

FACTUAL HISTORY

On January 11, 2012 appellant, then a 56-year-old postmaster, filed a claim for an occupational disease claim alleging that she sustained right arm and shoulder pain as a result of sorting and distributing mail. She stated that she developed tendinitis in her rotator cuff causing rotation of acromioclavicular (AC) joint by using her arm in many duties performed at work. Appellant noted that she first became aware of her condition and realized that it resulted from her employment on May 11, 2007.³ She stopped work on April 22, 2012 and filed for disability compensation.

By letter dated February 24, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested additional medical evidence to establish that she sustained a diagnosed condition as a result of her federal employment.

In a March 30, 2012 magnetic resonance imaging (MRI) scan of the cervical spine, Dr. John Huddle, a Board-certified diagnostic radiologist, reported right paramedian disc protrusion at C5-6 mildly compressing appellant's right nerve root and encroaching into the right neural foramen and mildly broad-based protrusions at C6-7 mildly compressing into the right lateral recess.

In an April 19, 2012 attending physician's report, Dr. Gregory J. Cush, a Board-certified orthopedic surgeon, noted a date of injury of May 11, 2007 and history of injury of "repetitive use right arm." He diagnosed impingement syndrome of the AC joint. Dr. Cush checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity. He reported that appellant was totally disabled beginning January 31, 2012.

In a handwritten May 5, 2012 letter, appellant stated that after years of throwing mail around and flipping mail into cases and post office boxes, she experienced a terrible pain throughout her shoulder to her elbow on May 11, 2007 while working at the employing establishment. After several days of not being able to work she contacted her family doctor and underwent an MRI scan which revealed right shoulder rotator cuff syndrome. Appellant was referred to Dr. Cush who recommended surgery. At the time, she did not want to undergo surgery, however, and instead opted to receive shots in order to continue working. Appellant noted that the shots relieved the pain for only a couple of months. She continued to work until the pain worsened this year.

In a decision dated May 8, 2012, OWCP denied appellant's claim. It accepted that she worked as a postmaster and was diagnosed with a right shoulder condition, but denied her claim finding insufficient medical evidence to establish that her right shoulder condition was causally related to factors of her employment.

³ The record reflects that appellant filed an additional occupational disease claim on March 1, 2013 for a right hand condition (File No. xxxxxx374), which is currently still under review. Appellant also filed two previous occupational disease claims on February 1, 2012 for a left hand condition (File No. xxxxxx003) and on March 5, 2012 for an emotional condition (File No. xxxxxx193). The record also reflects that she has a previously accepted claim (File No. xxxxxx726) for right wrist carpal tunnel syndrome. On January 31, 2012 appellant filed a claim for recurrence of disability, which was denied.

In a letter dated May 29, 2012 and received on May 30, 2012, appellant, through counsel, submitted a request for a telephone hearing. By decision dated July 25, 2012, an OWCP hearing representative vacated the May 8, 2012 denial decision and returned the claim to the district office for further medical development. She directed the district office to prepare a statement of accepted facts (SOAF) and refer appellant's claim, along with specific questions, to appellant's attending physician Dr. Cush for examination to determine causal relationship.

On August 9, 2012 OWCP referred appellant's claim, along with a SOAF, to Dr. Cush for examination and a rationalized medical opinion on the causal relationship, if any, between appellant's right shoulder condition and her employment duties as a postmaster.

In a September 12, 2012 report, Dr. Timothy P. Duffey, an orthopedic surgeon, evaluated appellant for complaints of right shoulder pain. He reviewed her available medical records and noted that she had evidence of some AC joint osteoarthritis in her right shoulder. Dr. Duffey recommended that appellant wait on shoulder surgery because he believed most of her pain at the present time was C5 pain in her biceps, distal humerus region, and some trapezius pain.

On November 2, 2012 OWCP contacted Dr. Cush's office *via* telephone to determine whether he would respond to the August 9, 2012 letter. No response was received by Dr. Cush or his office.

In a decision dated November 21, 2012, OWCP denied appellant's claim finding insufficient medical evidence to establish that her right shoulder condition was causally related to her employment.

In a letter dated November 26, 2012 and received on November 27, 2012, appellant, through counsel, requested a telephone hearing, which was held on February 13, 2013. She was represented by counsel. Counsel stated that appellant had not been seen by Dr. Cush in over a year as she was referred to a different orthopedic specialist. Appellant explained that she had a new treating physician, Dr. Duffey, and had submitted various medical reports from him regarding treatment for her right shoulder pain. An OWCP hearing representative advised appellant that she needed a narrative report from Dr. Duffey regarding the causal relationship between appellant's right shoulder condition and her federal employment.

In an April 18, 2013 report, Dr. Robert J. Nowinski, an orthopedic surgeon, related appellant's complaints of progressive pain and stiffness in her right shoulder since a May 11, 2007 industrial injury. Upon examination, he observed global tenderness and passive stiffness of the right shoulder. Range of motion demonstrated forward elevation to 140 and abduction to 80. Neer and Hawkins impingement signs were positive. Dr. Nowinski reported that appellant's neurovascular status was intact and found no signs of instability. He stated that x-rays of the right shoulder revealed sloped acromion and moderate AC joint arthropathy. Dr. Nowinski diagnosed progressive right shoulder adhesive capsulitis with frozen shoulder and post-traumatic rotator cuff syndrome with impingement and AC joint arthropathy.

In an April 25, 2013 report, Dr. Duffey stated that he treated appellant for her right shoulder condition for the past 11 months. He reported that on May 11, 2007 she experienced sharp pain in the right shoulder but was able to continue to work with active assistance with her

right upper extremity. Dr. Duffey explained that appellant's causal relationship was a rotator cuff partial tear related to the May 11, 2007 incident. He stated that she had some cumulative injury since that time of May 11, 2007 because she continued to work with the partial tear until January 11, 2012.

Dr. Duffey reviewed appellant's history and conducted an examination. He reported evidence of rotator cuff weakness and tear with positive Jobe and drop arm tests. Dr. Duffey diagnosed outlet impingement of the shoulder, rotator cuff syndrome, partial tear of the supraspinatus tendon, affliction of the shoulder, sprain and strain of the shoulder, partial tear of the subscapularis tendon, labral tears of the shoulder, and progressive adhesive capsulitis of the shoulder. He opined that the facts of the injury were a direct and proximal cause of the diagnoses he had above, based on the review of her medical records, examination, and test results. Appellant also resubmitted Dr. Duffey's various medical reports.

In a decision dated April 30, 2013, the hearing representative affirmed the November 21, 2012 denial decision.

In a letter dated and received on May 24, 2013, counsel requested reconsideration. He stated that OWCP should review the case on the merits and grant appellant's request for work-related benefits.

In a May 31, 2013 attending physician's report, Dr. Nowinski reported a history of injury of right shoulder pain when using repetitive motions every day. He reported findings of adhesive capsulitis with frozen shoulder, post-traumatic rotator cuff syndrome, and impingement. Dr. Nowinski checked "yes" that appellant's condition was caused or aggravated by an employment activity and explained "repetitive use of right arm for periods of years of employment duties." He noted that she was totally disabled from June 18 to August 18, 2013.

By decision dated October 28, 2013, OWCP denied modification of the April 30, 2013 decision finding that the medical evidence was insufficient to establish that appellant's right shoulder condition was causally related to factors of her employment.

In a letter dated February 14, 2014 and received on February 17, 2014, appellant, through counsel, submitted a request for reconsideration. Counsel stated that he was submitting a November 14, 2013 report by Dr. Duffey that was not previously submitted and confirmed the causal relationship between appellant's employment and her medical condition.

In a November 14, 2013 report, Dr. Duffey noted that appellant was injured on May 11, 2007. He stated that at the time she was performing lifting duties that often involved 50- to 70-pound crates when she experienced immediate pain in her right shoulder. Dr. Duffey explained that appellant had acute onset after lifting overhead heavy weight on May 11, 2007 which then persisted and increased in severity over the years. He stated that the weight shift and movement overhead was causally and directly related to the partial tear of the rotator cuff and the supraspinatus tendon in her shoulder. Dr. Duffey concluded that appellant had established causal relationship and alleged that her shoulder condition should be allowed and established.

In a decision dated May 13, 2014, OWCP denied modification of the October 28, 2013 decision finding that the medical evidence was insufficient to establish that appellant's right shoulder condition was causally related to factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵ 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 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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁸

ANALYSIS

Appellant alleges that she sustained a right shoulder condition as a result of repetitively using her right arm and shoulder in the performance of duty. OWCP accepted her factors of employment as a postmaster, but denied her claim finding insufficient medical evidence to establish that her right shoulder condition was causally related to her federal employment. The Board finds that appellant did not meet her burden of proof to establish that she sustained a right shoulder occupational disease as a result of her employment duties.

In support of her claim, appellant submitted various attending physician's reports by Dr. Nowinski dated April 18 to May 31, 2013. Dr. Nowinski discussed her history of progressive pain and stiffness in her right shoulder since a May 11, 2007 industrial injury. He conducted an examination and observed global tenderness and stiffness of the right shoulder. Dr. Nowinski stated that x-rays of the right shoulder revealed sloped acromion and moderate AC

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

joint arthropathy. He diagnosed progressive right shoulder adhesive capsulitis with frozen shoulder and post-traumatic rotator cuff syndrome with impingement and AC joint arthropathy. In a May 31, 2013 report, Dr. Nowinski checked “yes” that appellant’s condition was caused or aggravated by “repetitive use of right arm” during employment. The Board notes that he provided examination findings and a medical diagnosis. Dr. Nowinski indicated by checking a box marked “yes” that appellant’s right shoulder condition was caused or aggravated by repetitive use of her right arm at work. He failed, however, to provide any medical explanation or rationale for how her right shoulder condition was caused or aggravated by her employment. The Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.⁹ Because Dr. Nowinski failed to adequately explain his opinion on causal relationship, his reports are insufficient to establish appellant’s claim.

Likewise, Dr. Cush’s April 19, 2012 attending physician’s report also failed to establish appellant’s occupational disease claim as he merely checked a box marked “yes” that appellant’s condition was caused by an employment activity without any medical explanation or rationale.

Appellant was also examined by Dr. Duffey, who in reports dated September 12, 2012 to November 14, 2013, reported his treatment for her right shoulder condition. Dr. Duffey reviewed her medical records and noted that she had evidence of some AC joint osteoarthritis in her right shoulder. Upon examination of her right shoulder, he observed evidence of rotator cuff weakness and tear. Dr. Duffey diagnosed outlet impingement of the shoulder, rotator cuff syndrome, partial tear of the supraspinatus tendon, affliction of the shoulder, sprain and strain of the shoulder, partial tear of the subscapularis tendon, labral tears of the shoulder, and progressive adhesive capsulitis of the shoulder. In an April 25, 2013 report, he stated that on May 11, 2007 appellant experienced sharp pain in the right shoulder. He reported that the causal relationship was a rotator cuff partial tear related to the May 11, 2007 incident. Dr. Duffey explained that appellant had some cumulative injury since that time of May 11, 2007 because she continued to work with the partial tear until January 11, 2012. In a November 14, 2013 report, he further clarified that she had an acute onset injury on May 11, 2007 after lifting heavy weight overhead which then persisted and increased in severity of the years.

The Board finds that Dr. Duffey’s reports are likewise insufficient to establish causal relationship as they are based on an incomplete background.¹⁰ Dr. Duffey discussed how appellant sustained an acute onset injury on May 11, 2007, but he does not relate her right shoulder condition to repetitively distributing mail as appellant claimed. The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant’s condition, with reasons stated by a physician.¹¹ Because

⁹ *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁰ *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001) (medical reports must be based on a complete and accurate factual and medical background).

¹¹ *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

Dr. Duffey did not accurately connect appellant's right shoulder condition with her accepted employment factors, his opinion failed to establish causal relationship.

The additional March 30, 2012 diagnostic report by Dr. Huddle fails to establish appellant's occupational disease claim. While Dr. Huddle observed disc protrusions of appellant's cervical spine he failed to mention any diagnosed right shoulder condition or discuss the cause of appellant's medical condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

On appeal, counsel alleges that OWCP's decision was overly litigious and an obvious attempt to nitpick a job description. The Board notes, however, that OWCP does not dispute appellant's employment factors as a postmaster. It denied appellant's claim because the medical evidence failed to demonstrate that her shoulder condition was causally related to those employment factors. As previously noted, causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹³ In this case, appellant did not submit any medical evidence that adequately explained, based on medical rationale, how her shoulder condition resulted in an occupational disease from her repetitive duties as a postmaster. For these reasons, the Board finds that she did not meet her burden of proof to establish her occupational disease claim.

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 her right shoulder condition is causally related to factors of her employment.

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹³ *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2015
Washington, DC

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

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

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