



xxxxxx864, as both claims concerned the same parts of the body and contained similar medical evidence. The Board also directed that following any other necessary development, that OWCP issue a *de novo* decision in the case. The law and facts of the case as set forth in the Board's order are incorporated by reference.

Under File No. xxxxxx864, OWCP accepted that on July 17, 2009 appellant, then a 50-year-old mail handler, sustained a neck sprain and bilateral shoulder sprain when he lifted a bucket of mail. He stopped work at the time of injury. Dr. Marc M. Levinson, an attending Board-certified physiatrist, ordered magnetic resonance imaging (MRI) scans of the cervical spine and both shoulders, which were performed on June 17, 2010. These studies showed cervical spondylosis, foraminal compromise and osteophyte formation from C3-7, a central disc herniation with cord compression at C4-5 and acromioclavicular (AC) joint degeneration with subacromial subdeltoid bursitis and a glenoid labrum tear in both shoulders. Following vocational rehabilitation, appellant returned to full-time restricted duty on August 5, 2011.

On September 6, 2011 appellant filed a traumatic injury claim (Form CA-1) alleging that while reaching to place mail in a machine sorter earlier that day, he experienced severe pain and spasm in his neck and shoulders with paresthesias into his fingers and toes. He was treated at an emergency room and released.<sup>3</sup> Appellant did not return to work. OWCP assigned the claim File No. xxxxxx537.

Dr. Levinson related appellant's history of the onset of severe cervical spine and bilateral shoulder spasm the day before. He found severely restricted motion in the cervical spine and in both shoulders and positive Neer, Hawkins' and apprehension signs in both shoulders. Dr. Levinson diagnosed an exacerbation of cervical spinal pain syndrome and exacerbation of internal derangement of both shoulders.

On September 30, 2011 Dr. Levinson noted that appellant had not fully recovered from the July 17, 2009 cervical spine and bilateral shoulder sprain, although he returned to full-time work in August 2011. On examination, he noted continued restriction of neck and shoulder motion, with bilaterally positive impingement and apprehension signs. Dr. Levinson diagnosed "[c]ervical spine pain syndrome exacerbation from repetitive use" and "[s]prain/strain bilateral shoulders -- exacerbation with internal derangement" due to repetitive use. [He] opined that there was "a direct causal relationship between the accident described and [appellant's] current injuries. [Appellant's] symptoms and clinical findings [were] consistent with musculoskeletal injuries to the described areas." Dr. Levinson found appellant totally disabled for work from September 7 to October 28, 2011, for bilateral shoulder sprain/strain and cervical pain syndrome.

In a September 15, 2011 letter, OWCP advised appellant of the type of evidence needed to establish his claim, including factual evidence supporting timely filing and performance of duty and medical evidence explaining how and why the September 6, 2011 incident would cause the claimed neck injury. Appellant was afforded 30 days to submit such evidence.

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<sup>3</sup> The emergency room reports do not contain an identifiable signature from a physician. The employing establishment controverted the claim, alleging that appellant's "accident was premeditated" to force the employing establishment to comply with his attending physician's restriction limiting him to working four hours a day.

By decision dated October 20, 2011, OWCP denied appellant's claim because it found that causal relationship was not established. While the September 6, 2011 incident occurred at the time, place, and in the manner alleged, OWCP found that appellant's physicians did not explain the medical reasons why the incident would cause an injury.

In an August 10, 2012 letter, counsel requested reconsideration, contending that a new report from Dr. Levinson, in conjunction with his prior opinions, contained sufficient medical rationale supporting causal relationship to meet appellant's burden of proof.<sup>4</sup> In a June 19, 2012 report, Dr. Levinson related appellant's account of the onset of severe neck and bilateral shoulder pain on September 6, 2011 "while reaching for mail" at work. March 14, 2012 MRI scans of both shoulders showed supraspinatus, infraspinatus and subscapularis tendinosis on the right and a superior labral tear, AC joint arthrosis, and supraspinatus tendinosis on the left. Dr. Levinson noted that these findings demonstrated a worsening of bilateral shoulder conditions compared to June 17, 2010 MRI scans.

On examination, Dr. Levinson found restricted motion of the cervical spine and both shoulders, with bilaterally positive apprehension tests, Neer, and Hawkins signs. He diagnosed cervical spinal pain syndrome and internal derangement of both shoulders.

Regarding causal relationship, Dr. Levinson opined that the "above mentioned injuries [were] causally related to [appellant's] work injury on September 6, 2011. It is obvious that the injuries happened at this time because [appellant] gives no other history or explanation for the injuries and where [he was] in such discomfort that he had to go to the emergency room." He explained that the subscapularis tendinosis in the left shoulder and supraspinatus and infraspinatus tendinosis in the right shoulder were not present on June 17, 2010 studies. Rather, they were new injuries which "within medical probability ... did occur on September 6, 2011." Dr. Levinson found appellant totally disabled for work and recommended a surgery for both shoulders.

By decision dated November 15, 2012, OWCP denied modification of its prior decision on the grounds that Dr. Levinson's opinion was insufficient to meet appellant's burden of proof. It found that Dr. Levinson did not explain how reaching for mail caused the alleged cervical spine or shoulder injuries.

Counsel filed his first appeal with the Board and the Board's January 24, 2013 decision set aside OWCP's November 15, 2012 decision and remanded the case for additional development. On remand of the case, OWCP doubled File No. xxxxxx864 under File No. xxxxxx537 effective January 31, 2014. Appellant submitted additional medical evidence.

In a September 9, 2011 report, Dr. Darren J. Friedman, an attending Board-certified orthopedic surgeon, noted appellant's history of a July 2009 occupational left shoulder injury with demonstrated rotator cuff tears. He recommended arthroscopic debridement and subacromial decompression.

In monthly reports from October 28, 2011 to July 9, 2012, Dr. Levinson diagnosed an exacerbation of cervical spinal pain syndrome and exacerbation of internal derangement of both

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<sup>4</sup> Counsel also submitted evidence previously of record.

shoulders. On examination, he observed continued restriction of cervical and bilateral shoulder motion, with positive impingement and apprehension signs in both shoulders. Dr. Levinson recommended bilateral shoulder surgery.<sup>5</sup> He found appellant totally disabled for work through March 2, 2012.

By decision dated February 5, 2014, under File No. xxxxxx537, OWCP affirmed its October 11, 2011 decision, finding that the medical evidence did not contain a sufficient explanation supporting causal relationship. It found that Dr. Levinson did not explain how “reaching for mail on September 6, 2011 directly caused or aggravated” the claimed cervical spine and bilateral shoulder conditions.

### **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.<sup>6</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>7</sup>

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 conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.<sup>8</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>9</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained cervical spine and bilateral shoulder sprains in the performance of duty on July 17, 2009. Appellant remained off work through August 5, 2011, when he returned to a full-time restricted-duty position. He claimed that, while reaching for mail on September 6, 2011, he experienced severe cervical spine and bilateral shoulder pain with paresthesias into all extremities. Appellant did not return to work. OWCP accepted that the September 6, 2011 incident occurred at the time, place, and in the manner alleged, but denied the claim by October 20, 2011 and February 5, 2014 decisions, finding that his physicians did not

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<sup>5</sup> Appellant also submitted an April 10, 2012 report from, Dr. Andrew D. Brown, an attending Board-certified physiatrist, who diagnosed “[t]raumatic lumbosacral pain syndrome with [herniated nucleus pulposus]” related to a March 15, 2008 incident.

<sup>6</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

provide sufficient reasoning supporting a causal relationship between the accepted incident and the claimed neck and shoulder injuries.

In support of his claim, appellant submitted reports from Dr. Levinson, an attending Board-certified physiatrist, who treated appellant beginning in 2010. Dr. Levinson noted in his September 7, 2011 and June 19, 2012 reports that appellant experienced the onset of severe neck and shoulder symptoms while reaching for mail on September 6, 2011. He opined that appellant's symptoms and objective findings on September 6, 2011 were consistent with acute cervical pain syndrome and bilateral shoulder derangement. Dr. Levinson noted on June 19, 2012 that the left subscapularis tendinosis, right supraspinatus and infraspinatus tendinosis, which disabled appellant as of September 6, 2011, were not present on June 17, 2010 MRI scans but visible on March 14, 2012 studies. He found that these were new injuries which occurred on September 6, 2011.

The Board finds that Dr. Levinson's opinion is not sufficiently rationalized to meet appellant's burden of proof in establishing his claim. Dr. Levinson posited a temporal relationship between the September 6, 2011 onset of symptoms and subsequently diagnosed bilateral shoulder tendinosis. However, the Board has held that a temporal relationship alone is insufficient to establish causal relationship.<sup>10</sup> Dr. Levinson did not explain the medical reasons why reaching for mail on September 6, 2011 would cause or aggravate any of the diagnosed medical conditions. He did not specify why the physical stresses of reaching for mail would alter appellant's cervical spine and shoulders, resulting in subscapularis tendinosis, infraspinatus tendinosis, or an aggravation of a cervical sprain. Without such rationale, Dr. Levinson's opinion is of diminished probative value.<sup>11</sup>

Appellant also provided a September 9, 2011 report from Dr. Friedman, an attending Board-certified orthopedic surgeon, who noted a July 2009 occupational left shoulder injury, and recommended arthroscopy. However, Dr. Friedman did not address causal relationship. His opinion is therefore insufficient to meet appellant's burden of proof.

On appeal, counsel asserts that the medical evidence of record, in particular Dr. Levinson's June 19, 2012 report, was sufficient to establish causal relationship. He contends that, under the Board's precedent in *John P. Broll*,<sup>12</sup> it was "not necessary that the evidence be so conclusive as to establish causal connection beyond all reasonable doubt. Where the relative circumstances strongly suggest a causal relationship, the claimant has met his burden of proof." In the *Broll* case appellant suffered a visible condition to his face, the left orbital area, as a result of being struck by a falling object. Appellant's eye glasses were broken by the impact. The supervisor and witness agreed that the incident occurred as described by appellant. Appellant sought emergency room treatment the same day and was diagnosed with a contusion by a physician. The facts and medical issues in the *Broll* case are distinguishable because they are less complex than those presented in the current appeal. In *Broll* appellant had no preexisting condition affecting the same part of the body. The Board believes that the cervical and bilateral

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<sup>10</sup> *Louis R. Blair, Jr.*, 54 ECAB 348. (2003).

<sup>11</sup> *Deborah L. Beatty*, *supra* note 9.

<sup>12</sup> 42 ECAB 410 (1991).

shoulder conditions in this appeal are more complex and require more extensive and detailed explanation than is provided in Dr. Levinson's reports.

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 he sustained a traumatic injury in the performance of duty as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 5, 2014 is affirmed.

Issued: January 12, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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