

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

S.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gary, IN, Employer**

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**Docket No. 13-896
Issued: August 21, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 5, 2013 appellant filed a timely appeal from the September 7, 2012 and March 1, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 while in the performance of duty.

FACTUAL HISTORY

On June 15, 2012 appellant, then a 44-year-old supervisor of customer services, filed an occupational disease claim alleging tendinitis on the job. She became aware of her condition on November 19, 2009 and realized its connection to her federal employment on December 8, 2009.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP informed appellant in an August 9, 2012 letter that additional evidence was needed to establish her claim. It afforded her 30 days to submit a factual statement detailing her employment duties and a report from a qualified physician explaining how work factors caused or contributed to a diagnosed injury.

Appellant specified in an August 3, 2012 statement that she performed the duties of a clerk for a two-week period due to a staff shortage. She pushed containers, gurneys, and hand trucks, carried tubs and parcels, and sorted and loaded mail for deliveries. As a result, appellant injured both shoulders.

The August 2, 2010 bilateral shoulder x-rays obtained by Dr. Gregory S. Stacy, a Board-certified diagnostic radiologist, presented “no specific findings to account for patient’s symptoms.” The July 1, 2011 bilateral shoulder magnetic resonance imaging (MRI) scans obtained by Dr. Christopher M. Straus, a Board-certified diagnostic radiologist, exhibited left intrasubstance supraspinatus tear, supraspinatus and infraspinatus tendinopathy, and acromial downslope and right supraspinatus and infraspinatus tendinopathy. An April 16, 2012 left shoulder MRI scan obtained by Dr. Larry B. Dixon, a diagnostic radiologist, showed supraspinatus tendinosis.²

By decision dated September 7, 2012, OWCP denied appellant’s claim, finding the medical evidence was insufficient to establish that the accepted work factors caused or contributed to a bilateral shoulder condition.

Appellant requested reconsideration on October 15, 2012. By decision dated October 24, 2012, OWCP denied her request on the grounds that she presented insufficient evidence to warrant a merit review.

Appellant requested reconsideration on December 17, 2012 and submitted new evidence. In a May 3, 2012 report, Dr. Roderick H. Birnie, an orthopedic surgeon, examined appellant’s left shoulder and observed a positive impingement sign. He noted that she “hurt her shoulder at work by doing repetitive pushing, pulling and lifting.” Dr. Birnie diagnosed left shoulder subacromial impingement syndrome.

In a July 31, 2012 report, Dr. Birnie related that appellant’s work activities “require a lot of pushing, pulling and lifting and the pain in her shoulder began with these movements of the left arm.” On examination, he observed left positive impingement sign and mild acromioclavicular joint discomfort. Dr. Birnie diagnosed left shoulder subacromial impingement syndrome and acromioclavicular joint arthritis. He opined, “It is possible that the subacromial impingement and bursitis developed as a result of these repetitive type of activities at work or were at least aggravated by these movements.”

In a November 8, 2012 report, Dr. Birnie examined appellant and observed bilateral positive impingement signs. He diagnosed bilateral shoulder subacromial impingement

² Appellant also provided records from a nurse practitioner and a physical therapist for the period March 13 to May 9, 2012.

syndrome and reiterated that the injury “can be related to repetitive [pushing, pulling, and lifting] movements” at work.

On March 1, 2013 OWCP denied modification of the September 7, 2012 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.³ 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.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ 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 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.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.⁷

ANALYSIS

The Board finds that appellant did not establish that she sustained an occupational disease while in the performance of duty. OWCP accepted that she pushed containers, gurneys, and hand trucks, carried tubs and parcels, and sorted and loaded mail for deliveries. The medical evidence, however, did not adequately address how these accepted work factors caused or contributed to a bilateral shoulder condition.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

⁶ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁷ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 4.

Dr. Birnie remarked in May 3, July 31 and November 8, 2012 reports that appellant's duties entailed repetitive pushing, pulling and lifting. He added that her bilateral shoulder subacromial impingement syndrome possibly developed as a result of these movements at work.⁸ Dr. Birnie, however, did not pathophysiologically explain how pushing containers, gurneys, and hand trucks, carrying tubs and parcels, and sorting and loading mail caused or contributed to this diagnosed condition.⁹ His opinion on causal relationship was speculative. The remaining medical evidence, Dr. Stacy's August 2, 2010 bilateral shoulder x-rays, Dr. Straus' July 1, 2011 bilateral shoulder MRI scans, and Dr. Dixon's April 16, 2012 left shoulder MRI scan, offered limited opinion on the issue of causal relationship. None of the diagnostic studies addressed whether a bilateral shoulder condition resulted from appellant's job duties.¹⁰ In the absence of rationalized medical opinion evidence, appellant failed to discharge her burden of proof.

Appellant contends on appeal that the medical evidence sufficiently established her occupational disease claim. The Board has noted the deficiencies of this evidence.

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 while in the performance of duty.

⁸ See *Geraldine H. Johnson*, 44 ECAB 745 (1993); *Leonard J. O'Keefe*, 14 ECAB 42 (1962) (medical opinions that are speculative or equivocal in character have little probative value).

⁹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). See also *John W. Montoya*, 54 ECAB 306 (2003) (a physician's opinion must discuss whether the employment factors described by the claimant caused or contributed to the diagnosed medical condition).

¹⁰ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2013 and September 7, 2012 merit decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 21, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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