

**United States Department of Labor
Employees' Compensation Appeals Board**

A.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Columbia, SC, Employer**

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**Docket No. 14-1983
Issued: January 14, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 15, 2014 appellant filed a timely appeal from March 24 and August 7, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish a left shoulder condition causally related to factors of her employment.

FACTUAL HISTORY

On January 31, 2014 appellant, then a 46-year-old mail carrier, filed an occupational disease claim alleging that she developed shoulder and neck pain as a result of "grabbing mail"

¹ 5 U.S.C. § 8101 *et seq.*

and “lifting her left arm” to case mail. She first became aware of her condition and realized it resulted from her employment in December 2013. Appellant stopped work on February 3, 2014.

By letter dated February 19, 2014, OWCP advised appellant that no evidence had been received in support of her claim and requested additional evidence. It requested that she respond to a questionnaire and describe the employment-related activities which she believed contributed to her condition, how often she performed such activities, and for how long they were performed. OWCP also requested a medical report establishing a diagnosed condition as a result of her alleged employment duties.

In a decision dated March 24, 2014, OWCP denied appellant’s claim based on her failure to prove fact of injury. It determined that she failed to provide sufficient factual evidence to establish the employment-related activities that she believed contributed to her condition and sufficient medical evidence to demonstrate that she sustained a diagnosed condition as a result of her employment.

In an appeal request form received by OWCP on April 2, 2014, appellant requested reconsideration.

Dr. Leland Stoddard, a Board-certified orthopedic surgeon, in a January 7, 2014 diagnostic report, stated that an internal rotation and outlet view of the left shoulder revealed no specific bone, joint, or soft tissue abnormality. He also reported that lateral views of the cervical spine demonstrated some osteophytic diseases at C6-C7. Dr. Stoddard diagnosed degenerative spondylosis of the cervical spine.

In a January 21, 2014 progress note, Dr. Stoddard examined appellant for ongoing pain in the left shoulder. Upon examination, he observed a fairly strong positive impingement sign in the shoulder. Dr. Stoddard opined that appellant had ongoing impingement pain and recommended a magnetic resonance imaging (MRI) scan of appellant’s left shoulder. In a work restriction note, he authorized appellant to return to work on January 27, 2014 with restrictions of no lifting greater than five pounds, no pushing, pulling, or overhead activity, and no repetitive use of the hand, such as grasping.

An MRI scan report of the left shoulder dated January 27, 2014 was reviewed by Dr. William Conway, a Board-certified radiologist, who observed a large ganglion cyst from the suprascapular notch region extending between the supraspinatus and infraspinatus muscles. Dr. Conway noted that the cyst extended both superiorly and inferiorly and did not appear to communicate with the joint itself. He reported that no other significant abnormality was seen.

Dr. Stoddard observed in a January 28, 2014 report, a large ganglion cyst in the superior glenoid area of appellant’s left scapula. He reported no other abnormalities in the left rotator cuff or shoulder. Dr. Stoddard stated that the cyst was impacting the function of both the infraspinatus and supraspinatus musculature. He opined that this cyst was responsible for appellant’s pain.

In a February 3, 2014 report, Dr. Stoddard examined appellant for ongoing pain in the left shoulder. He stated that appellant should have essentially no use of the left arm, including lifting, pushing, pulling, and repetitive activity in her work at the employing establishment.

Dr. Stoddard noted that appellant was given a sling and told to wear the sling at work in order to prevent overuse of the left arm.

In a February 25, 2014 report, Dr. Richard J. Friedman, a Board-certified orthopedic surgeon, examined appellant for complaints of approximately two months of left shoulder pain. He related that appellant had no prior history of left shoulder pain and noted no traumatic episode. Appellant stated that her pain worsened with overhead reaching progressed to where her daily activities were limited. Dr. Friedman noted that a January 27, 2014 MRI scan demonstrated a large ganglion cyst in the suprascapular notch extending between the supraspinatus and infraspinatus muscles in the subacromial charges. Upon examination of appellant's left shoulder, he observed intact contours and skin with no atrophy and asymmetry. Dr. Friedman also reported acromioclavicular (AC) pain to palpation on the left side and subacromial tenderness and positive pivot signs. Cross body abduction was positive. Speed, Yergason, and Jacob tests were negative. Dr. Friedman stated that x-rays taken that day were within normal limits. He opined that appellant had suprascapular nerve entrapment with a ganglion cyst of the notch, which accounted for a large part of her symptoms along with impingement and AC degenerative joint disease. Dr. Friedman reported that appellant's condition was unlikely to resolve on its own and recommended surgery.

Dr. Stoddard reported on March 10, 2014 that appellant was scheduled for surgery for arthroscopy decompression and open removal of cyst. He reported that appellant's examination and complaints were unchanged. Dr. Stoddard related that appellant believed her left shoulder condition was an overuse type of injury at work that would account for the current findings. He agreed that this was a valid, overuse workers' compensation claim.

On April 7, 2014 appellant underwent left shoulder arthroscopy. She submitted the hospital operative report and discharge instructions.

In a May 15, 2014 statement, the employing establishment controverted the claim.

By decision dated August 7, 2014, OWCP denied modification of the March 24, 2014 denial decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴ It is the employee's burden to establish that his or her injury occurred at the time, place, and in the manner alleged.⁵

ANALYSIS

Appellant alleges that she developed left shoulder and neck pain as a result of her employment. In a February 19, 2014 letter, OWCP advised her to submit additional factual and medical evidence to establish her claim. A questionnaire was provided where appellant was requested to describe the employment-related activities which she believed contributed to her condition, how often she performed such activities, and for how long they were performed. OWCP also requested a physician's opinion based on examination and medical rationale regarding how appellant's work activities caused or contributed to her alleged medical condition.

Appellant provided various medical and hospital reports regarding her treatment for left shoulder and neck conditions but failed to respond to OWCP's questionnaire and failed to provide any additional factual evidence describing in detail the work activities which she believed caused or contributed to her left shoulder condition. To establish a claim for compensation, the Board has held that an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition and submit medical evidence to establish causal relation.⁶ Appellant claimed that she developed left shoulder pain as a result of "grabbing mail" and "lifting her left arm." She did not provide any further evidence describing her work activities, how often she performed these activities, or for how long she performed them. The employing establishment disputed appellant's claim, noting that appellant had reported that her neck pain began on the way to work, not while at work. The only other evidence addressing appellant's work factors is found in Dr. Stoddard's March 10, 2014 report where he agreed that her left shoulder condition was a valid overuse workers' compensation claim. The Board finds that this evidence is insufficient to establish a claim as appellant failed to describe the specific employment factors alleged to have caused or contributed to the overuse injury to her left shoulder and neck.⁷

As appellant has not established the employment factors alleged to have caused her claimed condition, it is not necessary to consider the medical evidence with respect to causal relationship.⁸

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁵ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

⁷ *See B.H.*, Docket No. 13-1034 (issued September 13, 2013).

⁸ *See S.P.*, 59 ECAB 184 (2007).

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 meet her burden of proof to establish that she sustained a left shoulder condition causally related to factors of her employment.

ORDER

IT IS HEREBY ORDERED THAT the August 7 and March 24, 2014 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 14, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board