

pain in her left shoulder at the end of her shift, but it always felt better the next day. Appellant noted that in September, the pain started going from her shoulder into her chest and collar bone. She described her work duties, indicating that she pushes equipment, loads the belt, throws mail and pulls mail across the machine and sleeving trays and that these activities put strain on her arms and shoulders.

By decision dated February 21, 2012, OWCP denied appellant's claim because she did not submit any medical evidence containing a medical diagnosis in connection with the accepted employment activities.

On October 9, 2012 appellant requested reconsideration. In support thereof, she submitted several medical reports. In a February 14, 2012 report, Dr. Terry J. Sites, a Board-certified orthopedic surgeon, indicated that appellant worked for the employing establishment in reaching-type activities. He noted that there had been no specific injury or event, but repetitive trauma. Dr. Sites assessed appellant with left shoulder rotator cuff tendinopathy with impingement, possible tear. In a February 20, 2012 magnetic resonance imaging (MRI) scan study, Dr. Tommy Hinton, a Board-certified radiologist, listed his impressions as: (1) supraspinatus tendinosis; (2) acromioclavicular joint degenerative changes which could be a cause of impingement-type syndromes; and (3) degenerative cystic changes in the humeral head. In a February 22, 2012 report, Dr. Mark W. Powell, a Board-certified orthopedic surgeon, assessed appellant with left shoulder impingement. He noted that he reviewed the MRI scan results with appellant and that he gave her a cortisone injection in her left shoulder.

In a May 10, 2012 report, Dr. Tarik Sidani, an osteopath, noted that appellant complained of pain in her left shoulder which she attributed to repetitive lifting activities at the employing establishment. He assessed appellant with impingement and rotator cuff tendinitis of the left shoulder. Dr. Sidani recommended an injection and continued physical therapy. In a September 6, 2012 report, he indicated that appellant had continued left shoulder pain, and has had no relief with formal physical therapy, anti-inflammatories and injections. Dr. Sidani recommended a diagnostic arthroscopy, subacromial decompression and possible rotator cuff repair. In an operative report, he noted that on September 28, 2012 appellant underwent a left shoulder arthroscopy with arthroscopic subacromial decompression and acromioplasty and mini-open rotator cuff repair. He listed the postoperative diagnosis as left shoulder impingement syndrome and high grade partial rotator cuff tear (90 percent). An October 3, 2012 report by Dr. Sidani indicated that appellant was five days after left shoulder arthroscopy with rotator cuff repair. He recommended physical therapy. Dr. Sidani reported on October 10, 2012 that surgery revealed a rotator cuff tear and bursitis which she believed was caused by her work.

By decision dated January 14, 2013, OWCP conducted a merit review but indicated that, although appellant had now established fact of injury, the claim remained denied as appellant had not established a causal relation.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,³ including that he or she is an “employee” within the meaning of FECA⁴ and that he or she filed her claim within the applicable time limitation.⁵ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.⁸

Causal relationship is a medical issue⁹ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty,¹¹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹²

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹² *See William E. Enright*, 31 ECAB 426, 430 (1980).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury to her left shoulder causally related to the duties of her federal employment. Although appellant established employment factors and a medical diagnosis, she did not submit rationalized medical evidence showing the medical condition was causally related to her federal employment. Neither Dr. Powell nor Dr. Hinton discussed appellant's employment at the employing establishment. Dr. Sites diagnosed left shoulder rotator cuff tendinopathy with impingement and possible tear and indicated that appellant worked in the employing establishment in reaching-type activities, but he did not provide a rationalized medical opinion linking these activities to her diagnosed condition. Dr. Sidani noted in his several reports that appellant attributed her condition to repetitive work at the employing establishment, but he did not make any independent conclusion as to the cause of her shoulder condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was caused by her employment is sufficient to establish causal relationship.¹³ As appellant did not submit a rationalized medical opinion establishing a causal relationship between her accepted employment activities and a diagnosed medical condition, OWCP properly denied her claim.

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 established that she sustained an injury to her left shoulder causally related to factors of her federal employment.

¹³ *Walter D. Morehead*, 31 ECAB 188 (1986).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 14, 2013 is affirmed.

Issued: July 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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