

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

B.E., Appellant	)	
	)	
and	)	Docket No. 14-63
	)	Issued: December 16, 2013
U.S. POSTAL SERVICE, POST OFFICE, Danville, CA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 20, 2013 appellant filed a timely appeal of the January 31, 2013 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 the case.

**ISSUE**

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

**FACTUAL HISTORY**

On December 10, 2012 appellant then a 51-year-old mail carrier, filed a Form CA-2, occupational disease claim, alleging that her repetitive duties of lifting and reaching and opening and closing doors resulted in a left rotator cuff tear. She became aware of her condition on

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

October 21, 2010 and realized that it was causally related to her work on October 19, 2012. Appellant stopped work on October 19, 2012.

Appellant submitted a Form CA-7, claim for compensation, asserting that she was totally disabled from October 26 to December 10, 2012, due to her work injury. She also submitted an OWCP time loss worksheet.

On December 27, 2012 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her left rotator cuff condition and specific work factors.

In a statement dated January 7, 2013, appellant noted that on October 21, 2010 she injured her shoulder when she extended her left arm to grab a parcel. After the injury, she was off work and returned on October 15, 2012 and performed repetitive duties that included lifting, reaching, grabbing and closing her vehicle door which aggravated her left shoulder condition. On October 23, 2012 appellant's left shoulder pain increased and she could no longer use her left arm. On October 25, 2012 she sought treatment from Dr. George Pugh, a Board-certified orthopedic surgeon and hand surgeon, who took her off work until January 2, 2013 when she returned to limited duty.

Appellant submitted a note dated October 29, 2012 from Dr. Pugh who noted that she reported that her shoulder hurt too much to work. In a January 2, 2013 duty status form report, Dr. Pugh returned appellant to work full time at limited duty with no climbing ladders, pulling/pushing limited to four hours and 20 pounds intermittently, no reaching above with the left shoulder and casing mail limited to one hour.

On January 31, 2013 OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that her left rotator cuff conditions were causally related to work activities.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the

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<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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>3</sup>

### ANALYSIS

It is not disputed that appellant's duties as mail carrier included performing repetitive duties including lifting, reaching, grabbing and opening and closing doors. She was treated for left shoulder pain in connection with this claim. The Board finds that appellant has not submitted sufficient medical evidence to establish that her shoulder condition is causally related to specific employment activities.

Appellant submitted a brief work status note dated October 29, 2012 from Dr. Pugh who stated only that appellant reported that her shoulder hurt too much to work. In a January 2, 2013 duty status report, Dr. Pugh returned appellant to work full-time limited duty. The reports do not provide a diagnosis of a particular medical condition,<sup>4</sup> provide any history of injury,<sup>5</sup> or offer a specific opinion by him as to whether appellant's employment caused or aggravated her condition.<sup>6</sup> Consequently the reports are of limited probative value and do not establish appellant's occupational illness claim.

Appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. The evidence of record is insufficient to meet her burden of proof. The record contains no other medical evidence. Appellant has not submitted reasoned medical evidence explaining how her left shoulder condition was employment related.

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. Causal relationships must be established by

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<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

<sup>5</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

<sup>6</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

rationalized medical opinion evidence.<sup>7</sup> Appellant failed to submit such evidence and OWCP therefore properly denied appellant's claim for compensation.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>7</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).