United States Department of Labor
Employees' Compensation Appeals Board

P.F., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Cherry Hill, NJ, Employer**	**Docket No. 14-1130** **Issued: September 22, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 17, 2014 appellant, through her attorney, filed a timely appeal from a January 7, 2014 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has established a right shoulder injury in the performance of duty.

On appeal, counsel argues that appellant's attending physicians distinguished the claimed traumatic injury from preexisting arthritis of the right shoulder. He requests that OWCP accept the claim or remand the matter for development of the medical evidence.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 2, 2011 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder earlier that day when she closed her delivery vehicle's side door. She stopped work that day and sought medical attention at a hospital emergency room. Appellant did not return to work.

In a November 2, 2011 report, Dr. Jason Hartis, an attending physician specializing in emergency medicine, noted appellant's account of the onset of right shoulder pain that day while "closing door handle on mail truck." On examination, he found full right shoulder range of motion. Dr. Hartis obtained x-rays showing calcific tendinitis throughout the right shoulder with joint space narrowing and degenerative spurring. He diagnosed calcific tendinitis of the right shoulder.

In a December 1, 2011 report, Dr. Mark Pollard, an attending Board-certified orthopedic surgeon, noted appellant's account of the onset of right shoulder symptoms on November 2, 2011 "when she went from four levels to five levels for sorting mail." On examination, he found limited right shoulder motion with crepitus.

Dr. Lawrence Miller, an attending Board-certified orthopedic surgeon, submitted a December 12, 2011 report finding appellant disabled for work due to severe, intractable right shoulder pain. He noted that a magnetic resonance imaging (MRI) scan of the right shoulder showed degenerative deformities of the glenoid and humeral head. Dr. Miller diagnosed severe arthritis of the right shoulder of unknown etiology.

In a January 12, 2012 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a medical report from her attending physician diagnosing an injury and supporting a causal relationship between that injury and the November 2, 2011 incident. It noted that the medical evidence of record did not distinguish diagnosed degenerative arthritis from the claimed traumatic shoulder injury. Appellant was afforded 30 days to submit additional evidence. No further evidence was received.

By decision dated February 16, 2012, OWCP denied appellant's claim on the grounds that causal relationship was not established. It accepted that the November 2, 2011 incident occurred at the time, place and in the manner alleged. OWCP further found, however, that the medical evidence did not establish an injury resulting from that incident. It noted that one of the physicians of record diagnosed degenerative arthritis of unknown etiology and not a traumatic injury caused by closing a vehicle door.

In a March 2, 2012 letter, counsel requested an oral hearing, held June 6, 2012. At the hearing, appellant explained that she had dislocated her right shoulder several years previously when she fell down stairs at home. She eventually returned to full duty. Appellant noted that she experienced right shoulder discomfort while casing mail, particularly after her case was increased from four to five levels. She submitted additional evidence.

In a February 2, 2012 report, Dr. Miller noted that appellant reported "an incident on November 2, 2011 which exacerbated her preexisting severe arthritis of the right shoulder." On

May 29, 2012 he performed a hemiarthroplasty with biceps tenodesis. Dr. Miller diagnosed right glenohumeral degenerative joint disease with a glenoid wear pattern. He opined on June 25, 2012 that while the November 2, 2011 incident did not cause the right shoulder arthritis, "a sudden jolt can exacerbate a preexisting condition and this is what [appellant had] disclosed to [him]."[2]

By decision dated July 30, 2012, an OWCP hearing representative affirmed the February 16, 2012 decision on the grounds that causal relationship was not established. The hearing representative found that the medical evidence did not support that appellant's right shoulder arthritis or tendinitis was caused or exacerbated by opening a vehicle door on November 2, 2011.

In an October 9, 2012 letter, counsel requested reconsideration. He contended that additional medical evidence supported that the November 2, 2011 incident exacerbated preexisting arthritis. Counsel provided reports from Dr. Craig H. Rosen, an attending Board-certified orthopedic surgeon, who treated appellant for an April 24, 2009 nonoccupational dislocation of the right shoulder. In reports through January 7, 2010, Dr. Rosen diagnosed an anterior dislocation of the right shoulder with a small Hill-Sachs deformity and mild supraspinatus tendinosis. As of January 7, 2010, appellant had mildly diminished sensation in the right axillary nerve, mild weakness in the right arm and minimally restricted right shoulder motion.[3]

In a September 24, 2012 report, Dr. Miller noted that he agreed with appellant that "her current situation [was] secondary to exacerbation of preexisting condition from the arthritis in her shoulder." He explained on December 7, 2012 that, while her degenerative arthritis was not secondary to the November 2, 2011 workplace incident, "the event caused an exacerbation of her symptoms" which did not return to baseline, necessitating surgery. Dr. Miller opined that his opinion was based on information supplied to him by counsel.

Dr. Laura Ross, an attending osteopath Board-certified in orthopedic surgery, opined on October 1, 2012 that the November 2, 2011 incident as reported by appellant caused an "[e]xacerbation of underling glenohumeral osteoarthrosis" with rotator cuff tears. She elaborated that "the injury at work [was] the likely culprit for the rotator cuff tear as well as bicipital tendon tear and glenoid labral tear as the mechanism of injury supports these findings." Dr. Ross held appellant off work indefinitely.

By decision dated February 12, 2013, OWCP affirmed its July 30, 2012 decision on the grounds that causal relationship was not established. In an April 23, 2013 letter, counsel requested reconsideration. He asserted that Dr. Miller's December 7, 2012 report and Dr. Ross' October 1, 2012 report provided medical rationale supporting a causal relationship between the

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[2] Appellant also submitted imaging studies. December 6, 2011 computerized tomography (CT) and MRI scans showed severe osteoarthritis of the right shoulder with advanced degenerative changes and a full thickness rotator cuff tear. A March 6, 2012 CT showed remodeling of the humeral head and bony glenoid with loss of the inferior glenoid bone stock and several loose bodies.

[3] Dr. Rosen also treated appellant for a left ankle fracture and removal of fixation hardware, unrelated to the present claim.

November 2, 2011 incident, appellant's right shoulder condition and the May 29, 2012 hemiarthroplasty. Counsel provided copies of medical reports previously of record.

By decision dated July 9, 2013, OWCP denied modification on the grounds that causal relationship was not established. It found that Dr. Miller's December 7, 2012 report and Dr. Ross' October 1, 2012 report did not explain how or why closing a vehicle door on November 2, 2011 would cause or aggravate the diagnosed right shoulder conditions or necessitate surgery.

In a July 10, 2013 letter, counsel requested reconsideration. He asserted that an additional report from Dr. Ross was sufficient to establish causal relationship. Counsel provided a July 1, 2013 narrative from Dr. Ross reviewing medical records. On examination, Dr. Ross observed limited right shoulder motion and atrophy in the right shoulder girdle. She opined that appellant sustained multiple right shoulder injuries "as a direct result of the work injury that occurred on November 2, 2011," which "exacerbated her condition and [was] likely the culprit for the rotator cuff," "bicipital tendon tear and glenoid labral tear." Dr. Ross explained that "while pulling closed a sliding door on a mail truck at work, the mechanism of injury to her right shoulder when she experienced the sudden jolt supports these findings."

By decision dated January 7, 2014, OWCP denied modification of its July 9, 2013 decision on the grounds that causal relationship was not established. It found that Dr. Ross' July 1, 2013 report did not set forth her medical reasoning supporting that closing the vehicle door on November 2, 2011 would cause or aggravate any of the diagnosed right shoulder conditions or have necessitated the May 29, 2012 hemiarthroplasty.

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 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.[4] 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.[5]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[6]

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

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.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

ANALYSIS

Appellant claimed that she sustained a right shoulder injury or exacerbation of preexisting arthritis of the right shoulder on November 2, 2011 when she slid shut her delivery vehicle door. OWCP accepted that the incident occurred as alleged but denied the claim by February 16, 2012 decision on the grounds that causal relationship was not established. Pursuant to a hearing request and three subsequent requests for reconsideration, it affirmed the prior denial of the claim as the medical evidence did not support that sliding a vehicle door shut on November 2, 2011 caused or aggravated any injury or condition of the right shoulder.

Appellant provided medical reports from several physicians, Dr. Rosen, an attending Board-certified orthopedic surgeon, diagnosed an April 24, 2009 anterior dislocation of the right shoulder. His reports do not address appellant's condition on and after November 2, 2011. Dr. Hartis, an attending physician specializing in emergency medicine, diagnosed calcific tendinitis of the right shoulder on November 2, 2011 but did not indicate that appellant sustained a traumatic injury. Dr. Pollard, an attending Board-certified orthopedic surgeon, noted on December 1, 2011 that appellant attributed worsening right shoulder symptoms to casing mail. However, he did not express his own opinion on causation. As these reports do not contain medical rationale explaining how and why the accepted November 2, 2011 incident would cause any diagnosed condition of the right shoulder, the opinions of Drs. Hartis, Pollard and Rosen are insufficient to meet appellant's burden of proof.[9]

Dr. Miller, an attending Board-certified orthopedic surgeon, diagnosed severe degenerative arthritis of the right shoulder of unknown etiology. He opined on June 25, 2012 that "a sudden jolt" such as the November 2, 2011 incident "can exacerbate a preexisting condition." Dr. Miller later stated that the November 2, 2011 incident exacerbated appellant's symptoms, necessitating hemiarthroplasty and biceps tendinitis. His opinion on causal relationship is too equivocal to meet her burden of proof, as he noted that the November 2, 2011

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[8] *I.J.*, 59 ECAB 408 (2008).

[9] *Supra* note 7.

incident "can" exacerbate preexisting arthritis, not that it did.[10] Also, Dr. Miller did not explain how an exacerbation of symptoms led to an objective change in the right shoulder requiring surgery. This lack of rationale additionally diminishes the probative quality of his opinion.[11]

Dr. Ross, an attending osteopath Board-certified in orthopedic surgery, opined on October 1, 2012 and July 1, 2013 that the November 2, 2011 incident exacerbated glenohumeral osteoarthrosis and was "the likely culprit for the rotator cuff" and tendon tears as the mechanism of a "sudden jolt" while pulling a sliding door shut "supports these findings." However, she did not provide her medical reasoning explaining how and why pulling the sliding door shut would cause or aggravate any aspect of appellant's right shoulder condition. While she supported the causal relationship that appellant claims, Dr. Ross' opinion does not contain sufficient medical rationale to establish that the November 2, 2011 incident caused or aggravated arthritis or tendinosis of the right shoulder.[12]

As appellant did not submit sufficient medical evidence supporting that the November 2, 2011 incident caused or aggravated a right shoulder injury or condition, OWCP's January 7, 2014 decision denying the claim is proper under the law and facts of the case.

On appeal, counsel contends that Dr. Miller and Dr. Ross distinguished the claimed traumatic injury from preexisting arthritis. As stated above, Dr. Miller and Dr. Ross did differentiate the preexisting osteoarthritis from the November 2, 2011 incident. However, this clarification in and of itself is insufficient to establish causal relationship. Counsel also requests that OWCP accept the claim or remand the matter for development of the medical evidence. As explained above, the medical evidence of record is insufficient to meet appellant's burden of proof. It is also of insufficient probative value to warrant additional development by OWCP.

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 established that she sustained a right shoulder injury in the performance of duty as alleged.

[10] *Ricky S. Storms*, 52 ECAB 349 (2001).

[11] *Supra* note 7.

[12] *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2014 is affirmed.

Issued: September 22, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board