

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

A.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Forest Park, IL, Employer)

**Docket No. 15-1359
Issued: November 4, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 3, 2015 appellant filed a timely appeal from a January 12, 2015 merit decision 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 established a left shoulder injury in the performance of duty on May 13, 2013.

FACTUAL HISTORY

On May 17, 2013 appellant, then a 48-year-old casual mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2013 she strained her left shoulder when moving heavy trays of mail.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant stopped work on May 13, 2013. She sought emergency treatment on May 14, 2013 from Dr. Scott C. Sherman, an attending physician Board-certified in emergency medicine, who released appellant to restricted duty with minimal use of the left arm and no lifting more than five pounds with the left arm. Dr. Sherman provided discharge instructions for repetitive strain or traumatic injury.

Appellant was then followed by Dr. Kenneth M. Blair, an attending Board-certified family practitioner, who provided a May 16, 2013 report noting appellant's complaints of left shoulder pain over several months, with a traumatic incident during the May 12 to 13, 2013 work shift. On examination, Dr. Blair found limited active left shoulder motion, with 3/5 weakness. He diagnosed "left shoulder pain related to her postal work" and prescribed physical therapy. In May 23, 2013 reports, Dr. Blair noted that left shoulder active motion was severely limited. He held appellant off work. Appellant underwent a physical therapy evaluation on June 3, 2013.

The employing establishment controverted the claim, asserting that appellant provided conflicting accounts of how she injured her shoulder.

In a July 13, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a detailed description of how she was injured, and her physician's explanation of how those work factors would cause the claimed left shoulder injury. It afforded her 30 days to submit such evidence.

In response, appellant submitted June 18 and 26, 2013 reports from Dr. Blair, noting that appellant's left shoulder condition had improved with physical therapy. On July 26, 2013 Dr. Blair noted that appellant injured her left shoulder at work "when she was carrying a heavy bag of mail." The employing establishment terminated appellant "because she was no longer able to perform her duties." Dr. Blair prescribed additional physical therapy.

By decision dated October 3, 2013, OWCP denied the claim as fact of injury was not established. It found that appellant did not submit a statement explaining what she was doing when she was injured.

Appellant disagreed, and in an October 25, 2013 letter requested a telephonic hearing, held before an OWCP hearing representative on March 21, 2014. At the hearing, she stated that she injured her left shoulder when trying to lift a heavy tray of mail from a conveyor belt to a postal container. As appellant turned away from the conveyor belt, the tray slipped and fell, causing a "pop" in her left shoulder. She submitted additional medical evidence.

An October 29, 2013 magnetic resonance imaging (MRI) scan of the left shoulder showed and a "small likely degenerative humeral cyst at the insertion of the infraspinatus tendon" with no evidence of a rotator cuff tear.

In a May 21, 2014 letter, Dr. Blair noted treating appellant for left shoulder pain caused by "turning with mail to toss it into a bin located on her left." He referred her to an orthopedist. Appellant experienced a recurrence of symptoms in February 2014, improved in March 2014.

By decision dated June 10, 2014, an OWCP hearing representative affirmed OWCP's October 3, 2013 decision. He found that appellant's testimony was sufficient to establish the May 13, 2013 incident as factual. However, the additional medical evidence was insufficient to establish causal relationship.

In an October 8, 2014 letter, appellant requested reconsideration. In support of her request, she submitted reports from Dr. Victor Romano, an attending Board-certified orthopedic surgeon.²

On September 9, 2013 Dr. Romano provided a history of the alleged May 13, 2013 injury and subsequent treatment. He noted that appellant was left-hand dominant. Dr. Romano diagnosed persistent rotator cuff tendinitis of the left shoulder, with a small degenerative cyst at the insertion of the infraspinatus tendon. In reports from October 28, 2013 to October 1, 2014, he diagnosed a left rotator cuff tear, left rotator cuff tendinitis, and a possible superior labral anterior to posterior (SLAP) lesion.³

By decision dated January 12, 2015, OWCP affirmed the June 10, 2014 decision, finding that causal relationship was not established. It found that Dr. Romano did not explain how and why the accepted May 13, 2013 incident would cause the diagnosed left 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.⁴ 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.⁵

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 employment incident that is alleged to have occurred.⁶ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are

² Appellant also submitted December 4, 2013 and August 6, 2014 reports from Dr. Romano which do not address appellant's left shoulder. OWCP returned the originals of these documents to appellant at her request.

³ In the diagnosis section of April 16 and July 3, 2014 reports, Dr. Romano diagnosed pathologies of the right shoulder. However, as the evaluation was clearly titled "Physical Exam[ination] Left Shoulder," the reference to the right shoulder appear to be typographical errors.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ 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.⁸

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁹

ANALYSIS

OWCP accepted that the May 13, 2013 incident occurred as alleged, but denied the claim as the medical evidence did not establish a causal relationship between those factors and the claimed left shoulder injury.

In support of her claim, appellant submitted a May 14, 2013 report from Dr. Sherman, an attending physician Board-certified in emergency medicine, who noted work restrictions for the left upper extremity but did not provide a definitive diagnosis or a clear history of injury. Dr. Sherman's opinion is therefore insufficient to meet appellant's burden of proof.¹⁰

Dr. Blair, an attending Board-certified family practitioner, diagnosed a left shoulder condition related to a heavy lifting incident during the May 12 to 13, 2013 work shift. Dr. Romano, an attending Board-certified orthopedic surgeon, diagnosed persistent rotator cuff tendinitis of the left shoulder and a left rotator cuff tear. He related appellant's account of a May 13, 2013 injury, but did not explain how and why the accepted incident would cause the diagnosed conditions.

While Dr. Blair and Dr. Romano opined that the accepted May 13, 2013 incident caused a left shoulder condition, they did not provide their medical reasoning to support this conclusion. The physicians did not explain why dropping a heavy tray of mail while turning to lift it into a container would cause left rotator cuff tendinitis or a rotator cuff tear. Because Dr. Blair and Dr. Romano did not provide such rationale, their opinions are insufficient to establish causal relationship in this case.¹¹

⁷ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁰ *Id.*

¹¹ *Id.*

OWCP advised appellant by July 13, 2013 letter of the necessity of providing a narrative report from her attending physician with medical rationale supporting causal relationship. As appellant did not provide such evidence, OWCP's January 12, 2015 decision denying the claim is affirmed.

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 a left shoulder injury in the performance of duty on May 13, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Program dated January 12, 2015 is affirmed.

Issued: November 4, 2015
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board