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

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| **R.W., Appellant** | ) | |
| **and** | ) | **Docket No. 15-0810** |
| | ) | **Issued: July 28, 2015** |
| **U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On February 26, 2015 appellant filed a timely appeal of a February 9, 2015 merit 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 merit decision of the case.

### ***ISSUE***

The issue is whether appellant has met her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

### ***FACTUAL HISTORY***

On May 31, 2013 appellant then a 54-year-old maintenance support clerk, filed a Form CA-1, traumatic injury claim, alleging that on that date, while preparing maintenance mail, her left shoulder was dislocated. She stopped work on May 31, 2013 and did not return.

[1] 5 U.S.C. §§ 8101-8193.

Appellant submitted a duty status report dated June 6, 2013 from Dr. Claude Barosy, a Board-certified family practitioner, who diagnosed possible bilateral shoulder rotator cuff tears. Dr. Barosy noted that appellant was incapacitated and unable to perform the core functions of her position.

By letter dated June 18, 2013, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a statement dated June 28, 2013 and indicated that on May 31, 2013 while using a postage validator imprinter which weighed 18 pounds she heard her left shoulder pop and dislocate. She was diagnosed with a left shoulder rotator cuff tear. Appellant was seen by Dr. Sara Vizcay, a Board-certified family practitioner, on June 21, 2013, for a physical impairment evaluation. Dr. Vizcay provided evaluation of appellant's range of motion and strength.

Appellant was treated by Dr. Barosy from June 4 to July 2, 2013. Dr. Barosy noted that she sustained a right shoulder injury on April 29, 2006 as a result of performing repetitive overhead duties and moving mail containers weighing 100 to 1,500 pounds. Appellant reported having right shoulder surgery in April 2007 and June 1, 2010. She noted overcompensating with the left arm and shoulder and developing left shoulder pain. Dr. Barosy noted that a magnetic resonance imaging (MRI) scan of the left shoulder revealed degenerative changes of the acromioclavicular joint, tendinopathy with a partial thickness tear of the supraspinatus, and infraspinatus tendon near insertion. He diagnosed internal derangement of the right and left shoulder and ruled out rotator cuff tear of the right and left shoulder. Dr. Barosy opined that repetitive movement at work resulted in tearing and damage of appellant's shoulders.

Appellant was treated by Dr. Samy R. Bishai, a Board-certified orthopedist, on June 27, 2013 for a left shoulder injury sustained at work. She reported that on May 31, 2013 while performing her custodian duties, including preparing mail, her left shoulder dislocated.[2] Appellant further indicated that for seven years she was overcompensating using her left shoulder and arm because she sustained a right rotator cuff tear on April 29, 2006. Dr. Bishai noted findings of left shoulder pain and tenderness, numbness and tingling in both hands, and restricted range of motion. X-rays of the left shoulder done on June 7, 2013 revealed lateral downward sloping of the acromion. Dr. Bishai diagnosed internal derangement of the left shoulder, dislocation of the left shoulder joint, torn rotator cuff of the left shoulder, left shoulder impingement syndrome, and status postoperative arthroscopic surgery for repair of rotator cuff tear. He opined that appellant sustained a left shoulder dislocation on May 31, 2013 while performing her job duties. Dr. Bishai noted that appellant was disabled from work for two weeks. In duty status reports dated June 27 and July 9, 2013, he noted clinical findings and diagnosed internal derangement of the left shoulder and torn rotator cuff tear of the left shoulder. Dr. Bishai noted that appellant was disabled from work for two weeks. Appellant submitted physical therapy notes dated June 25 to July 2, 2013.

[2] Although Dr. Bishai indicates that appellant worked as a custodian, the record supports that she worked as a maintenance support clerk.

In a July 26, 2013 decision, OWCP denied the claim finding that the medical evidence failed to establish that the diagnosed medical conditions were causally related to the established work-related events.

On August 7, 2013 appellant requested an oral hearing which was held on January 22, 2014. She submitted reports from Dr. Barosy dated July 9 to September 25, 2013. Dr. Barosy treated appellant for left shoulder pain. Appellant reported injuring her left shoulder on May 31, 2013 while working as a mail handler which required a lot of lifting, bending, kneeling, and placing trays on racks above her head. Dr. Barosy diagnosed a full thickness tear of the right shoulder, partial thickness tear of the anterior aspect of the supraspinatus and infraspinatus tendons of the left shoulder, and internal derangement of the bilateral shoulder joints. He recommended physical therapy. In a duty status report dated August 6, 2013, Dr. Barosy noted clinical findings and diagnosed internal derangement of the left shoulder and torn rotator cuff tear of the left shoulder. He noted that appellant could not work. On August 26, 2013 Dr. Barosy treated appellant for a work-related injury occurring on April 29, 2006 and noted that she was totally disabled since June 1, 2013.

In reports dated July 24, 2013 and February 10, 2014, Dr. Bishai noted appellant's complaints of left shoulder pain with numbness and tingling. He diagnosed internal derangement of the left and right shoulders, dislocation of the left shoulder, partial thickness tear of the supraspinatus and infraspinatus tendons, bilateral shoulder impingement, status post arthroscopic surgery repair of the right rotator cuff tear, and a full thickness tear of the supraspinatus tendon with tendinopathy.

Appellant was treated by Dr. Robert R. Reppy, an osteopath, from December 27, 2013 to March 4, 2014 for left shoulder pain. Dr. Reppy noted limited range of motion of the left shoulder and diagnosed internal derangement of the left shoulder joint, a full thickness tear of the suprapinatus and infraspinatus tendons of the left shoulder, rotator cuff syndrome, supraspinatus tear of the right shoulder, tendinopathy of the infraspinatus tendon of the right shoulder, and failed surgery syndrome of the right shoulder. On April 10, 2014 he noted a developmental sequence that appellant sustained a right rotator cuff injury on April 29, 2006 which led to consequential overuse compensation of the left shoulder which developed into a left shoulder dislocation. Dr. Reppy noted that appellant's left shoulder injury occurred when she was lifting a machine out of a box at work. He noted positive findings on examination and diagnosed supraspinatus and infraspinatus tendon tears, degenerative joint disease of the left acromioclavicular joint, closed dislocation of the left shoulder, internal derangement of the left shoulder, left shoulder impingement syndrome, status post arthroscopic surgery of the right rotator cuff, and internal derangement of the right shoulder. An x-ray of the left shoulder revealed lateral downward sloping of the acromion. An MRI scan of the left shoulder dated June 24, 2013 revealed degenerative changes of the acromioclavicular joint, tendinopathy, partial thickness tear of the supraspinatus, and infraspinatus tendons. Appellant submitted physical therapy notes from July 25 to September 15, 2013.

In a decision dated April 15, 2014, an OWCP hearing representative affirmed the decision dated July 26, 2013.

Appellant appealed her claim to the Board. In an order dated October 22, 2014, the Board noted that OWCP failed to consider Dr. Reppy's April 10, 2014 report prior to issuing a decision and remanded the case and instructed OWCP to consider all evidence submitted prior to issuance of the April 15, 2014 decision.

Appellant submitted an October 15, 2013 report from Dr. Gary K. Arthur, a psychiatrist, who treated her for depression and anxiety relating to increasing physical limitations and pain involving both shoulders and hands. Dr. Arthur diagnosed depression secondary to medical conditions involving the shoulders, generalized anxiety disorder, and multiple orthopedic injuries.

In a decision dated February 9, 2015, OWCP denied modification of the decision dated April 15, 2014.

## ***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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

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 he 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.[4]

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.[5]

## ***ANALYSIS***

It is not disputed that on May 31, 2013 appellant was performing her job duties when injured on May 31, 2013. It is also not disputed that she was diagnosed with internal derangement of the left shoulder, dislocation of the left shoulder joint, torn rotator cuff of the left

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *T.H.*, 59 ECAB 388 (2008).

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

shoulder, and left shoulder impingement syndrome. However, appellant has not submitted sufficient medical evidence to establish that her diagnosed condition was caused or aggravated by this incident. On June 18, 2013 OWCP advised appellant of the type of medical evidence needed to establish her claim. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

In reports dated June 4 to July 2, 2013, Dr. Barosy treated appellant in follow up for bilateral shoulder pain. Appellant reported working for the employing establishment where she pushed containers weighing from 100 to 1,500 pounds. Dr. Barosy noted examination findings and diagnosed internal derangement of the right and left shoulder with a possible rotator cuff tear of the right and left shoulder. He opined that repetitive duties over the years resulted in tearing and damage of her shoulders. Similarly, in reports dated July 9 to September 25, 2013, Dr. Barosy noted that appellant's work required a lot of lifting, bending, kneeling, and placing trays on racks above her head. He noted findings and diagnosed a full thickness tear of the right shoulder, partial thickness tear of the anterior aspect of the supraspinatus and infraspinatus tendons of the left shoulder, and internal derangement of the bilateral shoulder joints. Although Dr. Barosy supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusion opinion regarding the causal relationship between appellant's diagnosed conditions and the May 31, 2013 work incident. Instead, he attributes appellant's condition to the work factors of bending and pushing of mail containers over a period of time instead of an incident on May 31, 2013. The Board notes that the present claim is for a traumatic injury that occurred on May 31, 2013.[6] Dr. Barosy did not explain how work activities on May 31, 2013 would cause or aggravate the diagnosed conditions.

On August 26, 2013 Dr. Barosy treated appellant for a work-related condition with a date of injury of April 29, 2006 and noted that she was totally disabled since June 1, 2013. However, his reports do not address appellant's left shoulder condition. Rather they reference an unrelated right shoulder injury. In duty status reports dated June 6 and August 6, 2013, Dr. Barosy noted findings, diagnoses, and work status. He did not address whether the May 31, 2013 injury caused or contributed to the diagnosed conditions. These reports are insufficient to establish the claim as Dr. Barosy did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[7]

Appellant was also treated by Dr. Bishai. In a June 27, 2013 report, Dr. Bishai advised that appellant sustained a left shoulder dislocation and arm injury on May 31, 2013 while performing her duties. Appellant related that for seven years she was overcompensating using her left shoulder and arm because she had a right rotator cuff tear on April 29, 2006. Dr. Bishai opined that appellant sustained a dislocation injury to her left shoulder and arm on May 31, 2013

[6] *See* 20 C.F.R. § 10.5(ee) (traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, with in a single workday or shift); 20 C.F.R. § 10.5(q) (occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift). This decision does not preclude appellant from filing an occupational disease claim.

[7] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

while working. Although he supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's diagnosed conditions and the lifting required in her job. Dr. Bishai also does not have an accurate history as the record indicates that appellant's job is a maintenance support clerk and not a custodian.[8] In any event, he did not explain how particular work duties would cause or aggravate the diagnosed conditions. In duty status reports dated June 27 and July 9, 2013, Dr. Bishai did not specifically address whether the May 31, 2013 work incident caused or aggravated the diagnosed conditions.

Appellant submitted reports from Dr. Reppy dated December 27, 2013 and March 4, 2014. Dr. Reppy diagnosed internal derangement of the left shoulder joint, full thickness tear of the suprapinatus and infraspinatus tendons of the left shoulder, rotator cuff syndrome, supraspinatus tear of the right shoulder, tendinopathy of the infraspinatus tendon of the right shoulder, and failed surgery syndrome of the right shoulder. On April 10, 2014 he noted that appellant sustained a right rotator cuff injury on April 29, 2006 which led to consequential overuse compensation by the left shoulder for seven years which developed into a left shoulder dislocation. Dr. Reppy noted that appellant's left shoulder injury occurred when she was lifting a machine out of a box at work. He noted diagnoses and opined that appellant was totally disabled. Although Dr. Reppy supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's diagnosed conditions and the May 31, 2013 lifting incident. He did not explain how lifting a machine from a box would cause or aggravate the diagnosed conditions.

Other medical reports of record are insufficient to establish the claim as these reports do not specifically address whether the May 31, 2013 lifting incident caused or contributed to a diagnosed left shoulder condition.[9]

Appellant submitted physical therapy notes. The Board has held that treatment notes signed by a physical therapist are not considered medical evidence as such provider is not considered a physician under FECA.[10]

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.

[8] *See Beverly R. Jones*, 55 ECAB 411 (2004) (medical conclusions based on inaccurate or incomplete histories are of diminished probative value.)

[9] *See supra* note 7.

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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