

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

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**T.N., Appellant**

**and**

**U.S. POSTAL SERVICE, CORONADO POST  
OFFICE, Tucson, AZ, Employer**

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**Docket No. 12-1120  
Issued: October 23, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On April 26, 2012 appellant filed a timely appeal from a November 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying a traumatic injury claim and a March 12, 2012 nonmerit decision denying reconsideration. 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.

**ISSUES**

The issues are: (1) whether appellant established that she sustained a right rotator cuff injury in the performance of duty on September 21, 2011; and (2) whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

On appeal, appellant asserts that, while on restricted duty on September 21, 2011, a supervisor insisted that she perform an absent colleague's duties, resulting in the claimed rotator

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

cuff tear. She also contends that the claimed shoulder injury is causally related to a neck injury accepted under a separate claim.

### **FACTUAL HISTORY**

On September 27, 2011 appellant, then a 50-year-old distribution clerk, filed a traumatic injury (Form CA-1) claiming that on September 21, 2011 while on light duty due to accepted neck and shoulder conditions,<sup>2</sup> she sustained a right rotator cuff tear while casing flats of mail. She stopped work on the date of injury and did not return. A coworker submitted a November 7, 2011 statement asserting that, on an unspecified date, appellant “was told to case flats, which required her to reach above her head and she ended up being in immense pain in her shoulder.”

A September 22, 2011 magnetic resonance imaging (MRI) scan of the right shoulder showed a full thickness tear of the supraspinatus tendon.

Dr. Dara Chafik, an attending Board-certified orthopedic surgeon, held appellant off work as of September 27, 2011 due to a tear of the right supraspinatus tendon. In a September 27, 2011 report, she noted a 2009 occupational neck injury due to lifting multiple heavy parcels and an October 2010 shoulder injury while pushing a mail cart. On examination, Dr. Chafik limited right shoulder motion and obtained x-rays showing acromioclavicular osteoarthritis. She diagnosed right symptomatic acromioclavicular osteoarthritis and a symptomatic full thickness tear of the supraspinatus tendon. Dr. Chafik prescribed physical therapy in which appellant participated through November 2011.

In an October 19, 2011 letter, OWCP advised appellant of the evidence needed to establish her claim. It requested a detailed factual statement describing the September 21, 2011 incident and a narrative report from an attending physician explaining how the incident caused the claimed rotator cuff tear.

Appellant submitted additional reports from Dr. Chafik. On October 7, 2011 Dr. Chafik noted first examining appellant on September 27, 2011 for a right rotator cuff tear. In an October 14, 2011 report, she noted that appellant also had cervical spine problems. On November 4, 2011 Dr. Chafik diagnosed right frozen shoulder in addition to the right supraspinatus tendon tear, attributable to “overhead motion and pushing” at work. She administered a subacromial injection.

In a February 9, 2011 report, Dr. Scott Goorman, an attending Board-certified physiatrist, diagnosed neck pain due to degenerative disc disease and myofascial causes.

By decision dated November 18, 2011, OWCP denied appellant’s claim on the grounds that causal relationship was not established. It accepted that the September 21, 2011 work incident occurred as alleged; but the medical evidence was insufficient to establish a causal relationship between casing flats on September 21, 2011 and the claimed right rotator cuff tear.

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<sup>2</sup> OWCP accepted cervical spine and shoulder conditions under File No. xxxxxx860.

In a December 10, 2011 letter, appellant requested reconsideration. She asserted that Dr. Chafik's reports were sufficient to establish causal relationship. Appellant submitted duplicate copies of Dr. Chafik's reports, Dr. Goorman's February 9, 2011 report, the September 22, 2011 MRI scan report, physical therapy notes and the November 7, 2011 witness statement. She also submitted new physical therapy notes dated from November 23 to December 13, 2011.

Appellant also submitted two new statements. In an October 25, 2011 letter, an employing establishment supervisor confirmed that, on September 20, 2011, he directed appellant to move to another work area to case flats due to a clerk's absence. Appellant reminded him that "throwing the letters and flats aggravate[d] her shoulder. I told her that I understood and to move over anyway" as he was unaware of any restrictions preventing her from casing flats. In a November 5, 2011 statement, appellant asserted that, on September 20, 2011, a supervisor assigned her to case flats, in violation of her restrictions.

By decision dated March 12, 2012, OWCP denied reconsideration on the grounds that the evidence submitted in support thereof was either cumulative in nature or irrelevant to the medical issue of causal relationship in the case.

### **LEGAL PRECEDENT -- ISSUE 1**

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant claimed that she sustained a right rotator cuff tear on September 21, 2011 due to overhead reaching while casing flats at work. OWCP accepted that the September 21, 2011 incident occurred as alleged, but denied the claim as the medical evidence failed to establish a causal relationship between that incident and the claimed rotator cuff tear.

In support of her claim, appellant submitted reports from Dr. Chafik, an attending Board-certified orthopedic surgeon. In reports from September 27 to October 14, 2011, Dr. Chafik diagnosed a right supraspinatus tendon tear and acromioclavicular arthritis, noted a history of a 2009 occupational neck injury and an October 2010 occupational shoulder injury. On November 4, 2011 she attributed a frozen right shoulder to “overhead motion and pushing” at work. However, Dr. Chafik did not mention the accepted September 20, 2011 incident or explain why overhead reaching while casing flats would cause the claimed supraspinatus tendon tear. Therefore, her opinion is insufficient to establish causal relationship in this case.<sup>8</sup> As the February 9, 2011 report from Dr. Goorman, an attending Board-certified physiatrist, did not address a right shoulder condition and is dated significantly prior to the accepted September 20, 2011 incident, his report is also insufficient to establish causal relationship.

On appeal, appellant asserts that, while on restricted duty on September 21, 2001, a supervisor insisted that she perform an absent colleague’s duties, resulting in the claimed rotator cuff tear. She also contends that the claimed shoulder injury is causally related to a neck injury accepted under a separate claim. Appellant notes that her job duties are physically arduous. As set forth above, OWCP accepted the September 21, 2011 work incident as factual. However, appellant presented insufficient medical evidence explaining how and why casing flats at work on September 21, 2011 would cause the claimed right supraspinatus tear. Therefore, OWCP properly denied her claim for traumatic injury.

Appellant may submit new evidence or argument with a valid 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.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>9</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant must: (1) show OWCP erroneously applied or interpreted a specific point of law; (2) advance a

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<sup>7</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>8</sup> *Deborah L. Beatty*, *supra* note 6.

<sup>9</sup> 5 U.S.C. § 8128(a).

relevant legal argument not previously considered by OWCP; or (3) submit relevant and pertinent new evidence not previously considered by OWCP.<sup>10</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>11</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>12</sup> The claimant need only submit relevant, pertinent evidence not previously considered by OWCP.<sup>13</sup> When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

Following OWCP's November 18, 2011 decision denying her claim, appellant requested reconsideration. She submitted duplicate copies of Dr. Chafik's reports, Dr. Goorman's report, physical therapy notes, an MRI scan report and a witness statement. However, the Board has held the evidence which is cumulative or duplicative of material already in the record is insufficient to warrant reopening a claim for merit review.<sup>15</sup>

Appellant also submitted her supervisor's October 23, 2011 statement and her November 5, 2011 statement corroborating the accepted September 21, 2011 incident, as well as new physical therapy notes. The critical issue at the time OWCP denied the claim was the medical question of whether casing flats on September 21, 2011 caused the claimed right supraspinatus tendon tear. The factual statements and physical therapy notes do not address that issue. Therefore, they are irrelevant to the claim.<sup>16</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.<sup>17</sup>

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<sup>10</sup> 20 C.F.R. § 10.606(b)(2).

<sup>11</sup> *Id.* at § 10.608(b). *See also D.E.*, 59 ECAB 438 (2008).

<sup>12</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>13</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>14</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>15</sup> *A.F.*, Docket No. 11-1297 (issued December 20, 2011).

<sup>16</sup> Where the underlying issue is medical in nature, reports from a physical therapist are not relevant because a physical therapist is not a physician under FECA. *See* 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation; a physical therapist is not a physician as defined under the FECA).

<sup>17</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly issued its March 18, 2012 decision denying merit review.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a right rotator cuff tear on September 21, 2011. The Board further finds that OWCP properly denied her request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 12, 2012 and November 18, 2011 are affirmed.

Issued: October 23, 2012  
Washington, DC

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

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

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