

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

W.A., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Kearny, NJ,
Employer**

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**Docket No. 14-1336
Issued: October 9, 2014**

Appearances:
Thomas R. Uliase, 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
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 22, 2014 appellant, through her representative, filed a timely appeal from the February 3, 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 sustained an injury in the performance of duty on November 11, 2011.

FACTUAL HISTORY

On or about May 8, 2012 appellant, a 56-year-old clerk, filed a traumatic injury claim alleging a right shoulder injury in the performance of duty on November 11, 2011. She was

¹ 5 U.S.C. § 8101 *et seq.*

sorting letters into mail bins that day, constantly reaching as she was sorting. Appellant's right arm, shoulder and neck became very painful and swollen.

The record indicates that appellant had previously sustained a right rotator cuff tear in the performance of duty on March 15, 2004.² She remained off work until she returned to a limited-duty assignment on November 11, 2011. One day later, appellant filed a recurrence of disability claim, which OWCP denied. She then pursued a new injury claim.

Dr. Cornelius I. Nicoll, the attending orthopedic surgeon who had followed appellant many years for her right shoulder, noted on November 14, 2011 that she had pain in both shoulders and pain to range of motion. Appellant was unable to elevate both arms above the shoulder. She told him that she went to work and developed severe pain and ended up in the emergency room the same day. Dr. Nicoll remarked: "I believe that this problem is chronic and patient remains totally disabled. The last time she worked was approximately eight years ago."

On June 21, 2012 OWCP denied appellant's injury claim.

Appellant saw Dr. Nicoll on September 12, 2012. Her right shoulder was noted to have major problems. New x-rays were reviewed. A diagnosis of post-traumatic arthritis and possible rotator cuff tear were made. Dr. Nicoll advised: "We are sending you this note saying she has been under our follow up for many years for injury to the right shoulder. She developed some pain and stiffness and symptoms of the rotator cuff tear."

On January 11, 2013 an OWCP hearing representative affirmed the denial of appellant's new injury claim. The hearing representative found that Dr. Nicoll did not explain whether or how the new, limited work activity led to a specific medical diagnosis.

Dr. Nicoll reported on November 21, 2013 that appellant had been his patient for many years. Appellant gave a history of a right shoulder injury on March 15, 2004, for which she had surgical repair. As physical therapy was not approved, she had an unsatisfactory recovery. Appellant remained with chronic pain, stiffness and limited right shoulder motion. She also developed post-traumatic changes to her left shoulder as a result of using that shoulder in compensation.

Dr. Nicoll added that appellant remained disabled for work until November 11, 2011, when she made an attempt to return. "I believe that she was totally disabled permanently until November 2011. Patient did not receive a note from me as I was on vacation and she made an attempt of returning to work." He noted that appellant developed severe pain to the right shoulder after performing her duties and reinjured or aggravated the original condition. "I believe that her injuries from March 15, 2004 and November 11, 2011 are the #1 factors Patient's [sic] right shoulder and then left shoulder became very stiff and she was able to elevate it above the shoulder level with severe pain and stiffness."

In a decision dated February 3, 2014, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Nicoll provided no medical

² OWCP File No. xxxxxx514.

rationale to support how reaching to sort letters and compensating for the right shoulder caused or aggravated appellant's diagnosed condition.

Appellant's representative argues that *prima facie* evidence of traumatic injury has been provided. He requests that the Board reverse the denial of appellant's claim. In the alternative, appellant's representative suggests that sufficient evidence has been submitted to require further development.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁴

Causal relationship is a medical issue,⁵ 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,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

ANALYSIS

OWCP does not dispute the duties appellant performed during her return to duty in November 2011. Appellant has therefore met her burden to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether these work activities caused an injury. Appellant has the burden of proof as to this issue.

In his first narrative reports, Dr. Nicoll, the attending orthopedic surgeon, did not offer an opinion on appellant's claim that she sustained a traumatic work injury on November 11, 2011. He simply related what appellant had told him. Dr. Nicoll believed that appellant's problem was

³ 5 U.S.C. § 8102(a).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

chronic and that she remained totally disabled. He diagnosed post-traumatic arthritis and possible rotator cuff tear, but he did not discuss how the duties that appellant performed on November 11, 2011 caused or aggravated these diagnosed conditions.

Dr. Nicoll offered more of a context in his November 21, 2013 report. He described appellant prior to November 2011 as being totally and permanently disabled for work. Dr. Nicoll was on vacation, he explained, and did not give her a note to return to work, but she attempted to do so and developed severe pain to the right shoulder after performing her duties “and reinjured or aggravated the original condition.”

Although this is supportive of appellant’s claim that she sustained an injury in the performance of duty on November 11, 2011, Dr. Nicoll did little more than repeat appellant’s claim. He did not discuss the duties she performed or how she performed them. Medical conclusions unsupported by rationale are of little probative value.⁹ The burden of going forward with the evidence lies with appellant. As she has not met her burden of proof to establish the critical element of causal relationship, the Board affirms OWCP’s February 3, 2013 decision denying her new injury 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 to establish that she sustained an injury in the performance of duty on November 11, 2011.

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board