

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

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**M.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Palatine, IL, Employer**

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**Docket No. 16-0227  
Issued: April 1, 2016**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 13, 2015 appellant filed a timely appeal from an October 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has established that her right shoulder condition is causally related to the accepted July 25, 2015 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence following the October 23, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## **FACTUAL HISTORY**

On July 27, 2015 appellant, then a 32-year-old sales and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2015 she injured her right shoulder when she lifted several tubs filled with mail weighing 60 pounds or more. She stopped work on July 27, 2015.

Appellant was initially examined on July 27, 2015 by Dr. Timothy B. Trusowych, an osteopath who specializes in occupational medicine. He noted diagnoses of shoulder strain and trapezius strain. Dr. Trusowych recommended that appellant return to work on July 28, 2015 with restrictions of no lifting over 10 pounds and no reaching above the shoulders. He included a duty status report (Form CA-17) which restricted appellant to work with no lifting of his arm.

In July 29 and August 5, 2015 work activity status reports, Dr. Imran H. Kazmi, a Board-certified internist, diagnosed shoulder and upper arm strain, trapezius strain, and cervical radiculopathy. He authorized appellant to return to work with restrictions of no reaching above the shoulders and lifting with the right upper extremity.

Appellant submitted an unsigned Form CA-16 dated July 29, 2015. She indicated that she worked as a customer service clerk and that on July 25, 2015 she was lifting tubs filled with catalogs weighing more than 60 or 70 pounds. On the back of the claim form, a physician with an illegible signature described the injury as a “lifting injury” and diagnosed right trapezius and shoulder strain. The physician checked “yes” that appellant’s condition was caused or aggravated by the described employment activity. Appellant was authorized to return to work with restrictions of no lifting of the right upper extremity and no reaching above the shoulder.

Appellant underwent an examination by Dr. Greg White, a Board-certified diagnostic radiologist, who indicated in a July 29, 2015 report that appellant experienced an acute injury and shoulder pain. He observed acromioclavicular (AC) joint osteoarthritis and a full-thickness supraspinatus tendon tear that extended into the infraspinatus tendon. Dr. White also reported subscapularis tendinosis, biceps tendon tear, ganglion cyst, and subcoracoid bursitis. He further noted possible loose body near the torn infraspinatus tendon and a likely degenerative type labral tear.

On July 31, 2015 appellant began physical therapy treatments. She provided appointment details and treatment notes dated July 31 to August 5, 2015.

In an August 4, 2015 statement, appellant reported that on July 25, 2015 she worked three skids that contained tubs full of catalogs weighing more than 70 pounds. She related that on the car ride home she felt a very sharp pain in her arm so she went to the emergency room. The emergency room physician informed her that she pulled a nerve and prescribed medication. Appellant stated that she did not work on Sunday and informed her supervisor. On Monday she returned to work with a doctor’s note restricting her to work with only her left arm. When the Postmaster saw her he advised that she stop work and go to an employing establishment physician. When appellant was examined by that physician, she was advised to work without using her right arm and to go to physical therapy. She stated that she returned to work and

provided the doctor's note to the Postmaster. He informed appellant that there was no work within her limitations and advised her to go home.

Appellant provided a Request of Absence for continuation of pay for the dates July 28 to August 11, 2015. The employing establishment denied the request and indicated that an employee must use sick or annual leave for the first three days following injury.

On August 19, 2015 appellant underwent a surgical consultation with Dr. Kevin Tu, a Board-certified orthopedic surgeon who specializes in sports medicine. He related that on July 25, 2015 appellant injured her right shoulder at work when she was emptying out skids. Dr. Tu noted that this activity required repetitively lifting tubs of mail. He indicated that after work appellant began to experience right shoulder pain and difficulty with overhead activities. Dr. Tu reported that appellant underwent physical therapy but experienced minimal improvement with her symptoms. He reviewed appellant's history and related that a right shoulder magnetic resonance imaging (MRI) scan revealed a large full-thickness rotator cuff tear. Upon examination of appellant's right shoulder, Dr. Tu observed no tenderness over the AC joint or cross body adduction. Forward elevation was to 120 degrees; external rotation was to 60 degrees; and internal rotation was to the iliac crest. Neer impingement and Hawkins reinforcement tests were positive. Dr. Tu advised appellant that he would schedule her for surgery as soon as it was authorized.

On September 11, 2015 Dr. Tu requested authorization for right shoulder arthroscopy surgery.

By letter dated September 18, 2015, OWCP advised appellant that her claim was initially accepted as a minor injury but was reopened for review of the merits because appellant had not returned to work. It requested additional factual and medical evidence to establish that appellant sustained a diagnosed condition as a result of the July 25, 2015 employment incident.

Appellant filed various Form CA-7 claims for disability compensation for the period September 12 to October 16, 2015.

Dr. Tu re-examined appellant on September 23, 2015. He related that appellant still experienced difficulty with lifting activities and overhead activity. Upon examination, Dr. Tu observed positive Neer impingement and Hawkins reinforcement tests. Range of motion examination revealed forward elevation 1 to 5 degrees, external rotation to 60 degrees, and internal rotation to the iliac crest. Dr. Tu reported no tenderness over the AC joint or with cross body adduction. O'Brien and Speed tests were negative. Dr. Tu diagnosed right shoulder acute on chronic rotator cuff tear. He indicated that he was still awaiting approval for right shoulder surgery.

On September 25, 2015 OWCP received appellant's response to its development letter. She stated that on July 25, 2015 her supervisor asked her to drop the tubs by each route. Appellant noted that each tub weighed 70 pounds or more and that she completed three skids each that contained approximately 45 tubs. She related that after completing three skids she informed her supervisor that she could not continue. Appellant noted that the pain in her right shoulder was very strong and that she went to the emergency room for treatment. She was put

on limited duty, but her Postmaster informed her that they could not accommodate her restrictions. Appellant described the medical treatment she received. She noted that she underwent an x-ray, MRI scans, and physical therapy treatments, but saw little improvement. Appellant was referred to an orthopedic surgeon who recommended surgery.

In a decision dated October 23, 2015, OWCP denied appellant's claim. It accepted that the July 22, 2015 incident occurred as alleged, but denied her claim finding insufficient medical evidence to establish that her right shoulder condition was causally related to the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.<sup>9</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>10</sup> 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

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<sup>3</sup> *Supra* note 1.

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

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>10</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

the employee.<sup>11</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

### ANALYSIS

Appellant has alleged that on July 25, 2015 she sustained a right shoulder injury when she lifted heavy tubs filled with mail in the performance of duty. OWCP accepted that the July 25, 2015 incident occurred as alleged, but it denied her claim as she had not established that her right shoulder condition resulted from the accepted incident. The Board affirms this finding.

Appellant was initially examined by Drs. Trusowych and Kazmi. In reports dated July 27 to August 5, 2015, they noted diagnoses of shoulder and upper arm strain, trapezius strain, and cervical radiculopathy. Drs. Trusowych and Kazmi authorized appellant to return to work with restrictions of no reaching above the shoulders and no lifting of the right arm. Although both physicians provided a medical diagnosis, none of the physicians described the July 25, 2015 employment incident or provided an opinion as to the cause of appellant's diagnosed conditions. 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.<sup>13</sup> These reports, therefore, are insufficient to establish appellant's claim. Similarly, the July 29, 2015 MRI report of Dr. White also failed to establish causal relationship as he did not address the cause of appellant's right shoulder condition.

On August 19, 2015 appellant underwent a surgical consultation with Dr. Tu. He described the July 25, 2015 employment incident and reviewed appellant's history. Dr. Tu related that the July 29, 2015 MRI scan of the right shoulder revealed a large full-thickness rotator cuff tear. He conducted an examination and advised appellant that he would schedule her for surgery as soon as it was authorized. On September 23, 2015 Dr. Tu re-examined appellant. He provided examination findings and diagnosed right shoulder acute on chronic rotator cuff tear. Although Dr. Tu accurately described the July 25, 2015 incident and diagnosed right shoulder rotator cuff tear based on physical examination, the Board finds that he did not offer any explanation on how appellant's right shoulder condition resulted from the July 25, 2015 employment incident. The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>14</sup> Dr. Tu did not provide any opinion, based on medical rationale, explaining how the July 25, 2015 employment incident caused or contributed to appellant's right shoulder condition. His reports, therefore, are insufficient to establish appellant's traumatic injury claim.

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<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> *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).

<sup>14</sup> *John W. Montoya*, 54 ECAB 306 (2003).

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>15</sup> Because appellant has not provided such probative medical evidence in this case, the Board finds that she did not meet her burden of proof to establish her 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 establish that her right shoulder condition is causally related to the July 25, 2015 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2016  
Washington, DC

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

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

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

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<sup>15</sup> *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).