

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kansas City, MO, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 14-11
Issued: August 27, 2014**

Appearances:

Melford V. McCormick, Esq., for the appellant

No appearance, for the Director

Oral Argument July 8, 2014

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 7, 2013 appellant, through her representative, filed a timely appeal from a September 11, 2013 merit decision 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to factors of her federal employment as a mail processor clerk.

FACTUAL HISTORY

On August 22, 2012 appellant, then a 47-year-old mail processor clerk, filed an occupational disease claim (Form CA-2) alleging a right shoulder condition as a result of her federal employment duties. She first became aware of her condition and of its relationship to her

¹ 5 U.S.C. § 8101 *et seq.*

employment on June 7, 2004. Appellant noted that her shoulder condition was the result of a work-related injury under OWCP claim File No. xxxxxx795, for which she received treatment from 2004 to 2010. She further stated that her shoulder condition had worsened over the years and was forced by OWCP to file a recurrence claim, noting that her physician's reports could be found under that case record.²

By letter dated October 2, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim, noting that it had not received any medical evidence. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. OWCP also advised her that, by decision dated July 23, 2012, the Board found that she failed to establish that her right shoulder injury was causally related to her accepted June 7, 2004 injury in claim File No. xxxxxx795.³ Therefore, additional medical evidence would be required to establish a right shoulder injury in this claim.

By decision dated December 17, 2012, OWCP denied appellant's claim. It found that she failed to establish the factual component of her claim as no evidence was received other than a brief letter from her representative. Further, no medical evidence was submitted.

On January 6, 2013 appellant, through counsel, requested a hearing before the Branch of Hearings and Review. A hearing was held on June 11, 2013 but the transcript recording of the hearing malfunctioned. Appellant was offered a choice of a new hearing or review of the written record. By telephone call dated June 24, 2013, counsel requested review of the written record.

By letter dated August 19, 2013, counsel stated that appellant was originally injured in 2004. He noted that she was submitting an August 7, 2013 medical report from Dr. Joshua Nelson, a Board-certified orthopedic surgeon, which would explain her condition and need for

² On June 7, 2004 appellant filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained injuries to her neck, back, right leg and left arm when she was struck by a box being transported by a power equipment operator. By decision dated October 8, 2004, OWCP accepted the claim for subluxation of the cervical spine. Appellant returned to work full time on May 5, 2006. On December 5, 2008 she filed a claim for notice of recurrence (Form CA-2a). By decisions dated May 4 and December 1, 2009, OWCP denied appellant's recurrence claim.

By letter dated September 13, 2010, appellant requested her claim be expanded to include a right shoulder condition. By decisions dated October 22, 2010, March 7 and September 6, 2011, OWCP denied her request to expand her claim to include a right shoulder condition, finding that the medical evidence failed to establish that she sustained a right shoulder injury as a result of the accepted June 7, 2004 injury, claim File No. xxxxxx795.

On September 23, 2011 appellant filed for review of OWCP's September 6, 2011 decision in claim File No. xxxxxx795. The appeal was docketed as No. 11-2084. By decision dated July 23, 2012, the Board affirmed the September 6, 2011 OWCP decision finding that appellant failed to establish that her claim should be expanded to include a shoulder condition as a result of the accepted employment injury.

In an August 19, 2012 decision, OWCP finalized termination of appellant's medical and wage-loss benefits related to her accepted cervical condition. Appellant filed for review of the August 19, 2012 decision in Docket No. 12-1146. By decision dated September 18, 2012, the Board reversed OWCP's August 19, 2012 termination of compensation and medical benefits. OWCP reinstated appellant's medical and compensation benefits related to her cervical condition claim.

³ Docket No. 11-2084 (issued July 23, 2012).

surgery on June 6, 2011. Counsel further stated that, while appellant's condition had improved, she experienced continued problems when returning to regular-duty work without the necessary physical restrictions. He concluded that her injury began in June 2004 and was aggravated by her federal employment duties.

In an August 7, 2013 medical report, Dr. Nelson reported that appellant sustained a right shoulder injury in 2004. He had treated her in the past for a posterior labral tear and a superior labral tear from anterior to posterior (SLAP tear). On January 6, 2011 appellant underwent a posterior labrum tear repair and bicep tenotomy. Dr. Nelson noted that although her condition improved postsurgery, she continued to experience persistent spasms and musculature-type pain with repetitive overhead activities required by her employment. Appellant's spasms of the trapezius and portions of the underlying musculature had been a persistent problem for the last two years. Dr. Nelson noted that, if appellant could not improve with physical therapy, she would have to limit overhead activities and conditioning of the shoulder girdle musculature.

By decision dated September 11, 2013, the Branch of Hearings and Review affirmed OWCP's December 17, 2012 decision, as modified. The hearing representative found that the medical evidence of record failed to establish that appellant's right shoulder condition was causally related to factors of her federal employment.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁵

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, *supra* note 4.

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.⁷

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁸ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

OWCP accepted that appellant engaged in repetitive activities in her employment duties as mail processor clerk. It denied her claim, however, on the grounds that the medical evidence failed to establish a causal relationship between those activities and her right shoulder condition. The Board finds that the medical evidence of record is insufficient to establish that appellant developed a right shoulder injury causally related to factors of her federal employment as a mail processor clerk.

The only medical report received was the August 7, 2013 medical report from Dr. Nelson, appellant's treating physician, who reported that appellant sustained a right shoulder injury in 2004 and noted that he treated appellant in the past for a posterior labral tear. Appellant was more recently diagnosed with a SLAP tear on January 6, 2011. She underwent surgery and both conditions were treated with a posterior labrum tear repair and bicep tenotomy. Dr. Nelson noted that although appellant's condition improved postsurgery, she continued to experience persistent spasms and musculature-type pain with repetitive overhead activities, which was required at her employment. Appellant's spasms of the trapezius and portions of the underlying musculature had been a persistent problem for the last two years. Dr. Nelson noted that, if appellant could not improve with physical therapy, she would have to limit overhead activities and conditioning of the shoulder girdle musculature.

The Board finds that the medical report of Dr. Nelson is not well rationalized. Dr. Nelson failed to provide an adequate medical history, only noting that appellant sustained a right shoulder injury in 2004. He provided no details regarding the mechanism of injury, when he began treating appellant for her right shoulder condition and failed to identify any of her prior injuries. While Dr. Nelson provided a diagnosis of posterior labral tear and SLAP tear, he did

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

adequately relate these injuries to appellant's federal employment duties. Rather, he noted that postsurgery, appellant continued to have spasms and musculature-type pain with repetitive overhead activity which was required by her employment. Dr. Nelson's assessment that repetitive overhead activity continued to cause appellant pain is of little probative value as he described a symptom rather than a clear diagnosis of the medical condition.¹⁰ His opinion relative to causal relationship is equivocal as he related appellant's right shoulder symptoms to her employment duties and not her diagnosed condition of posterior labral tear or SLAP tear. Dr. Nelson failed to adequately describe appellant's work duties, did not specify how long she worked as a mail clerk, how many hours per day she would lift overhead and the frequency of other physical movements and tasks. Moreover, he failed to provide any explanation on how repetitive overhead activities would cause or aggravate a posterior labral tear or SLAP tear. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹¹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹² Dr. Nelson's report does not meet that standard and is therefore insufficient to meet appellant's burden of proof.¹³

On appeal, counsel for appellant argues that the medical evidence establishes that appellant's shoulder condition was caused by her federal employment duties. For reasons stated above, the Board finds that the evidence is insufficient to establish appellant's claim. Counsel also contends that the shoulder condition should be accepted because OWCP paid for the rehabilitation since the inception of the injury in claim File No. xxxxxx795. The Board has held, however, that OWCP's gratuitous payment of a medical bill, without more, does not constitute formal acceptance of a claim for injury.¹⁴

The Board further notes that counsel and appellant made reference to medical reports in claim File No. xxxxxx795. As noted in OWCP's October 2, 2012 development letter, the Board has already issued a decision denying expansion of appellant's claim for a right shoulder condition under claim File No. xxxxxx795.¹⁵

¹⁰ The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹² *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹³ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁴ *See M.C.*, Docket No. 12-64 (issued May 10, 2012); *Gary L. Whitmore*, 43 ECAB 441 (1993) (where the Board found that payment of compensation by OWCP does not in and of itself, constitute acceptance of a particular condition or disability in absence of evidence from OWCP indicating that a particular condition or disability has been accepted as work related).

¹⁵ *Supra* note 3.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her right shoulder condition is causally related to factors of her employment as a mail processor clerk.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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