



## **FACTUAL HISTORY**

On May 16, 2013 appellant, then a 52-year-old rural letter carrier, filed an occupational disease claim alleging that on February 1, 2013 she first became aware of severe atrophy in her left shoulder and that her condition was caused by repetitive work duties. She stopped work on May 13, 2013.

Appellant submitted an April 22, 2013 referral slip for physical therapy to treat her left shoulder pain and atrophy from Dr. John M. Reynolds, IV, a Board-certified orthopedic surgeon. In a May 17, 2013 report, Dr. Brooks advised that appellant was unable to work until further notice.

A report from appellant's physical therapist addressed the treatment of her left shoulder and neck pain and rotator cuff atrophy on April 24, 2013.

By letter dated May 29, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested factual and medical evidence. OWCP also requested that the employing establishment provide information regarding appellant's employment duties.

In an April 10, 2013 report, Dr. Timothy L. Alder, a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of the left shoulder demonstrated severe atrophy of the supraspinatus and infraspinatus muscle. There was no significant rotator cuff tear, only minimal articular-sided tearing of the anterior distal infraspinatus fibers. He stated that nerve entrapment or Parsonage Turner syndrome should be considered. Dr. Alder found no appreciable lesion in the supraspinatus fossa or spinal glenoid notch. There was trace fluid in the subacromial subdeltoid bursa. There was also subscapularis tendinopathy and likely intrasubstance tearing of the mid distal fibers.

In an April 22, 2013 report, Dr. Reynolds listed a history of appellant's left shoulder pain and weakness dating back to January 2013 and her medical, social and family background. Appellant's shoulder hurt with any type of motion. Dr. Reynolds reviewed the results of the April 10, 2013 left shoulder MRI scan and provided findings on physical and x-ray examination. He diagnosed chronic pain and severe atrophy of the supraspinatus and infraspinatus in the left shoulder. Dr. Reynolds advised that it was not clear what caused appellant's atrophy but there appeared to have been some neurologic injury or compression. He stated that Parsonage Turner syndrome was a possibility. Additional diagnostic testing was recommended. On May 21, 2013 Dr. Reynolds referred appellant for physical therapy to treat her left shoulder conditions for possible Parsonage Turner syndrome. On June 3, 2013 he related that he could not directly link appellant's current condition to a work-related cause.

In a May 16, 2013 report, Dr. Daryl L. Harp, a Board-certified radiologist, advised that an MRI scan of the cervical spine revealed scattered spondylotic changes, degenerative disc disease, facet point arthritis and apparent thyroid cysts.

On June 27, 2013 Dr. Brooks reported that appellant had cervical spine arthritis, left shoulder rotator cuff tendinopathy and rheumatoid arthritis. Appellant could not work.

In a July 15, 2013 decision, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that the described injury or event occurred as alleged. OWCP also found that the medical evidence did not establish that appellant sustained a diagnosed condition caused by the work injury or event.

On August 26, 2013 appellant requested reconsideration and submitted an August 20, 2013 report from Dr. Brooks who stated that appellant's allegation that her left shoulder injury was work related was most likely correct, at least in part. She was a long-time patient since October 26, 2005. Dr. Brooks stated that in 2007 appellant sustained left shoulder rotator cuff tendinopathy while lifting at work.<sup>2</sup> Appellant continually used her left arm to reach over and grab mail and pick up packages to put in her vehicle. During subsequent evaluations, Dr. Brooks reviewed diagnostic test results and provided physical examination findings related to her left shoulder lumbar and cervical conditions. He assessed appellant as having several left shoulder conditions, including partial thickness tears and muscular tendinous atrophy of the infraspinatus and supraspinatus tendons and rotator cuff tendinopathy. Appellant's conditions were conservatively treated with injections and medications. In May 2013 Dr. Brooks advised that she could no longer work due to pain and tendinopathy in the shoulder girdle. During appellant's visit on August 7, 2013, Dr. Brooks found no changes in her left shoulder condition as she continued to have left shoulder pain with range of motion. According to his records, she had long-standing left shoulder problems without any significant injuries to the shoulder during this period. Dr. Brooks related that appellant did not have such problems prior to working as a mail carrier or in using her left arm, which was not her dominant arm. He stated that it was reasonable to assume that at least a portion, if not all, her muscular atrophy along with tendinopathy and tears were work related.

In an October 2, 2013 decision, OWCP affirmed the July 15, 2013 decision. It found that the evidence was sufficient to establish that appellant performed daily repetitive work duties as a rural letter carrier; however, the medical evidence was insufficient to establish her claim as Dr. Brooks' opinion on causal relationship was speculative.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 and/or specific condition for which compensation is claimed are causally related to the

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<sup>2</sup> The record reveals that under File No. xxxxxx 336 OWCP accepted that on August 20, 2007 appellant sustained an employment-related left shoulder strain. OWCP, under File No. xxxxxx807, denied her claim for a left shoulder injury sustained on April 3, 2008.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

employment injury.<sup>4</sup> 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.<sup>5</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) a 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.<sup>6</sup> Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.<sup>7</sup>

### ANALYSIS

OWCP accepted as factual that appellant performed the repetitive work duties of a rural carrier. The Board finds that appellant failed to establish a causal relationship between her left shoulder conditions and the accepted work duties.

Dr. Brooks' August 20, 2013 report listed a history that appellant continuously used her left arm to lift, reach over to grab mail, and pick up packages to put them in her vehicle while working as a mail carrier. He reviewed her medical treatment since 2005, including his findings on physical examination and review of diagnostic test results. Dr. Brooks diagnosed several left shoulder conditions, including partial thickness tears and muscular tendinous atrophy of the infraspinatus and supraspinatus tendons and rotator cuff tendinopathy. He placed appellant off work due to pain and tendinopathy in the shoulder girdle. Dr. Brooks stated that it was reasonable to assume that at least a portion, if not all, of appellant's left shoulder conditions were work related. His only rationale for causal relationship was that she had no shoulder problems before working as a mail carrier. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.<sup>8</sup> Dr. Brooks did not

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<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>8</sup> See *John F. Glynn*, 53 ECAB 562 (2002); *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Kimper Lee*, 45 ECAB 565 (1994).

adequately explain how the established employment factors caused or contributed to her diagnosed left shoulder conditions or disability for work. Further, his opinion that appellant's contention that she sustained a work-related left shoulder injury was most likely correct, at least in part, is speculative.<sup>9</sup> None of the reports from Dr. Brooks provided adequate explanation on whether the established employment duties caused or aggravated her diagnosed left shoulder conditions and resultant disability. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>10</sup> The Board finds, therefore, that this evidence is insufficient to establish appellant's claim.

Dr. Reynolds' April 22, 2013 report found that appellant had chronic pain and severe atrophy in the left shoulder supraspinatus and infraspinatus. He did not specifically attribute the diagnosed conditions to the accepted work duties of a rural carrier. Rather, Dr. Reynolds stated that it was not clear what caused appellant's atrophy and related it to possible Parsonage Turner syndrome. In a June 3, 2013 statement, he did not attribute appellant's left shoulder condition to the established employment factors. Dr. Reynolds stated that he could not directly link her current condition to a work-related cause. His April 22 and May 21, 2013 referral slips for physical therapy are also of limited probative value as he did not provide any opinion addressing whether the established employment duties caused or aggravated appellant's left shoulder conditions.<sup>11</sup> The Board finds that Dr. Reynolds' reports are of diminished probative value on causal relationship.

The diagnostic test results from Drs. Alder and Harp are insufficient to establish appellant's claim. Neither physician provided an opinion on whether the diagnosed left shoulder or cervical spine conditions were caused or aggravated by the established employment factors.<sup>12</sup> The Board finds that the reports of Drs. Alder and Harp are insufficient to establish appellant's claim.

The April 24, 2013 report from a physical therapist is of no probative medical value in establishing appellant's claim as a physical therapist is not a physician as defined under FECA.<sup>13</sup>

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left shoulder condition causally related to the accepted employment factors. Appellant did not meet her burden of proof.

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<sup>9</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

<sup>10</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>11</sup> See *id.*

<sup>12</sup> *Id.*

<sup>13</sup> See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

On appeal, appellant contended that Dr. Brooks explained that her constant daily repetitive work duties caused a tear in her left shoulder. As noted, Dr. Brooks did not adequately address the causal relationship between her diagnosed left shoulder conditions and the accepted employment duties.

Appellant also submitted new evidence on appeal. The Board, however, cannot consider evidence that was not before OWCP at the time of the final decision.<sup>14</sup> Appellant may resubmit this evidence with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a left shoulder injury causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 2 and July 15, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 26, 2014  
Washington, DC

Patricia Howard Fitzgerald, 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>14</sup> See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).