mail. She previously sustained right shoulder tendinitis in 1999. Appellant exhibited anterior and lateral rotator cuff interval tenderness, soreness radiating to the deltoid, positive impingement signs, mild subacromial crepitus and limited range of motion (ROM) on examination while x-rays revealed calcific

² March 31 and April 19, 2010 rehabilitation service order forms signed by the physician assistant reiterated a diagnosis of left shoulder calcific tendinitis.

³ The record contains a March 25, 1999 medical report regarding appellant's complaint and an April 10, 2009 physician's note excusing her from performing duties involving the postal delivery bar code sorter "due to a preexisting condition that may be aggravated by the repetitive motion."

deposits. She was diagnosed with left shoulder calcific tendinitis and received a cortisone injection. Subsequent cosigned March 31 and April 19, 2010 reports noted that appellant was unable to raise her left arm above shoulder height, as was required by her job duties. She was referred to physical therapy and scheduled to return to work on April 20, 2010.⁴

A May 3, 2010 duty status report signed by Dr. Kane and the physician assistant pointed out that appellant developed left shoulder soreness while feeding mail into a delivery bar code sorter on February 20, 2010. On examination, she exhibited left shoulder impingement, tenderness and calcific deposits. Appellant was diagnosed with calcific tendinitis and impingement of the left shoulder and scheduled to return to limited sedentary duty on April 20, 2010. A separate, cosigned May 3, 2010 report added that appellant's left shoulder worsened after a full day of work. This report also indicated that appellant's right shoulder overcompensated and became symptomatic.

In a May 14, 2010 report, Dr. Kane noted that appellant experienced symptoms since February 20, 2010 due to "certain repetitive motions at work." He examined her and observed moderate deficits in motion, suboptimal effort and tenderness between the acromion and tuberosity. Based on prior radiological films, Dr. Kane diagnosed calcific tendinitis and referred appellant to physical therapy.⁵

On August 19, 2010 OWCP denied modification of the April 27, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁶ 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.⁷

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁸ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

⁴ The April 19, 2010 report noted that appellant did not begin physical therapy because her workers' compensation claim was denied.

⁵ Appellant also furnished cosigned copies of the physician assistant's notes for the period March to April 19, 2010 and April 19, 2010 rehabilitation service order form.

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See S.P.*, 59 ECAB 184, 188 (2007).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes 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. The opinion of the physician must be based on a complete factual and medical background, 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.¹⁰

ANALYSIS

The evidence supports that appellant routinely fed mail into and swept mail from a delivery bar code sorter since 2006. The medical reports diagnosed left shoulder calcific tendinitis. The Board finds, however, that the medical evidence was insufficient to establish that the accepted employment activity caused the condition.

Appellant originally submitted medical documents from a physician assistant for the period March 18 to April 19, 2010, which advised that she sustained left shoulder symptoms on February 20, 2010 due to feeding the delivery bar code sorter and diagnosed calcific tendinitis. She later furnished copies that were jointly signed by Dr. Kane. Appellant submitted additional cosigned reports for the period March 18 to May 3, 2010 that attributed her condition to feeding, sorting and tray lifting. While the Board has held that a physician assistant's notes may be considered probative if cosigned by a physician,¹¹ the cosigned medical records in this case are insufficient to establish causal relationship because they fail to provide medical rationale explaining how feeding mail into a delivery bar code sorter or sweeping mail caused or aggravated the left shoulder calcific tendinitis.¹² Here, the need for such rationale is particularly important as appellant indicated that she previously had left shoulder symptoms in 1999.

A May 14, 2010 report from Dr. Kane remarked that appellant experienced symptoms since February 20, 2010 due to "certain repetitive motions at work." His opinion, however, is of diminished probative value on the issue of causal relationship as it lacked fortifying medical rationale.¹³ While Dr. Kane appeared to associate appellant's condition to her employment, he

⁹ *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see R.R.*, Docket No. 08-2010 (issued April 3, 2009).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 7. *See* 5 U.S.C. § 8101(2) (FECA's definition of physician).

¹¹ *See Rosita F. Brown*, Docket No. 03-1076 (issued July 1, 2003); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3(c) (March 2010).

¹² *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹³ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

did not specify any of the contributing work factors.¹⁴ He did not explain the nature of the repetitive motions at work or why any particular work activities would cause or aggravate a diagnosed condition.

Appellant contends on appeal that her claim was wrongly denied “because of the wording on the physician’s medical report.” As noted, medical evidence must sufficiently explain how feeding mail into and sweeping mail from a delivery bar code sorter pathophysiologically caused or aggravated left shoulder calcific tendinitis. As the medical opinion of record failed to demonstrate this relationship, appellant did meet her burden.

The Board notes that appellant submitted new evidence after issuance of the August 19, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁵ However, appellant may submit new evidence or argument as part of a formal 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 that she sustained an occupational disease claim in the performance of duty.

¹⁴ See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician’s opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). The Board also points out that Dr. Kane did not explicitly identify a left shoulder condition. See *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

¹⁵ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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