

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

M.N., Appellant)	
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)	
and)	Docket No. 14-1457
)	Issued: November 4, 2014
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, Employer)	
)	
)	

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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 10, 2014 appellant, through her attorney, filed a timely appeal from a March 27, 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 developed a right shoulder condition as a result of factors of her employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.² In a decision dated April 5, 2012, OWCP denied appellant's claim. It accepted that appellant worked as a city letter carrier and that she was diagnosed with a right shoulder rotator cuff condition but it denied her claim finding insufficient medical evidence to establish that her right shoulder condition was causally related to factors of her employment. In an appeal request form dated June 12, 2012 and received on June 25, 2012, appellant requested reconsideration. By decision dated July 19, 2012, OWCP denied her request for reconsideration without reviewing the merits. On February 6, 2013 the Board affirmed the April 5, 2012 merit decision, finding that appellant had not met her burden of proof to establish her occupational disease claim. The Board also found that OWCP properly denied a merit review of her June 12, 2012 reconsideration request pursuant to 5 U.S.C. § 8128(a). The facts of the previous Board decision are incorporated herein by reference.

On February 5, 2014 appellant, through her attorney, requested reconsideration, noting a new medical report dated May 7, 2012 received by OWCP on September 5, 2012. He requested that OWCP review the new medical report and overturn its prior denial of her claim.

In the May 7, 2012 one-page report, Dr. Paul M. Robelia, a Board-certified family practitioner, examined appellant for right shoulder rotator cuff tendinitis and myofascial pain syndrome which was occupation related. He related that appellant was first treated on November 3, 2011 and diagnosed with right shoulder pain. On May 4, 2012 appellant was reassessed and complained of discomfort in the right shoulder and trapezius regions. Dr. Robelia stated that appellant's examination findings were consistent with right rotator cuff tendinitis and a myofascial pain syndrome. He opined that this was clearly related to her occupational activities. Dr. Robelia explained that there were no other activities that exacerbated the symptomatology. He restricted appellant to a maximum workweek of 40 hours, occasional reaching above the shoulder level, frequent lifting up to 10 pounds, occasional lifting up to 20 pounds and rarely lifting up to 50 pounds.

In a February 10, 2013 letter, the employing establishment contended that appellant's request for reconsideration was not submitted in a timely manner. Further, the medical evidence did not establish how appellant's right shoulder condition was causally related to her work.

In a decision dated March 27, 2014, OWCP denied modification of the February 15, 2013 decision. It found that the medical evidence was not sufficient to establish that appellant's right shoulder condition resulted from her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

² Docket No. 12-1763 (issued February 6, 2013). On January 13, 2012 appellant, then a 34-year-old part-time flexible city letter carrier, filed an occupational disease claim alleging that she developed a right shoulder condition as a result of casing and fingering mail and walking and driving to deliver mail in the performance of duty. She first became aware of her condition and realized it resulted from employment on October 27, 2011.

evidence³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or 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.⁵

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁷ The weight of the 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.⁸

ANALYSIS

Appellant alleges that she developed a right shoulder rotator cuff condition as a result of the repetitive duties of her job as a letter carrier. OWCP accepted her duties as a letter carrier and that she was diagnosed with right shoulder rotator cuff tendinitis. It denied appellant's claim finding insufficient evidence to establish that her right shoulder condition was causally related to factors of her employment. The Board finds that she did not meet her burden of proof to establish that her right shoulder condition resulted from her federal employment duties.

Appellant submitted a May 7, 2012 report from Dr. Robelia who stated that appellant's examination findings were consistent with right rotator cuff tendinitis and a myofascial pain syndrome. Dr. Robelia stated generally that this was clearly related to her occupational activities. He explained that there were no other activities that exacerbated the symptomatology. Dr. Robelia restricted appellant to a maximum workweek of 40 hours, occasional reaching above the shoulder level, frequent lifting up to 10 pounds, occasional lifting up to 20 pounds and rarely lifting up to 50 pounds. Although he concluded that appellant's right shoulder condition was related to her occupational activities, he did not provide adequate medical explanation or rationale to support his conclusion. Medical evidence that states a conclusion but does not offer

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁸ *James Mack*, 43 ECAB 321 (1991).

any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. Robelia did not provide a full history of appellant's right shoulder condition or specifically describe any of appellant's employment duties or explain how these specific duties caused or contributed to her diagnosed condition. The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.¹⁰ Because Dr. Robelia's report is of limited probative value, the Board finds that it is insufficient to establish appellant's claim.

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 met her burden of proof to establish that her right shoulder condition was causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁰ *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).