

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

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**J.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dover, NH, Employer**

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**Docket No. 12-646  
Issued: August 24, 2012**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 30, 2012 appellant, through his attorney, filed a timely appeal from a December 7, 2011 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he developed a left rotator cuff tear as a result of his employment.

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

<sup>2</sup> The Board notes that appellant submitted additional evidence following the December 7, 2011 merit decision. The Board, however, may not consider new evidence for the first time on appeal which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). As the medical reports were not part of the record considered by OWCP in its December 7, 2011 decision, the Board may not consider this evidence for the first time on appeal. Appellant may submit that evidence to OWCP along with a request for reconsideration.

## **FACTUAL HISTORY**

On September 1, 2011 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that he experienced pain and weakness in his left shoulder as a result of carrying bundles of mail in his left hand at work. He first became aware of his condition in April 2011. Appellant did not stop work.

In a September 8, 2011 New Hampshire Workers' Compensation medical form, Dr. Peter D. Buckley, Board-certified orthopedic surgeon, diagnosed rotator cuff tear and recommended surgery. He checked a box marked "yes" that appellant's injury and disability were a result of the injury described. Dr. Buckley advised that appellant could continue working full duty until surgery.

On September 15, 2011 OWCP notified appellant that the evidence submitted was insufficient to establish his claim. Appellant was requested to submit a detailed description of the employment activities he claimed caused his condition. He was also requested to submit a comprehensive medical report, which included a diagnosis, results of examinations and tests and a physician's opinion with medical reasons on the cause of his condition.

On September 19, 2011 appellant responded to OWCP's development letter. He stated that as a city carrier he had over 750 deliveries on his park and loop route. Appellant explained that he carried his residential mail in his left arm and carried his satchel with parcels and circulators on his left shoulder. He completed this route five to six days a week for seven years. Appellant reported that outside of work he played golf occasionally, but he had not played in over 18 months. He used a camping trailer one or two weeks each summer and rarely used the computer. Appellant did not have any prior injuries to his left shoulder but noted that six years prior he underwent right shoulder rotator cuff repair.

In an August 17, 2011 report, Dr. Gregory Andrecyk, a Board-certified family practitioner, noted appellant's complaints of worsening pain in his left shoulder. On examination, he observed some anterior tenderness in appellant's left shoulder, limited abduction and forward flexion secondary to pain and positive empty can test. Dr. Andrecyk diagnosed left shoulder pain and possible rotator cuff tear.

In an August 25, 2011 report, Dr. Buckley related appellant's complaints of progressively worsening left shoulder pain for the past four months. He reviewed appellant's history and noted a right shoulder rotator cuff repair in May 2005, which appellant had stated was work related. After his right shoulder surgery in 2005, appellant used his left shoulder significantly more and it was now worse than his right shoulder. On examination, Dr. Buckley observed full range of passive motion in his left shoulder and 4/5 rotator cuff testing. He noted tenderness about the acromioclavicular (AC) joint and anterior coracoacromial arch and tenderness to palpation in the bicipital groove, but nontender specifically over the rotator foot print. Appellant's neurovascular examination was intact and elbow motion was full. Dr. Buckley reported that radiographs revealed a Type 2 acromion and AC joint arthrosis. He stated that the symptoms were strongly suggestive of rotator cuff tear similar to appellant's other work-related problem six years ago with his contralateral shoulder.

In an August 29, 2011 magnetic resonance imaging (MRI) scan report, Dr. Michael Ciaschini, a Board-certified diagnostic radiologist, stated that the MRI scan results were abnormal. He observed a full-thickness tear of the supraspinatus insertion, anterior infraspinatus tendinosis and mild-to-moderate subscapularis tendinosis. Dr. Ciaschini also found fluid throughout the bursal space including the subcoracoid recess which was contiguous with the bursa compatible with full-thickness rotator cuff tear. He noted severe degenerative arthritis present in the AC joint with hypertrophic change. Dr. Ciaschini diagnosed severe tendinosis and full-thickness tear of the supraspinatus tendon with mild retraction, mild anterior infraspinatus tendinosis, moderate subscapularis tendinosis and severe AC joint arthritis with hypertrophic change resulting in impingement on the rotator cuff superiorly.

In a September 8, 2011 report, Dr. Buckley related appellant's continued complaints of left shoulder pain and difficulty sleeping. He reported that the MRI scan showed evidence of a full-thickness rotator cuff tear involving the superior and a portion of the infraspinatus, along with AC joint arthrosis, impingement and some labral tearing. Dr. Buckley observed persistent weakness and tenderness with rotator cuff testing that was essentially unchanged since the August 25, 2011 examination. He diagnosed left shoulder full-thickness rotator cuff tear with impingement syndrome and labral tears. Dr. Buckley recommended surgery.

In a decision dated December 7, 2011, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that he sustained a left shoulder rotator cuff tear as a result of his work duties.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup> In an occupational disease claim, appellant's burden requires submission of the following: (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 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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> Rationalized medical

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

Appellant alleged that his left shoulder rotator cuff tear resulted from his employment duties as a letter carrier. OWCP accepted that his duties included carrying mail with his left arm and his satchel filled with mail on his left shoulder and that he sustained a left shoulder rotator cuff tear, but denied his claim finding insufficient medical evidence to establish that his left shoulder condition was causally related to those duties. The Board finds that appellant has failed to provide sufficient medical evidence to establish that he sustained a left shoulder rotator cuff tear as a result of his employment duties.

Appellant submitted medical reports by Dr. Buckley, who related appellant's complaints of progressively worsening left shoulder pain for the past four months. Dr. Buckley reviewed appellant's history and noted a right shoulder rotator cuff repair in May 2005, which appellant had related was caused by work. Upon examination of appellant's left shoulder, he observed full range of passive motion and 4/5 rotator cuff testing. Dr. Buckley noted tenderness about the AC joint and anterior coracoacromial arch and tenderness to palpation in the bicipital groove, but nontender specifically over the rotator foot print. He diagnosed left shoulder full-thickness rotator cuff tear with impingement syndrome and labral tears and recommended surgery. In a New Hampshire Workers' Compensation form, Dr. Buckley also checked a box marked "yes" that appellant's condition was a result of the injury described. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>9</sup> The Board also notes that Dr. Buckley does not describe any of appellant's letter carrier duties nor actually attribute his condition to his employment duties. While Dr. Buckley noted that appellant used his left shoulder significantly more following his right shoulder surgery, he did not explain how medically his rotator cuff tear would have occurred as a result of appellant's employment duties. Rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.<sup>10</sup> Because Dr. Buckley fails to neither describe appellant's employment duties nor explain how these duties are causally related to his left shoulder condition, his reports are insufficient to establish his claim.

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<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>9</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>10</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Solomon Polen*, 51 ECAB 341 (2000).

The additional medical evidence is insufficient to establish appellant's claim. Drs. Andrecyk and Ciaschini provided a diagnosis of left shoulder rotator cuff tear, but neither physician provides any opinion on the cause of appellant's left shoulder condition nor relate specific factors of his employment to his condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> Moreover, the Board notes that Dr. Ciaschini found severe degenerative arthritis present in appellant's AC joint with hypertrophic change. Thus, the record is unclear as to whether appellant's left shoulder condition resulted from factors of his employment or from a degenerative condition. Without rationalized medical opinion evidence demonstrating that he sustained a left shoulder condition as a result of his letter carrier duties, the Board finds that OWCP properly denied his claim.

On appeal, appellant described his duties as a mail carrier and expressed his belief that because he carries his mail bundles in his left arm and carried his satchel on his left shoulder his left shoulder rotator cuff tear was directly related to his letter carrier duties. The Board has held, however, that the mere fact that a condition manifests itself during a period of employment does not raise an inference of a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>12</sup> Causal relationship is a medical question that must be established by reasoned medical opinion evidence.<sup>13</sup> Because appellant has not provided such rationalized medical opinion in this case, he has failed to meet his burden of proof.

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.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his left shoulder rotator cuff tear was causally related to factors of his employment.

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<sup>11</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>12</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>13</sup> *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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