

On appeal, appellant requests temporary light-duty employment.

FACTUAL HISTORY

On July 8, 2010 appellant, then a 49-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral shoulder condition due to factors of her federal employment. She indicated that her first employment injury occurred in 1996, the second in 2002 and the third in 2008.³ After the third injury, appellant returned to full duty in September 2008 and through the course of time, her duties and previous accidents caused the impairment of her shoulders.

Appellant submitted two light-duty requests dated June 17 and August 2, 2010.

A June 3, 2010 magnetic resonance imaging (MRI) scan of the left shoulder revealed a 1.2 centimeter tear of the supraspinatus tendon of the left shoulder, degenerative joint disease at the acromioclavicular (AC) joint and biceps tendon rupture.

On June 25, 2010 Dr. Robert Lowery, a Board-certified orthopedic surgeon, performed an arthroscopy of the left shoulder with debridement of biceps tendon tear, subacromial decompression and rotator cuff repair.

In an August 11, 2010 report, Dr. Lowery provided a history of appellant's medical treatment and diagnosed tendinitis and rotator cuff tear. He opined that appellant's work duties such as lifting, pushing, pulling, twisting, reaching above the shoulders and grasping mail for many years caused her conditions. Dr. Lowery noted that appellant mentioned work injuries in 1989,⁴ 1997, 2002 and 2008 where a pattern of using repetitive motions after an injury caused a recurrence of accidents. Appellant also mentioned a work injury in 2006 in which she broke a fall when pushing a cart. According to Dr. Lowery, while the act of falling did not automatically necessitate a tear within the rotator cuff, the tendon in her shoulder could have snapped, depending on how she landed.

In an August 20, 2010 letter, OWCP informed appellant of the deficiencies of her claim and afford 30 days for the submission of additional evidence.

In a February 27, 2003 report, Dr. James C. McIntosh, Jr., a Board-certified orthopedic surgeon, recommended that appellant avoid excessive overhead activities. He advised that, if she was placed in a position where she had to do a lot of lifting, he asked to limit this at 40 hours a week. Dr. McIntosh opined that most of appellant's condition had been related to the upper extremities and that having her in a seated position intermittently would have a positive effect to her condition.

³ The record reveals that OWCP accepted a sacroiliac strain/sprain injury occurring on November 17, 1997 in File No. xxxxxx482; a left wrist and trapezius (shoulder) strain for a June 12, 2002 occupational disease claim in File No. xxxxxx964; and chest and bilateral shoulder injury on May 19, 2008 in File No. xxxxxx610.

⁴ The record reveals that OWCP accepted that appellant sustained a lumbar condition on April 2, 1989 in File No. xxxxxx509.

In an April 15, 2010 report, Dr. Lowery indicated that appellant was seen as a self-referral for evaluation of bilateral shoulder pain. He reported that she felt that this all initiated when she extended her exercise program to include weightlifting as upper extremity activities. Dr. Lowery noted that appellant worked as a postal clerk and could identify no particular trauma. Appellant stated that any sort of lifting over shoulder height was very painful on the left and moderately painful on the right. Dr. Lowery indicated that her right shoulder problem was a “nonemployment, nonauto, nonhome[-]related accident injury, which occurred on or around February 15, 2010.” He diagnosed bilateral subacromial impingement bilateral pectoralis major tightness bilateral scapular dyskinesis.

On May 27, 2010 Dr. Lowery diagnosed left shoulder biceps tendinitis and rotator cuff tear. He further found that appellant’s right shoulder pain had resolved. On June 16, 2010 Dr. Lowery recommended left shoulder arthroscopy and diagnosed neck pain.

In a September 10, 2010 letter, the employing establishment controverted appellant’s claim and submitted photographs of special accommodations for her, a position description and qualification standard for a distribution, window and mark-up clerk. The employing establishment indicated that her federal employment required: lifting/carrying up to 30 pounds, pushing up to 70 pounds, sitting, walking and grasping. It stated that appellant’s job did not require: kneeling, climbing, pulling, bending, stooping or twisting. The employing establishment stated that she did not work above her shoulders at all and if she reached above her shoulder it was to retrieve a left notice article from shelf maybe 0 to 1 hours a day, was very intermittent and she was to solicit assistance with any weight at all.

By letter dated August 3, 2010, the employing establishment notified appellant that it did not have any limited-duty positions to offer that would fall within her medical restrictions, which included: eight hours of sitting; intermittent standing, walking and driving; no lifting/carrying, pushing/pulling, climbing, repetitive motion of hands, grasping, kneeling, bending, stooping, twisting, reaching and/or working above shoulders.

On September 8, 2010 appellant requested a light-duty position. Dr. Lowery indicated that she was absent from work for the period June 15 to 25, 2010 due to left shoulder rotator cuff repair and was able to return to work as of September 8, 2010 with restrictions.

By decision dated September 27, 2010, OWCP denied the claim finding that the evidence of record failed to establish fact of injury.

On October 2, 2010 appellant requested a review of the written record by an OWCP hearing representative. Thereafter, she submitted a September 8, 2010 report by Dr. Lowery who opined that if she was forced to return to full duty she was at an extremely high risk of having another rotator cuff injury. Dr. Lowery strongly recommended permanent light or limited-duty work with shoulder-strengthening exercises.

In a November 9, 2010 letter, the employing establishment advised appellant that she would be removed from her federal employment effective 30 days from her receipt of the letter. It charged her with failing to provide accurate information on OWCP documents. Appellant submitted a claim form on July 8, 2010 indicating that she first became aware of her condition on

April 15, 2010 and in an April 15, 2010 report Dr. Lowery stated that she reported that her bilateral shoulder pain initiated when she extended her exercise program to include weightlifting as upper extremity activities. Dr. Lowery's noted that her right shoulder condition was not employment related and occurred on or around February 15, 2010. The employing establishment found that appellant's behavior was so egregious that it warranted immediate removal, even though it was a first time offense.

In a November 15, 2010 report, Dr. Lowery indicated that appellant was doing much better after her surgery with the exception of some mild swelling.

In a January 5, 2011 narrative statement, appellant argued that her removal from employment was without basis in fact or merit and added financial, psychological and emotional injury and trauma to the pain and suffering already visited by the occupational disease. She requested dismissal of the charges and an immediate reinstatement of her employment in accordance with conditions consistent with her occupational disease.

By decision dated February 8, 2011, an OWCP hearing representative affirmed and modified the September 27, 2010 decision finding that although appellant established fact of injury, the evidence of record failed to establish causal relationship between her bilateral shoulder condition and the implicated employment factors.

On March 24, 2011 appellant requested reconsideration and resubmitted evidence in support of her claim.

By decision dated February 6, 2012, OWCP granted and conducted a merit review as the reconsideration decision was delayed beyond 90 days. It denied modification of its February 8, 2011 decision on the basis that the medical evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 of FECA and that an injury⁶ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty, in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or

⁵ 5 U.S.C. §§ 8101-8193.

⁶ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁷ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.⁹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed a bilateral shoulder condition in the performance of duty. The record reflects that her federal employment requires lifting/carrying up to 30 pounds, pushing up to 70 pounds, sitting, walking and grasping. Additionally, appellant has been diagnosed with bilateral shoulder pain. However, she has not established that her condition is causally related to any of these factors of her federal employment.

On April 15, 2010 Dr. Lowery indicated that appellant was seen as a self-referral for evaluation of bilateral shoulder pain, which she felt was initiated when she extended her exercise program to include weightlifting as upper extremity activities. He indicated that her right shoulder condition was a nonemployment-related injury which occurred on or around February 15, 2010. On May 27, 2010 Dr. Lowery diagnosed left shoulder tendinitis and rotator cuff tear and further found that appellant's right shoulder pain had resolved. On June 16, 2010 he diagnosed neck pain. On June 25, 2010 Dr. Lowery performed left shoulder surgery. In an August 11, 2010 report, he opined that appellant's work duties such as lifting, pushing and grasping mail for many years caused her conditions. Dr. Lowery noted that she mentioned work injuries in 1989, 1997, 2002 and 2008 and a work injury in 2006, in which she broke a fall when pushing a cart. According to him, while the act of falling did not automatically necessitate a tear within the rotator cuff, the tendon in appellant's shoulder could have snapped, depending on how she landed. On September 8, 2010 Dr. Lowery strongly recommended permanent light or limited-duty work. He provided firm diagnoses and identified appellant's work duties. However, Dr. Lowery's opinions were speculative and he failed to provide a rationalized opinion explaining how factors of her federal employment, such as lifting/carrying, pushing, sitting, walking and grasping, caused or aggravated her bilateral shoulder condition. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.¹⁰ Lacking thorough medical rationale on the issue of

⁸ *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ See *I.J.*, 59 ECAB 408 (2008). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

causal relationship, the Dr. Lowery's reports are insufficient to establish that appellant sustained an employment-related injury.

In his February 27, 2003 report, Dr. McIntosh recommended that appellant avoid excessive overhead activities and advised that if she was placed in a position where she had to do a lot of lifting, he asked to limit this at 40 hours a week. He opined that most of her condition had been related to the upper extremities and that having her in a seated position intermittently would have a positive affect to her condition. The Board has held 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.¹¹ As such, the Board finds that appellant did not meet her burden of proof with the submission of Dr. McIntosh's report.

The June 3, 2010 MRI scan is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹² Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. As appellant has not submitted any medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

On appeal, appellant requests temporary light-duty employment. However, the only issue before the Board, for which OWCP issued a final adverse decision is whether she sustained a shoulder condition in the performance of duty causally related to factors of her federal employment.¹³ As the Board has found above, she has not. Thus, appellant's request is not substantiated.

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 failed to meet her burden of proof to establish that she developed a bilateral shoulder condition in the performance of duty causally related to factors of her federal employment.

¹¹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹³ See 20 C.F.R. §§ 501.2(c) and 501.3(a), respectively.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2012
Washington, DC

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

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

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