

FACTUAL HISTORY

On July 16, 2013 appellant, then a 47-year-old part-time office assistant, filed a traumatic injury claim alleging that on June 13, 2013 she injured her right shoulder causing an acromioclavicular joint separation. She stated that she felt a pop in her right shoulder while opening mail with a letter opener. Appellant's supervisor, Michael J. Ciabby, indicated that appellant first reported the injury on July 17, 2013. In an occupational health mishap report dated July 8, 2013, appellant repeated that on June 13, 2013 she heard a pop while opening mail. She stated that on June 24, 2013 when she felt a burning going down her arm, she went to occupational health where she was told to see her doctor. Appellant related that she saw her doctor on June 25, 2013, and he sent her for an x-ray which showed inflammation in the shoulder. Her doctor recommended a computerized tomography scan.

In reports dated July 19, 2013, Dr. Brent Hines, a Board-certified osteopath specializing in orthopedic surgery, noted that appellant was seen for evaluation of right shoulder pain that began on June 13, 2013 as a result of repetitive use. He noted her report that she felt a popping sensation in her shoulder when she was rushing to open mail at work and currently had right shoulder pain that radiated down the arm and was aggravated by lateral reaching, overhead activities and repetitive use and movement of the arm. Dr. Hines indicated that appellant had stopped work. On right upper extremity examination, he noted weak supraspinatus and external rotation but normal range of motion and tenderness to palpation over the impingement area. X-rays demonstrated degenerative changes and no evidence of fracture or dislocation. Dr. Hines diagnosed impingement syndrome, right shoulder; right rotator cuff syndrome; and right shoulder pain and advised that appellant could return to modified duty with no use of the right upper extremity.

On August 23, 2013 Dr. Hines noted that appellant had good relief from a steroid injection and advised that she could return to regular duties with no restrictions. In a September 11, 2013 report, Darcy Kresge, a physician's assistant, reported that appellant had an increase in right shoulder pain since returning to work without restriction. She again restricted appellant to no use of the right arm. On September 13, 2013 Dr. Hines noted appellant's complaint of right shoulder pain exacerbated by regular activities which had increased over the past several days. He provided physical examination findings, reiterated his diagnoses and recommended a magnetic resonance imaging scan study. An October 21, 2013 right shoulder ultrasound demonstrated a small, full thickness or high grade partial thickness tear of the anterior portion of the supraspinatus, increased fluid around the biceps tendon consistent with tendinitis, and findings consistent with shoulder impingement syndrome. In an October 25, 2013 report, Dr. Hines noted the ultrasound findings. He opined that the rotator cuff tear was likely a preexisting condition but that appellant had exacerbated the condition and she would likely continue to aggravate it with repetitive-type activities. Dr. Hines indicated that appellant could return to modified duties that day.

By letter dated November 25, 2013, OWCP informed appellant that the evidence received was insufficient to support her claim because it did not include a physician's opinion as to how the claimed injury resulted in the diagnosed condition. Appellant was asked to provide a narrative medical report that included an opinion, supported by a medical explanation, as to how the reported work incident on June 13, 2013 caused or aggravated a medical condition. She was

also asked to provide a statement regarding the circumstances of the claimed injury, her medical treatment, and any similar condition that preceded the claimed injury. Appellant was also instructed to explain why she did not report the injury until July 17, 2013.

In a November 9, 2013 report, Dr. Hines noted that right shoulder surgery was planned for November 20, 2013. On November 20, 2013 he performed a right arthroscopic rotator cuff repair with subacromial decompression, biceps tenodesis, lysis of adhesions and bursectomy.

By decision dated January 16, 2014, OWCP denied the claim on the grounds that the evidence did not support that the injury occurred as appellant described, noting that the only history of injury was the brief statement on the claim form and that she did not respond to the November 25, 2013 development letter. It further found that the medical evidence did not establish a diagnosed condition caused by the claimed June 13, 2013 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

OWCP regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.³ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ 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

² Gary J. Watling, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(ee) (1999, 2011); Ellen L. Noble, 55 ECAB 530 (2004).

⁴ Gary J. Watling, *supra* note 2.

⁵ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

The Board finds that appellant opened mail at work on June 13, 2013. There is no contrary evidence. The Board, however, finds that the medical evidence submitted by appellant is insufficient to establish that her opening mail caused a medical condition as none of the medical evidence related a diagnosed condition specifically to such duties.

Dr. Hines submitted reports from July 19 to November 20, 2013 when he performed a right arthroscopic rotator cuff repair. While he noted appellant's report that her right shoulder pain began on June 13, 2013 when she felt a popping sensation and initially diagnosed right impingement syndrome, Dr. Hines did not provide sufficient medical rationale to fulfill appellant's burden that she sustained a work injury on that date. Following the October 21, 2013 ultrasound, he diagnosed a preexisting right shoulder rotator cuff tear that had been exacerbated. Dr. Hines opined that repetitive activities would continue to exacerbate the condition. However, he did not specifically relate any of the diagnosed conditions to the June 13, 2013 incident when appellant was opening mail or offer any explanation of how the mechanics of the June 13, 2013 incident could have resulted in an injury. Without a detailed medical report describing the employment incident in detail and noting how and why appellant sustained a right shoulder condition as a result of the June 13, 2013 incident, Dr. Hines' opinion is insufficient to meet appellant's burden of proof.⁸

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition. Dr. Hines did not do so.⁹ The Board notes that appellant did not respond to OWCP's November 25, 2013 request for further information.

The Board also notes that the September 11, 2013 report from Ms. Kresge does not constitute medical evidence as nurse practitioners and physician's assistants are not considered physicians under FECA. Also, the October 21, 2013 right shoulder ultrasound study did not address the cause of any diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. Appellant, therefore, did not meet her burden of proof to establish that she sustained a traumatic injury on June 13, 2013.

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *Leslie C. Moore*, *supra* note 6.

⁹ *Id.*

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 did not establish an employment-related injury on June 13, 2013.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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