

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

A.N., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Columbus, OH, Employer)

Docket No. 14-1222
Issued: November 5, 2014

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On May 2, 2014 appellant, through her attorney, filed a timely appeal from the March 6, 2014 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 that she sustained an injury on November 23, 2012.

FACTUAL HISTORY

On December 3, 2012 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2012 at 10:50 a.m. she sustained a right upper arm injury while delivering a heavy mail parcel. The parcel slipped, she stopped it with her right

¹ 5 U.S.C. §§ 8101-8193.

hand and felt a pulling sensation in her biceps muscles of the right arm. Appellant did not state whether she stopped work at the time of the November 23, 2012 incident.²

In a December 13, 2012 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a November 23, 2012 statement in which she noted that on that date she pulled open a door while delivering a heavy mail parcel. She caught the parcel with her right hand when it began to slip. Appellant felt a pulling sensation in her right biceps muscles and then experienced pain down her right arm and a tingling sensation in her right fingers. At 10:50 a.m. on November 23, 2012 she spoke by telephone to Dan Wiley, a supervisor, about the incident. Appellant contacted her physician, who responded by leaving her a message and she subsequently made an appointment for the next week.

In the statement dated November 23, 2012, Justin Staten, the postmaster at appellant's workplace and her immediate supervisor, provided a description of the November 23, 2012 work incident, similar to that provided by appellant. Mr. Staten noted that appellant called and spoke with Mr. Wiley and then contacted her physician, who told her that she needed diagnostic testing to evaluate her right arm and shoulder. Appellant finished delivering her mail route and advised that she would set up an appointment with the physician who performed a prior right arm surgery. Mr. Staten indicated that "[t]his is an ongoing injury with this [appellant]" noting that she had an accident while delivering her mail route in 2000 and had several prior right arm surgeries.

In a January 16, 2013 decision, OWCP denied appellant's claim. It found that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on November 23, 2012. OWCP noted that appellant established the occurrence of a work incident on November 23, 2012 but did not submit any medical evidence to establish a medical condition due to the work incident.

The findings of a January 11, 2013 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed changes of chronic calcific tendinopathy, calcium hydroxyapatite deposition disease and postoperative changes of her acromioclavicular joint, but no obvious rotator cuff tear was observed. A January 11, 2013 arthrogram of appellant's right shoulder showed tendinosis of her rotator cuff tendons, subacromial decompression and biceps tendonesis, but did not show any acute findings. There was no rotator cuff tear, detached labral tear or degenerative change of her glenohumeral joint.

In a January 15, 2013 report, Dr. Robert J. Nowinski, an attending osteopath and Board-certified orthopedic surgeon, noted that appellant complained of pain in her right biceps region and reported having a "repeat injury" at work while reaching out to deliver mail. Upon physical examination, appellant exhibited a decreased range of motion of her neck and left shoulder with pain. She displayed no visual changes in her right shoulder but there was diffuse tenderness in

² The record reflects that appellant had prior right shoulder problems and that on January 14, 2011 she underwent right shoulder surgery in the form of right rotator cuff biceps retrieval with tenodesis. It is unclear if this surgery was authorized by OWCP.

her right biceps muscles. Dr. Nowinski noted that there was full passive motion and no instability in her right shoulder, although motion was painful and weak at the terminal range. The findings of MRI scan testing of appellant's right shoulder showed that her rotator cuff and biceps tendons were grossly intact and there was no evidence of a complete tear. Dr. Nowinski diagnosed right shoulder biceps tendon pain with spasms, status post decompression and repair. He advised that appellant could return to work because no definitive tear in her right shoulder was noted. Dr. Nowinski recommended a cortisone injection of the shoulder.

In an April 16, 2013 report, Dr. Nowinski advised that appellant was seen on that date for a recheck and that she was status post right shoulder biceps tendons performed on January 14, 2011. He indicated that repeat MRI scan and arthrogram testing showed that her right rotator cuff and biceps tendons were intact, but she reported injuring herself lifting a 35-pound box which slipped, causing her to catch it with her right arm. Appellant exhibited full range of neck and left shoulder motion without pain and right shoulder testing showed full passive motion and active forward flexion to 150 degrees with pain and guarding. Her right shoulder displayed stable motion and intact neurovascular status, but there was diffuse tenderness in the biceps region. Dr. Nowinski provided the diagnosis of right shoulder biceps tendon pain with spasms, status post decompression and repair. He provided essentially the same findings in a July 11, 2013 report, but recommended that appellant undergo repeat MRI scan testing of her right shoulder.

In a December 5, 2013 report, Dr. Nowinski stated that appellant was seen on that date for reevaluation of "her right shoulder U.S. Department of Labor work-related injury." He indicated that her neck and left and right shoulders exhibited decreased, though stable, range of motion with pain. With respect to her right shoulder, appellant had active forward elevation to 120 degrees and abduction to 80 degrees, near and Hawkins signs were positive and strength was 4/5. Dr. Nowinski provided a diagnosis of persistent right shoulder pain status post rotator cuff repair and indicated that she would be reexamined after MRI scan testing of her right shoulder was completed.

In a December 13, 2013 letter, appellant, through counsel, requested reconsideration of OWCP's January 16, 2013 decision. He asserted that the April 16, 2013 report of Dr. Nowinski established her claim for a November 23, 2012 work injury.

By decision dated March 6, 2014, OWCP affirmed its January 16, 2013 decision finding that appellant had not established a November 23, 2012 work injury. It determined that Dr. Nowinski did not provide a clear, rationalized medical opinion that she sustained an injury due to the accepted November 23, 2012 work incident.

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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁷

ANALYSIS

On December 3, 2013 appellant filed a CA-1 form alleging that on November 23, 2012 she sustained a right upper arm injury when she used her right hand to stop a heavy mail parcel that was slipping from her grasp. She felt a pulling sensation in the biceps muscles of her right arm at this time. OWCP accepted the occurrence of the November 23, 2012 work incident. It denied appellant's injury claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on November 23, 2012.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on November 23, 2012.

Appellant submitted a January 15, 2013 report in which Dr. Nowinski, an attending osteopath and Board-certified orthopedic surgeon, noted that she complained of pain in her right biceps region and reported having a "repeat injury" at work while reaching out to deliver mail.⁸

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

⁴ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁵ *Julie B. Hawkins*, 38 ECAB 393 (1987).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ The evidence of record reflects that appellant had prior right shoulder problems and that on January 14, 2011 she underwent right shoulder surgery in the form of right rotator cuff biceps retrieval with tenodesis.

Dr. Nowinski indicated that she displayed no visual changes in her right shoulder and that diagnostic testing showed no definitive tear in her right shoulder, but noted there was diffuse tenderness in her right biceps muscles. He stated there was full passive motion and no instability in appellant's right shoulder, although motion was painful and weak at the terminal range. This report does not establish her claim for a November 23, 2012 work injury because Dr. Nowinski did not provide a clear opinion on causal relationship.⁹ He mentioned appellant's account of a work incident on an unspecified date and diagnosed right shoulder biceps tendon pain with spasms status post decompression/repair. Dr. Nowinski did not provide adequate opinion that her observed right shoulder condition was related to the accepted November 23, 2012 work incident. Further, he did not provide a full history of appellant's preexisting right shoulder condition for which surgery was performed.¹⁰

In April 16 and July 11, 2013 reports, Dr. Nowinski advised that appellant reported injuring herself lifting a 35-pound box which slipped, causing her to catch it with her right arm. Appellant exhibited full range of neck and left shoulder motion without pain and right shoulder testing showed full passive motion and active forward flexion to 150 degrees with pain and guarding. Dr. Nowinski provided the diagnosis of right shoulder biceps tendon pain with spasms status post decompression/repair and mentioned her reporting of a work incident that appeared consistent with the November 23, 2012 incident. Again he did not fully address appellant's prior right shoulder condition or explain how attempting to catch the mail parcel was competent to cause injury to her biceps. On December 5, 2013 Dr. Nowinski provided a diagnosis of persistent right shoulder pain status post rotator cuff repair. Although he generally advised that appellant was being seen for reevaluation of "[appellant's] right shoulder U.S. Depart[ment] of Labor work-related injury," he appeared to simply repeat her assertion of a work-related injury rather than provide his own opinion on causal relationship. Dr. Nowinski did not provide a clear, rationalized medical opinion that she sustained a specific diagnosed medical condition due to the accepted November 23, 2012 work incident.

For these reasons, appellant has not established that she sustained a work-related injury on November 23, 2012. She 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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on November 23, 2012.

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ The record reflects that appellant submitted six prior claims for occupational and traumatic injuries. The nature of these prior claims was not discussed by either Dr. Nowinski or appellant.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 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