



On appeal appellant's counsel argues that further development of the medical evidence is warranted.

### **FACTUAL HISTORY**

This case has previously been before the Board under OWCP File No. xxxxxx723. On September 9, 2011 the Board affirmed an October 14, 2010 OWCP decision denying appellant's traumatic injury claim.<sup>2</sup> By decision dated May 28, 2008, OWCP denied appellant's claim finding the medical evidence insufficient to establish that the accepted January 15, 2008 work incident caused or aggravated a medical condition. By decisions dated September 3, 2009 and October 14, 2010, it denied modification. In affirming the denial of her claim, the Board found that the medical evidence of record failed to explain how appellant's employment duties on January 15, 2008 caused or aggravated an arm, shoulder, neck, back or foot condition. The facts of the case as set forth in the Board's prior decision are incorporated by reference.<sup>3</sup>

On November 16, 2011 appellant, then a 50-year-old mail processing clerk, filed a claim for a recurrence of disability under OWCP File No. xxxxxx980. She alleged that throwing mail on October 11 and 14, 2011 aggravated her right shoulder condition. The employing establishment controverted the claim on the grounds that the clock rings showed appellant was not at work on the days of the alleged aggravation. As appellant alleged new work factors, OWCP adjudicated her claim as a new occupational disease and assigned File No. xxxxxx614.

In support of her claim in OWCP File No. xxxxxx614, appellant submitted a November 8, 2011 report from Dr. Tianshu Zhang, a treating Board-certified neurologist. He noted that appellant started to have right shoulder pain due to working a mail processing machine on October 11 and 14, 2011. A physical examination revealed right shoulder and cervical paraspinal muscle tenderness on palpitation. He diagnosed right shoulder pain due to her repetitive work duties and prior right shoulder surgery.

In correspondence dated May 8, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim under OWCP File No. xxxxxx614. Appellant was advised as to the medical and factual evidence to submit to support her claim and given 30 days to provide this information.

In response to OWCP's request for additional information under OWCP File No. xxxxxx614, appellant disagreed with the employing establishment statement that she had not been in a work status on October 11 or 14, 2011. She noted that she returned to work on October 11, 2011 because the machine she worked on was shut down, so that she had to throw mail into different places by hand. After working on October 11, 2011 appellant related feeling a

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<sup>2</sup> Docket No. 11-237 (issued September 9, 2011).

<sup>3</sup> On February 28, 2008 appellant, then a 47-year-old clerk, filed an occupational disease claim alleging that on January 15, 2008 she first felt tightness in her right shoulder and tingling in her right arm, but did not realize it was due to her employment duties until January 18, 2008. Specifically, she attributed her cervical disc herniation and cervical radiculopathy to her employment duties on January 15, 2008. OWCP assigned the claim OWCP File No. xxxxxx723. It converted appellant's claim to a traumatic injury claim.

sharp pain in her right shoulder which worsened after reporting back to work on October 14, 2011.

By decision dated June 21, 2012, OWCP denied appellant's claim under OWCP File No. xxxxxx614. It found that she failed to establish that the work events to which she attributed her shoulder condition occurred, as alleged.

On August 15, 2012 appellant's counsel requested reconsideration under OWCP File No. xxxxxx723. In an August 24, 2010 report, Dr. Zhang diagnosed right cervical radiculopathy, right carpal tunnel syndrome and right shoulder tendon repair. He attributed the conditions to appellant's job duties, including moving heavy boxes, lifting heavy trays and feeding a mail machine.

In a letter dated September 7, 2012, appellant's counsel requested reconsideration under OWCP File No. xxxxxx614.

In an April 28, 2012 report, Dr. Zhang diagnosed chronic cervical muscle strain, cervical disc osteophyte, mild-to-moderate central stenosis, left and right foraminal stenosis with possible C6 nerve root compression, right C6 radiculopathy and right shoulder supra and a recurrence of right shoulder pain. He attributed her chronic neck muscle pain to her years of repetitive work activity. Dr. Zhang related that appellant had a recurrence of right shoulder pain after returning to work on a machine. Specifically, he related that appellant returned to processing mail on a machine on October 11 and 14, 2011, which subsequently resulted in right shoulder pain and an inability to continue this type of work. A physical examination revealed tenderness on palpation in the right shoulder lateral aspect and right cervical paraspinal spinal muscles.

In a January 23, 2013 report, Dr. Jeffrey Lakin, a second opinion Board-certified orthopedic surgeon, detailed the medical history as provided by appellant and the statement of accepted facts.<sup>4</sup> He also just listed the medical evidence he reviewed without any details. On physical examination there was minimal cervical spine tenderness and full active range of motion with minimal decreased right shoulder strength and abduction. Dr. Lakin opined that appellant sustained a neck strain as a result of the January 15, 2008 employment incident, but there was no evidence to establish any other peripheral entrapment or upper extremity condition. He also concluded that the neck sprain had resolved and there was no disability due to her employment injury.

By decision dated decision February 5, 2013, OWCP vacated in part and affirmed in part the denial of her claim under OWCP File No. xxxxxx723.<sup>5</sup> It found the medical evidence sufficient to establish that she sustained a cervical sprain as a result of the January 15, 2008 employment incident. OWCP also found the evidence insufficient to establish her right cervical radiculopathy or right carpal tunnel syndrome as causally related to the accepted January 15, 2008 employment injury.

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<sup>4</sup> The Board notes that Dr. Lakin's report is contained in both OWCP File Nos. xxxxxx723 and xxxxxx614.

<sup>5</sup> The Board notes that subsequent to the February 5, 2013 OWCP decision, OWCP combined claim number xxxxxx723 and xxxxxx712 with claim number xxxxxx723 listed as the master file number.

Under OWCP File No. xxxxxx614, OWCP issued a decision dated February 5, 2013 which found that appellant established that incidents occurred as alleged. The medical evidence, however, was insufficient to establish a worsening of her right shoulder condition or any other medical condition causally related to throwing mail.

**LEGAL PRECEDENT -- ISSUE 1 -- OWCP File No. xxxxxx614**

An employee seeking benefits under FECA<sup>6</sup> has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.<sup>7</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>8</sup>

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.<sup>9</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>10</sup>

If a claimant does establish an employment factor, he or she must submit medical evidence showing that a medical condition was caused by such a factor.<sup>11</sup> The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. 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.<sup>12</sup>

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<sup>6</sup> 5 U.S.C. § 8101 *et seq.*

<sup>7</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>8</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>9</sup> 20 C.F.R. § 10.5(ee). *See S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>10</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

<sup>11</sup> *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

<sup>12</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>13</sup>

**ANALYSIS -- ISSUE 1 -- OWCP File No. xxxxxx614**

OWCP accepted the work activities on October 11 and 14, 2011 alleged by appellant occurred. On February 5, 2013 it denied appellant’s claim on the grounds that the medical evidence failed to support that she sustained any medical condition due to the October 11 and 14, 2011 work activities. The issue on appeal is whether the evidence is sufficient to establish appellant’s claim that she sustained or aggravated a right shoulder condition due to the accepted factors of employment.

In an April 28, 2013 report, Dr. Zhang diagnosed chronic cervical muscle strain, cervical disc osteophyte, mild-to-moderate central stenosis, left and right foraminal stenosis with possible C6 nerve root compression, right C6 radiculopathy and right shoulder pain. He attributed appellant’s right shoulder pain and disability to her return to processing mail on a machine on October 11 and 14, 2011. A physical examination revealed tenderness on palpation in the right shoulder lateral aspect and right cervical paraspinal spinal muscles.

In a January 23, 2013 report, Dr. Lakin concluded that there was no worsening of her condition following her return to work on October 11, 2011 and the pitching of mail. He reported that the physical examination revealed minimal weakness on abduction and an otherwise unremarkable right shoulder examination. Dr. Lakin reiterated that appellant did not suffer any residuals or material worsening of her shoulder condition due to her work activities in October 2011.

The Board finds a conflict in medical opinion between Dr. Zhang and Dr. Lakin, with regard to whether appellant’s work duties on October 11 and 14, 2011 caused or aggravated her preexisting right shoulder condition. The case will be remanded to refer appellant to an impartial medical examiner to resolve the conflict, pursuant to 5 U.S.C. § 8123(a). Following this and any further development of the medical evidence, OWCP shall issue a *de novo* decision.

**LEGAL PRECEDENT -- ISSUE 2 -- OWCP File No. xxxxxx723**

An employee seeking benefits under FECA<sup>14</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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

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<sup>13</sup> 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB 382 (2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>14</sup> 5 U.S.C. § 8101 *et seq.*

employment injury.<sup>15</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>16</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.<sup>17</sup> 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.<sup>18</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>19</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>20</sup> An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.<sup>21</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>22</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>23</sup> 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.<sup>24</sup>

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<sup>15</sup> *C.S.*, *supra* note 7; *Bonnie A. Contreras*, *supra* note 7.

<sup>16</sup> *S.P.*, *supra* note 8; *Joe D. Cameron*, *supra* note 8.

<sup>17</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 7.

<sup>18</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>19</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

<sup>20</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>21</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>22</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>23</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

<sup>24</sup> *I.J.*, *supra* note 12; *Victor J. Woodhams*, *supra* note 12.

**ANALYSIS -- ISSUE 2 -- OWCP File No. xxxxxx723**

Appellant alleged that she sustained cervical disc herniation and cervical radiculopathy as a result of the accepted January 15, 2008 employment injury. On February 5, 2008 OWCP accepted the claim for neck sprain, but found the evidence insufficient to establish the conditions of right cervical radiculopathy or right carpal tunnel syndrome as causally related to the accepted January 15, 2008 employment injury.

The Board finds that this case is not in posture for a decision.

OWCP referred appellant to Dr. Lakin for a second opinion examination. The Board finds, however, that Dr. Lakin's report is insufficient to form the basis of OWCP's February 5, 2013 decision denying that the conditions of cervical radiculopathy and right carpal tunnel syndrome had been caused or aggravated by the accepted January 15, 2008 employment injury. In his January 23, 2013 report, Dr. Lakin's answer to the questions presented by OWCP was quite brief. He repeated the question posed by OWCP and provided a conclusory answer without any accompanying narrative explanation. Dr. Lakin did not refer to results on examination, the medical or factual history, or provide sufficient medical rationale to support his opinion that the evidence was insufficient to support a diagnosis of cervical radiculopathy or right carpal tunnel or any relationship to the accepted January 15, 2008 employment injury. While his statement regarding that there was no evidence to support a diagnosis of either cervical radiculopathy or right carpal tunnel syndrome, was clear and unequivocal, Dr. Lakin failed to offer adequate medical reasoning in support of his conclusion.<sup>25</sup> The certainty with which Dr. Lakin expressed his opinion cannot overcome the lack of medical rationale.<sup>26</sup> It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done. As OWCP undertook development of the evidence by referring appellant to a second opinion physician, it has the duty to secure an appropriate report addressing the relevant issues.<sup>27</sup>

In this case, it undertook the development of medical evidence when it referred appellant to Dr. Lakin for a second opinion evaluation. It has an obligation to secure a report adequately addressing the relevant issue of whether the cervical radiculopathy and right carpal tunnel syndrome was caused or aggravated by her accepted January 15, 2008 employment injury. The case will be remanded for OWCP to obtain clarification of Dr. Lakin's opinion on whether appellant's January 15, 2008 employment injury caused or aggravated the conditions of right carpal tunnel syndrome and cervical radiculopathy. Dr. Lakin should provide supporting rationale explaining why he concluded that there was insufficient evidence supporting the diagnoses of cervical radiculopathy and right carpal tunnel syndrome and why these conditions had not been caused or aggravated by the accepted employment injury.

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<sup>25</sup> *J.M.*, 58 ECAB 303 (2007); *Elaine Sneed*, 56 ECAB 373 (2005).

<sup>26</sup> *See Willa M. Frazier*, 55 ECAB 379 (2004).

<sup>27</sup> *Peter C. Belkind*, 56 ECAB 580 (2005).

**CONCLUSION**

The Board finds that this case is not in posture for a decision as to whether the conditions of cervical radiculopathy and right carpal tunnel syndrome were caused or aggravated by the accepted January 15, 2008 employment injury under OWCP File No. xxxxxx614. The Board further finds an unresolved conflict in the medical opinion between Drs. Zhang and Lakin as to whether appellant's work activities on October 11 and 14, 2011 caused or aggravated her right shoulder condition under OWCP File No. xxxxxx723.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 5, 2013 are set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: September 18, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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