

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

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M.D., Appellant	)	
	)	
and	)	
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DEPARTMENT OF HOMELAND SECURITY,	)	Docket No. 14-1700
TRANSPORTATION SECURITY	)	Issued: December 1, 2014
ADMINISTRATION, St. Louis, MO, Employer	)	
	)	

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*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 1, 2014 appellant, through counsel, filed a timely appeal from a June 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim. 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.

**ISSUE**

This issue is whether appellant established that she sustained an injury in the performance of duty on August 15, 2013, as alleged.

On appeal, appellant's counsel argues that OWCP's decision is contrary to fact and law.

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

## **FACTUAL HISTORY**

On October 2, 2013 a claim for traumatic injury was filed on behalf of appellant, then a 52-year-old transportation security officer. The claim form noted that appellant stated that she “tweaked” her left shoulder on August 15, 2013 while removing a bag from the x-ray tunnel and that her pain increased over time. The employing establishment controverted the claim. It noted that appellant did not remember the time or date of the claimed injury and that the date was estimated.

By letter dated October 30, 2013, OWCP asked appellant to submit further information in support of her claim.

Appellant submitted a November 21, 2013 progress report by Dr. Dennis G. Motchan, a Board-certified internist, who diagnosed sprain of an unspecified site of the left shoulder and upper arm. Dr. Motchan noted that appellant gave a history of working for the employing establishment and that on August 15, 2013 she pulled a heavy bag while at work and felt pain in her left shoulder. Appellant told Dr. Motchan that the pain was minor at first, but slowly increased, and eventually became a throbbing in the shoulder with numbness and tingling radiating down her left arm. Dr. Motchan stated that appellant brought a copy of a magnetic resonance imaging scan which revealed a partial supraspinatus tear and possible labral tear. He assessed her with a severe left shoulder strain and referred her to an orthopedic surgeon.

In a December 3, 2013 report, Dr. Chris W. Kostman, a Board-certified orthopedic surgeon, related appellant’s history of injury while working for the employing establishment as an airport screener. He conducted a physical examination and obtained an x-ray. Dr. Kostman concluded that appellant had left shoulder rotator cuff tendinitis with a possible partial-thickness rotator cuff tear and possible labral tear.

In a December 16, 2013 decision, OWCP denied appellant’s claim. It accepted the August 15, 2013 incident, but found the medical evidence insufficient to establish causal relation.

In a December 10, 2013 report, Dr. Kostman noted that appellant had significant improvement following a subacromial injection. He believed that her symptoms following the injury of August 15, 2013 were more consistent with rotator cuff tendinitis.

On March 5, 2014 appellant requested reconsideration. She noted that she had tried to work with the injury but was not able to fully perform her responsibilities.

Appellant submitted handwritten notes by a nurse practitioner dated November 15, 2013 and February 14, 2014, countersigned by Dr. Syed Hussain, a Board-certified surgeon. She presented on November 15, 2013 with complaints of pain and limited mobility. Appellant reported that the injury occurred on August 15, 2013. She was diagnosed with a partial thickness tear of the supraspinatus tendons, moderate rotator cuff tendinitis and a small tear of the glenoid labrum.

In a February 26, 2014 report, Dr. Donald A. Weimer, a Board-certified orthopedic surgeon, noted treating appellant for left shoulder pain. He stated that she worked for the employing establishment and, on August 15, 2013 she was pulling a luggage bag and

experienced pain in left shoulder that progressed. Dr. Weimer noted that appellant's x-rays showed moderate acromioclavicular joint arthritis. He recommended a left shoulder arthroscopic decompression, distal clavicle excision and repair of partial articular-sided tear of the supraspinatus. Dr. Weimer believed that appellant's need for surgery was causally related to her injury given the lack of any problems in the shoulder prior to the injury.

By decision dated June 10, 2014, OWCP denied modification of its December 16, 2013 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 of FECA, that an injury was sustained 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. 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.<sup>2</sup>

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 is whether the employee experienced the employment incident or exposure, which is alleged to have occurred.<sup>3</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>4</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical 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>6</sup>

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<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (August 2012).

<sup>4</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

## ANALYSIS

OWCP accepted that the August 15, 2013 employment incident occurred as alleged. The Board finds that appellant has not met her burden of proof to establish a causal relationship between her left shoulder condition and the accepted employment incident.

Appellant's first medical report is dated November 21, 2013, over two months after the August 15, 2013 employment incident. Dr. Motchan noted that she provided a history of pulling a heavy bag at work on August 15, 2013, and while the pain in her shoulder was minor at first, it increased. He did not provide an opinion relating the accepted incident to her diagnosed left shoulder strain.

Dr. Kostman listed appellant's employment incident and noted that she had left shoulder rotator cuff tendinitis with possible partial-thickness rotator cuff tear and possible labral tear. He subsequently indicated that appellant's symptoms were more consistent with rotator cuff tendinitis. Dr. Kostman also did not directly address how her left shoulder conditions were caused or contributed to by the August 15, 2013 employment incident.

On February 26, 2014 Dr. Weimer stated his belief that appellant's moderate acromioclavicular joint arthritis was related to the August 15, 2013 employment incident. He cited to a lack of any problems in the shoulder prior to the injury. Dr. Weimer did not provide a rationalized medical opinion on causal relationship. He did not adequately explain how her condition was due to pulling on a bag at work. Opinions based on the lack of symptoms before the injury are insufficient, without supporting medical rationale, to establish causal relationship.<sup>7</sup>

In the reports countersigned by Dr. Hussain, appellant's treatment on November 15, 2013 and February 14, 2014 was noted. Dr. Hussain, however, failed to provide any medical rationale addressing how the August 15, 2013 incident caused appellant's left 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 the condition was caused by her employment is sufficient to establish causal relationship.<sup>8</sup>

The Board finds that appellant has not submitted sufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>9</sup> The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would

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<sup>7</sup> *F.I.*, Docket No. 11-1540 (issued April 10, 2012).

<sup>8</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>9</sup> *W.P.*, Docket No. 14-1076 (issued September 18, 2014).

have caused or aggravated her condition.<sup>10</sup> Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

The Board notes that appellant submitted evidence from a Dr. Thomas Meyer dated July 22, 2014 after the issuance of the June 10, 2014 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>11</sup>

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 in the performance of duty on August 15, 2013, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 10, 2014 is affirmed.

Issued: December 1, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

<sup>11</sup> 20 C.F.R. § 501.2(c).