

FACTUAL HISTORY

On August 17, 2012 appellant, then a 53-year-old part-time flexible sales and services distribution associate, filed a traumatic injury claim alleging that on October 4, 2011 she developed a left shoulder injury in the performance of duty when she was handling a bent shelf. She did not stop work at that time, but later stopped work due to surgery.

By letter dated August 23, 2012, OWCP notified appellant that the evidence was insufficient to establish her claim because no medical evidence had been received and allowed her 30 days to supplement the record.

In an August 27, 2012 statement, appellant noted that her claim was filed after the date of injury because her supervisor was hesitant to file the claim. She also stated that she waited until January 4, 2012 to receive medical treatment because the employing establishment was shorthanded because of the holiday season. A January 20, 2012 accident report email noted that appellant had reported a possible torn left rotator cuff when she was injured while at work on October 4, 2011.

By decision dated September 26, 2012, OWCP accepted that the incident occurred, but denied appellant's claim because the medical evidence failed to state a diagnosed condition.

OWCP received a January 4, 2012 report from Dr. Marvin Klingler, a family medicine practitioner. Dr. Klingler noted that appellant complained of left shoulder pain. He diagnosed left shoulder strain and stated that the apparent precipitating event was a fall. In a February 1, 2012 report, Dr. Lance Weagant, a Board-certified family practitioner and associate of Dr. Klingler, noted that appellant was injured on October 4, 2011 when she attempted to bring a cart down from a shelf. He advised that appellant reinjured her shoulder in mid-December when she had a fall at work. Upon physical examination, Dr. Weagant advised that there was no swelling or significant impingement. He noted that appellant had full flexion, abduction and external rotation with mildly limited internal rotation. Dr. Weagan further noted that appellant had some tenderness over the acromion and biceptal groove. Dr. Weagant advised that left shoulder x-rays had been ordered. In a February 1, 2012 diagnostic report, Dr. Mareve Kayfes, Board-certified in diagnostic radiology, advised that left shoulder x-rays revealed no acute abnormalities, no soft tissue calcifications, and maintained joint spaces.

On March 8, 2012 Dr. Weagant noted that appellant's pain began six months earlier. He advised that appellant related that the pain was intermittent, sharp, and stabbing. Appellant also related that her pain increased with lifting and was relieved with rest. Dr. Weagan stated that the apparent precipitating event was lifting and that it was a workers' compensation injury. In an accompanying March 8, 2012 disability status report, he advised that appellant could work without restrictions.

In a June 11, 2012 report, Dr. Thomas Comfort, a Board-certified orthopedic surgeon to whom appellant was referred by Dr. Weagant, stated that appellant had a work-related injury on October 4, 2011 when holding a shelf that suddenly gave way. He advised that x-rays showed an intact rotator cuff and acromioclavicular (AC) joint arthrosis. On physical examination, Dr. Comfort found that appellant had tenderness at the AC joint with positive compression and

mildly positive abduction testing. He stated that appellant had difficulty sleeping on her left side and that her pain was aggravated by lifting, pushing, and reaching. In an August 29, 2012 report, Dr. Weagant advised that appellant still had shoulder pain and that her symptoms were unchanged. Dr. Weagant also referred appellant to an orthopedist for her shoulder pain.

In a September 4, 2012 report, Dr. Weagant documented that appellant had a left shoulder injury at work on October 4, 2011. He noted first treating her on February 1, 2012 and that the injury occurred while she was attempting to lift a cart off of a shelf from overhead. Dr. Weagan noted the dates on which he treated appellant and advised that findings included left shoulder pain, limited range of motion, and pain with palpation of the shoulder. Left shoulder x-rays and magnetic resonance imaging (MRI) scans showed left acromioclavicular joint arthrosis and mild supraspinatus tendinopathy with partial irregular tearing. Dr. Weagant opined that appellant's job as a postal worker, especially having to repeatedly lift material above shoulder level, caused her injury with ongoing pain and disability.

In July 13 and September 26, 2012 reports, Dr. Jason Dieterle, an orthopedic surgeon and associate of Dr. Comfort, diagnosed left shoulder impingement syndrome with partial thickness tear of the rotator cuff and AC arthrosis. He noted that appellant injured herself when she pulled a cart at work. Appellant also submitted physical therapy reports and reports from medical assistants.

On October 19, 2012 appellant requested an oral hearing which was held on February 12, 2013. At the hearing, appellant reiterated that her claim was not immediately filed after the injury because her supervisor did not want to file the claim. She stated that she delayed seeking medical treatment because she did not want to jeopardize her job.

By letter dated March 18, 2013, the employing establishment controverted the claim. The letter highlighted that appellant had not sought medical treatment immediately and that, in some of the medical reports, the physician stated that appellant's condition was caused by a fall. This was inconsistent with appellant's reports. The employing establishment also argued that appellant had preexisting conditions including osteoarthritis and supraspinatus tendinitis.

In a March 12, 2013 addendum report, Dr. Dieterle clarified the history of injury from jamming her shoulder while pulling on a mail cart to holding on to an upper shelf on a cart that gave way.

By decision dated May 1, 2013, an OWCP hearing representative affirmed the denial of appellant's claim because, although the evidence did not establish a diagnosed condition, the medical evidence was insufficient to establish that the diagnosed condition was causally related to the accepted work incident.

On September 24, 2013 appellant's attorney requested reconsideration and submitted additional evidence.

In an August 26, 2013 report, Dr. Michael Lockheart, Board-certified in occupational medicine, diagnosed left shoulder pain. He noted that appellant jammed her left shoulder when she attempted to pull a shelf from a cart on October 4, 2011. Dr. Lockheart noted that appellant related to him that her physician deemed the injury work related.

In an October 31, 2012 report, Dr. Dieterle advised that appellant was interested in surgery if other treatment did not resolve her condition. In a December 18, 2012 report, he advised that appellant would proceed with surgery. In a January 2, 2013 surgery report, Dr. Dieterle advised that he performed a left shoulder arthroscopy with rotator cuff repair, arthroscopic subacromial decompression, acromioplasty, and arthroscopic distal clavicle resection. On January 14, 2013 he advised that appellant was two weeks' postsurgery and had some occasional mild pain. In an accompanying disability status report, Dr. Dieterle advised that appellant was able to work with maximum restrictions.

On February 5, 2013 Dr. Dieterle advised that appellant may have reinjured her rotator cuff while exercising with a handmade rope and pulley. Appellant stated that she felt a pop and immediate pain when the rope dropped causing her arm to drop. Dr. Dieterle ordered an MRI, which revealed no evidence of recurrent full thickness tearing of the supraspinatus tendon.³ In a February 11, 2013 report, Dr. Dieterle noted that the MRI scan findings and recommended continued physical therapy. On March 13, 2013 he advised that appellant was improving, but still had limited motion. Dr. Dieterle continued submitting postsurgical status reports and work restrictions.

In an August 8, 2013 report, Dr. Samuel Inkumsah, Board-certified in family medicine, stated that appellant injured herself at work as she was unloading mail from an upright steel cart. He stated that she pushed on the side of the cart with her right hand and pulled down on the shelf with her left when the shelf came loose jamming her in the shoulder. Dr. Inkumsah diagnosed partial thickness tear of the rotator cuff and associated bone spurring. He opined that appellant's rotator cuff tear and bone spurring was caused by the force of the shelf jamming into her shoulder. Dr. Inkumsah added that two months later appellant fell on uneven pavement while at work which he opined caused part of appellant's condition.

On September 9, 2013 Dr. Comfort stated that appellant was at work using a mail cart with an upper and lower shelf when her left arm gave way jamming her shoulder as she was holding the upper shelf. He advised that x-rays revealed AC arthrosis and that an April 5, 2012 MRI scan revealed a partial thickness tearing of the supraspinatus. Dr. Comfort opined that appellant's injury was work related. He noted appellant's January 2, 2013 surgery and advised that, as of June 25, 2013, she had nearly full strength and full active range of motion.

In a September 10, 2013 report, Dr. Lockheart diagnosed shoulder pain, low back pain, foot pain, fibromyalgia, and neck pain. He noted that appellant had shoulder surgery in January 2013 and indicated that this was being claimed as a workers' compensation injury.

By decision dated April 17, 2014, OWCP denied modification of its May 1, 2013 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial

³ The MRI scan was taken on February 8, 2013.

evidence,⁴ including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁷

Rationalized medical opinion evidence is generally required to establish causal relationship. 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

On October 4, 2011 appellant claimed that she injured her left shoulder when she tried to remove a damaged shelf from a cart. The evidence supports that the claimed incident with the shelf occurred at work. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the employment incident on October 4, 2011 caused appellant’s left shoulder injury.

In his August 8, 2013 report, Dr. Inkumsah diagnosed partial thickness tear of the rotator cuff and associated bone spurring. He opined that this was caused by the force of the shelf jamming into her shoulder. He added that two months later appellant fell on uneven pavement while at work which he opined caused part of appellant’s condition. The Board finds that Dr. Inkumsah’s report is not sufficiently rationalized to establish the claim. Although he offered an opinion on causal relationship, he failed to explain the reasons for his opinion. Dr. Inkumsah did not address the process by which a cart jamming appellant’s shoulder would cause a rotator cuff tear.

In his September 4, 2012 report, Dr. Weagant advised that appellant reported her injury while attempting to lift a cart off of an overhead shelf. He noted that diagnostic testing showed left acromioclavicular joint arthrosis and mild supraspinatus tendinopathy with partial irregular

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁵ *R.C.*, 59 ECAB 427 (2008).

⁶ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

tearing. Dr. Weagant opined that appellant's job as a postal worker, especially having to repeatedly lift material above shoulder level, caused her injury with ongoing pain and disability. However, this statement focused on appellant's general position as a postal worker without specifically explaining how the October 4, 2011 work incident caused or contributed to appellant's diagnosed conditions. On February 1, 2012 Dr. Weagant stated that appellant injured herself on October 4, 2011 when she attempted to bring down a cart from a shelf. In his March 8, 2012 report, he noted that appellant's pain began six months earlier and that the "apparent" precipitating event was lifting and that it was a workers' compensation injury. These reports are also insufficient to discharge appellant's burden of proof because they do not sufficiently explain how the work event caused or contributed to an injury. Furthermore, the use of the term "apparent" suggests equivocal support for causal relationship.⁹ Other reports from Dr. Weagant do not specifically address causal relationship and are insufficient to establish the claim.

Appellant also provided reports from Dr. Comfort. In the June 11, 2012 report, Dr. Comfort stated that appellant had a work-related injury on October 4, 2011 when holding a shelf that suddenly gave way. On September 9, 2013 he stated that appellant was at work using a mail cart with an upper and lower shelf when her left arm gave way jamming her shoulder as she was holding the upper shelf. Dr. Comfort opined that appellant's injury was work related. While these reports provide some support for causal relationship, they are insufficient to discharge appellant's burden of proof because Dr. Comfort does not provide medical rationale explaining the basis of his conclusion on causal relationship.

In his August 26, 2013 report, Dr. Lockheart diagnosed left shoulder pain. In his September 10, 2013 report, he indicated that the injury was being claimed as a workers' compensation injury. These reports do not discharge appellant's burden of proof. Dr. Lockheart is not relating his own opinion on causal relationship but instead is repeating what appellant told him.¹⁰ In any event, he also did not provide any medical reasoning explaining how the October 4, 2011 work incident caused or contributed to a diagnosed medical condition.

Appellant submitted multiple reports from Dr. Dieterle. In July 13 and September 26, 2012 reports, Dr. Dieterle offered diagnoses that included left shoulder impingement syndrome with partial thickness of the rotator cuff and noted that appellant injured herself when she pulled a cart at work. In a March 12, 2013 report, he corrected his account to reflect that appellant injured her shoulder as she was holding on to an upper shelf on a cart that gave way and jammed her shoulder. While these reports mention the employment incident, they too appear to be simply repeating what appellant told him regarding the cause of her condition. In none of these reports did Dr. Dieterle explain how the October 4, 2011 work incident caused or contributed to a diagnosed condition.¹¹ Thus, these reports are insufficient to establish the claim. Other reports

⁹ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

¹⁰ *K.C.*, Docket No. 10-425 (issued August 20, 2010).

¹¹ See also *C.M.*, Docket No. 14-88 (issued April 18, 2014) (a physician's opinion regarding causal relationship that appears to be primarily based on appellant's own representations rather than on objective medical findings is of limited probative value).

from Dr. Dieterle are also insufficient to establish the claim as they did not specifically attribute appellant's condition to the accepted work incident.

Dr. Klingler's report and reports of diagnostic testing are insufficient to discharge appellant's burden of proof because they do not offer a physician's opinion on causal relationship between a diagnosed condition and the October 4, 2011 work incident.¹²

Consequently, appellant has failed to establish, with rationalized medical evidence that the October 4, 2011 work incident caused or contributed to her diagnosed medical condition. The need for medical reasoning or rationale is particularly important here where appellant did not file her claim for over 10 months and she did not seek medical treatment for over two months after the claimed injury.¹³ Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 that she sustained a traumatic injury in the performance of duty on October 4, 2011.

¹² *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹³ Dr. Weagant's February 1, 2012 and Dr. Inkumsah's August 8, 2013 reports indicate that appellant had a fall at work in December 2011 that contributed to her condition. This claim does not pertain to any fall that may have occurred at work and the record does not indicate that a claim was filed regarding any such fall.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2015
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