

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 14-544
Issued: May 8, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2014 appellant filed a timely appeal from an October 2, 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 established that she sustained a right shoulder condition in the performance of duty.

FACTUAL HISTORY

On July 30, 2013 appellant, a 55-year-old city carrier, filed a Form CA-2 occupational disease claim, alleging that she developed a torn right rotator cuff condition causally related to employment factors.

¹ 5 U.S.C. § 8101 *et seq.*

In a July 19, 2013 Form CA-20 report, Dr. Brian T. Feeley, an orthopedic surgeon, diagnosed a rotator cuff tear as indicated by results of a magnetic resonance imaging (MRI) scan. He indicated that appellant did not sustain a specific injury but began experiencing shoulder pain in 2012. Dr. Feeley advised that it was possible that appellant's work caused the tear or increased her symptoms. He scheduled her for surgery on September 10, 2013, imposed a lifting restriction of 15 pounds and placed her on disability for three months. Dr. Feeley checked a box indicating that the diagnosed condition was caused or aggravated by employment activity.

On August 16, 2013 OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive report from her treating physician describing her symptoms and the medical reasons as to whether her claimed condition was causally related to her federal employment. OWCP requested that appellant submit this evidence within 30 days.

In a July 23, 2013 report, Dr. Michael L. Cheng, a specialist in internal medicine, noted that appellant had complaint of chronic right shoulder pain and a right rotator cuff tear. He advised that she was planning to undergo orthopedic surgery to repair her right rotator cuff on September 10, 2013.

A September 7, 2012 right shoulder magnetic resonance imaging (MRI) scan revealed supraspinatus tendinosis with a full-thickness tear of the anterior fibers; a high-grade intrasubstance tear within the critical zone; mild atrophy of the supraspinatus muscle; infraspinatus tendinosis with high-grade intra-substance tear with laminar extension proximally into the muscle fibers where there was an associated small intramuscular cyst; marked thickening and tendinosis of the subscapularis with at least partial tear of the superior fibers; severe tendinosis with partial tear of the biceps tendon with subluxation of the biceps tendon; degeneration and tear of the labrum and biceps tendon anchor; and a full thickness fissuring and cartilage loss along the inferior glenoid, with moderate-sized effusion.

By decision dated October 2, 2013, OWCP denied appellant's claim. It accepted that appellant performed duties as a letter carrier but found that she failed to submit sufficient medical evidence to establish that her claimed right shoulder condition was causally related to her work.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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.³ These are the essential elements of each and every

² *Id.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right shoulder condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish that her claimed right shoulder condition was related to factors of her employment. For this reason, she has not discharged her burden of proof.

In support of her claimed condition, appellant submitted reports from Drs. Feeley and Cheng. The physicians advised that she had a right rotator cuff tear and was scheduled to have surgery on September 30, 2013. In a July 19, 2013 form report, Dr. Feeley listed a history that appellant began having shoulder pain in 2012 which was not attributable to a specific injury. He diagnosed a rotator cuff tear as shown by MRI scan. Dr. Feeley noted generally that her work could have caused the tear or increased her symptoms. He scheduled rotator cuff surgery for September 10, 2013, placed her on disability for three months and imposed a 15-pound lifting restriction. Dr. Feeley checked a box indicating that appellant's diagnosed condition was caused or aggravated by an employment activity. In a July 23, 2013 report, Dr. Cheng advised that she

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

had complaints of chronic right shoulder pain and diagnosed a right rotator cuff tear. He related that appellant had scheduled right rotator cuff repair surgery for September 10, 2013.

Drs. Feeley and Cheng did not provide sufficient medical opinion addressing how appellant's right shoulder condition or disability was causally related to her employment duties as a letter carrier. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ The physicians did not sufficiently describe appellant's job duties or explain the medical process by which such duties would cause or contribute to a torn rotator cuff. The reports from Drs. Feeley and Cheng fail to explain how appellant's diagnosed condition resulted from factors of her employment. They did not address the history of appellant's shoulder conditions in any detail or how her work duties were competent to cause the current condition.⁸ The reports note that appellant had a right rotator cuff tear which required surgery; but do not attribute the diagnosed condition to appellant's employment duties. The July 19, 2013 form report from Dr. Feeley that supported causal relationship with a checkmark is insufficient to establish the claim. The Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his conditions were caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed right shoulder condition was causally related to her employment.

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 10.607.¹¹

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed right shoulder condition was sustained in the performance of duty.

⁷ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

⁹ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹⁰ See *Anna C. Leanza*, *supra* note 7.

¹¹ The Board notes that appellant submitted additional evidence to the record following OWCP's October 2, 2013 decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501(c).

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 8, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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