



On April 3, 2013 appellant accepted an offer of modified assignment as a mail handler. The duties included sealing, patching, and repairing mail.

On May 31, 2013 the employing establishment controverted the claim. It argued that appellant had not sufficiently described the history of injury or submitted supporting medical documentation. The employing establishment also noted that it appeared that his claim was for an occupational disease rather than a traumatic injury.

By letter dated June 4, 2013, OWCP requested that appellant submit additional factual and medical information, including a reasoned report from his attending physician addressing the causal relationship between any diagnosed condition and his employment. In a June 16, 2013 response, appellant described in detail his work as a mail handler for over 25 years. Beginning April 24, 2013 he experienced left shoulder and upper arm pain while performing his work duties that increased over time.

In a report dated May 13, 2013, received by OWCP on July 2, 2013, Dr. James K. Friedlander, a Board-certified orthopedic surgeon, evaluated appellant for complaints of anterior lateral pain in his left shoulder. He stated, “[Appellant] denies any specific injuries but started having the pain when he returned to work at the [employing establishment]. Dr. Friedlander reports that he [has] been doing a lot of mail sorting and thinks he may have aggravated it somehow.” He diagnosed left shoulder pain and a probable chronic rotator cuff tear. In a duty status report dated May 13, 2013, Dr. Friedlander found that appellant could work with restrictions.

A May 13, 2013 magnetic resonance imaging (MRI) scan study of the left shoulder showed a small articular surface tear of the infraspinatus tendon and mild-to-moderate supraspinatus/infraspinatus tendinopathy.

In a report dated June 26, 2013, Dr. Friedlander found that a May 28, 2013 MRI scan showed a partial thickness left rotator cuff tear and tendinopathy. He related, “It is my medical opinion that the long-term repetitive heavy lifting, carrying, pushing, and pulling required in his employment with the [employing establishment] as a mail carrier aggravated his underlying condition with his left shoulder.”

By letter dated July 15, 2013, OWCP advised Dr. Friedlander that appellant worked as a mail handler, not as a mail carrier and that he had not worked in his usual employment since February 17, 2012. It indicated that appellant returned to limited-duty employment on April 21, 2013 “repairing and sealing mail.” OWCP asked Dr. Friedlander to describe the work factors that he believed caused a diagnosed left shoulder condition. In the accompanying statement of accepted facts, it noted that appellant stopped work from June 29 to August 22, 2011 due to right carpal tunnel syndrome under file number xxxxxx651. Appellant again stopped work on February 17, 2012 for right shoulder surgery under file number xxxxxx477. He returned to modified employment on April 21, 2013.

In a separate letter dated July 15, 2013, OWCP notified appellant that it was adjudicating his claim as an occupational disease since he attributed his condition to work factors occurring beyond the course of one work shift.

On July 23, 2013 Dr. Friedlander indicated that his June 26, 2013 report should specify that appellant worked as a mail handler. He stated, "The description of the duties of a mail handler does not change my opinion about the aggravation of his underlying condition." Dr. Friedlander further stated:

"[Appellant's] left shoulder condition is from long-term chronic repetition which was aggravated by starting his new job duties repairing and sealing mail starting April 21, 2013. [He] reports that his permanent restrictions he has in place for his right upper extremity required him to lift partial and full flats of mail trays with his left upper extremity. [Appellant] reports that his left shoulder was also aggravated by doing repetitious motions of pulling and tearing mailbags from a roll dispenser.

"[Appellant's] left shoulder condition was aggravated by his duties as a mail handler till February 17, 2012. He was not symptomatic with his left shoulder during this time of inactivity. Once [appellant] started doing his restricted duties beginning April 21, 2013 he started having left shoulder pain beginning April 24, 2013."

By decision dated August 27, 2013, OWCP denied appellant's claim after finding that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted work factors. It found that the work duties identified by his physician as causing his employment injury did not correspond to the limited-duty assignment he performed beginning April 24, 2013.

On September 14, 2013 appellant requested a review of the written record by an OWCP hearing representative. He attributed his condition to long-term repetitive heavy lifting as a mail handler. Appellant related that when he resumed work on April 21, 2013, he used his left arm to carry mail trays and place them on a repair table. He asserted that his rotator cuff tear resulted from work duties performed up until February 2012, but that his job duties starting April 21, 2013 aggravated his condition. Appellant described in detail his employment duties.

By decision dated February 21, 2014, an OWCP hearing representative affirmed the August 27, 2013 decision. She found that appellant's physician did not explain how his work duties before February 2012 caused his injury when he had no symptoms until after April 2013.

On appeal appellant argues that he sustained a repetitive injury to his left shoulder working as a mail handler from November 1986 until February 2012. He notes that OWCP accepted that he sustained a right shoulder injury under file number xxxxxx477 and right carpal tunnel syndrome under file number xxxxxx651. Appellant questions OWCP's reason for denying his claim, noting that Dr. Friedlander showed knowledge of his work history and job duties. He asserts that he experienced pain in his left shoulder on April 24, 2013 while performing new work duties that necessitated repetitive left arm and hand movements.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> 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>3</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>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>8</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP’s regulations at section 10.121.<sup>9</sup>

## ANALYSIS

Appellant alleged that he sustained a left shoulder condition due to working as a mail handler for over 25 years.<sup>10</sup> In February 2012 he stopped work due to a right shoulder injury. Appellant returned to modified employment on April 24, 2013. He alleged that his work duties as a mail handler until February 2012 caused his left shoulder condition and that his new work duties starting April 2013 moving mail trays and placing them on a repair table aggravated his

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>9</sup> 20 C.F.R. § 10.121.

<sup>10</sup> OWCP properly adjudicated appellant’s claim as an occupational disease as he attributed his condition to work factors occurring over the course of more than one work shift.” *See* 20 C.F.R. § 10.5(q).

left shoulder condition. OWCP accepted that appellant worked as a mail handler until February 2012 and that he returned to limited-duty employment in April 2013 repairing and sealing mail. The employing establishment has not disputed his description of his work duties as a mail handler or his contention that he moved mail trays and placed them on a repair table using his left arm while performing his modified assignment. The Board, therefore, finds that appellant has established the occurrence of the work factors alleged to have caused his condition. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a report dated May 13, 2013, Dr. Friedlander discussed appellant's complaints of anterior lateral left shoulder pain that he believed was aggravated by mail sorting. He diagnosed a probable rotator cuff tear. In a report dated June 26, 2013, Dr. Friedlander determined that an MRI scan study of the left shoulder showed a partial thickness rotator cuff tear and tendinopathy. He attributed appellant's condition to his long-term work lifting, carrying, pushing, and pulling as a as a mail carrier. On July 23, 2013 Dr. Friedlander clarified that appellant worked as a mail handler not a mail carrier. He advised that his finding regarding the aggravation of appellant's condition had not altered after reviewing the actual duties of a mail handler. Dr. Friedlander concluded that appellant's work as a mail handler until February 17, 2012 aggravated his left shoulder condition and that his modified duties beginning April 21, 2013 of repairing and sealing mail moving flats of mail trays with his left upper extremity further aggravated his condition.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>11</sup> The Board has reviewed Dr. Friedlander's reports and notes that he provided a clear opinion that appellant's left shoulder condition was aggravated both by his work as a mail handler until February 17, 2012 and his modified work duties beginning April 21, 2013. Dr. Friedlander based his opinion on an accurate factual and medical history and expressed his opinion to a reasonably medical certainty. He did not equivocate or signify any doubt about the causal relationship between appellant's work duties and his diagnosed left shoulder condition of a partial thickness rotator cuff tear and tendinopathy. Dr. Friedlander based his diagnosis on an MRI scan study. His opinion is supportive, unequivocal, bolstered by objective findings, and based on a firm diagnosis and an accurate work history. It lacks only an explanation of why appellant sustained a torn rotator cuff and tendinopathy of the left shoulder as a result of work duties as a mail handler before February 17, 2012 and his work duties in a modified position after April 21, 2013. Consequently, while the medical evidence from Dr. Friedlander is insufficiently rationalized to meet his burden of proof to establish an employment-related left shoulder condition, it raises an undisputed inference of causal relationship sufficient to require further development by OWCP.<sup>12</sup> Accordingly, the Board will remand the case to OWCP. On remand, it should further develop the medical record to determine whether appellant sustained a left shoulder condition causally related to factors of his federal employment. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

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<sup>11</sup> A.A., 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>12</sup> *Id.*

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 21, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 11, 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