

FACTUAL HISTORY

This case has previously been before the Board on several occasions. In decisions dated December 28, 2007,² October 15, 2009,³ and August 10, 2011,⁴ the Board affirmed OWCP's denial of appellant's occupational disease claim for a right shoulder injury and the denial of her request for reconsideration without conducting a merit review. The Board found that she did not submit sufficient medical evidence establishing a causal relationship between the accepted employment factors and the claimed right shoulder injury. On June 22, 2015⁵ the Board found that the evidence submitted in support of appellant's request for reconsideration did not meet any of the three criteria for warranting a merit review of her claim pursuant to 20 C.F.R. § 10.606(b)(3). The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On August 29, 2006 appellant, then a 50-year-old casual clerk, filed an occupational disease claim (Form CA-2) alleging that on July 20, 2005 she first became aware of her full-thickness tear of the supraspinatus tendon. She further alleged that on April 6, 2006 she first realized that her condition was caused or aggravated by her employment.

By letter dated June 30, 2015 and received on July 1, 2015, following issuance of the Board's June 22, 2015 decision, appellant, through counsel, requested reconsideration of OWCP's July 1, 2014 decision denying her occupational disease claim for a right shoulder injury.

In a June 30, 2015 report, Dr. Goldberg reviewed appellant's medical records, statements from her coworkers, and a document regarding dumping a hamper. Appellant described to Dr. Goldberg her work duties which, included working side by side with regulars on a belt that was loaded up with trays of mail, parcels, and books. She loaded and unloaded trays into containers and threw some of them into hampers and worked on skids. Appellant related that this could be very stressful because she used the same dominant arm 8 hours a day and sometimes 12 hours during overtime. There was no time for warm-ups, cooldown, or rest. Appellant came into work and swung into action throwing heavy bundles which could be very irritating and painful. Her pain intensified while performing mandatory overtime work. Appellant had neck and shoulder pain while loading and unloading 70-pound sacks filled with books and heavy bundles of magazine wrappings. Her arms were in a forward flexion motion after lifting 70-pound bags off a belt and carrying them to a cage and dumping them. Appellant spent an entire eight-hour day doing this with two 15-minute breaks and one 30-minute lunch break. She noted that a moving dolly weighing 400 pounds was filled up with 30 tubs weighing 35 pounds each and stacked up to the top. Appellant pulled, lifted, and pushed up to 1,100 pounds. She had to stop keying and turn, twist, and aim to throw off heavy bundles of books and magazines due to a staff shortage. Appellant frequently performed overhead throwing, stacking,

² Docket No. 07-1968 (issued December 28, 2007).

³ Docket No. 09-801 (issued October 15, 2009).

⁴ Docket No. 11-271 (issued August 10, 2011).

⁵ Docket No. 15-0748 (issued June 22, 2015).

and loading at six-foot cages while she was five feet four inches tall. Dr. Goldberg noted that there was no dispute regarding OWCP's acceptance of appellant's work duties, which included repeatedly lifting tubs weighing 35 pounds and mailbags weighing up to 70 pounds and pushing and pulling dollies and cages weighing several hundred pounds.

Dr. Goldberg opined that appellant's work activities, specifically repetitive lifting between 35 and 70 pounds above her head, caused, accelerated, and precipitated her torn right rotator cuff and torn labral and biceps tears that eventually required surgery. He explained that performing repeated, forceful exertions across the front of the body increased the risk of injury to her wrist, hand, shoulder, and upper back. Appellant's torn tendons in her right arm were the result of a wearing down of tendons caused by repetitive stress from repetitive lifting of bundles of mail, books, and magazines, pushing heavy dollies and cages, and lifting heavy bags of mail off conveyor belts. Repetitive lifting caused repetitive tearing of the tendons and muscles which caused both to weaken to the point that her rotator cuff, biceps, and labral tendons tore. Dr. Goldberg noted that heavy lifting stressed the muscles and tendons. As muscles contracted, tendons were subjected to mechanical loading and viscoelastic deformation. With increased tension, they became stiffer in response to loads. If the load on the tendons exceeded the tensile limits of the tissue, permanent changes occurred, such as tears. If recovery time between contractions was too short, tendon damage resulted along with permanent changes that decreased the ultimate strength of the tendons. Dr. Goldberg found that repetitively lifting 35 to 70 pounds, as appellant did, was sufficient to cause such small tears. He advised that these small tears accumulated throughout her employment, decreasing the ultimate strength of her tendon which led to more tearing as she performed heavy lifting activities on a daily basis. Dr. Goldberg indicated that the existence of these tears was confirmed by a magnetic resonance imaging (MRI) scan and his April 20, 2010 right shoulder arthroscopy and subacromial decompression consisting of a subacromial bursectomy, biceps tenodesis, and rotator cuff tendon repair. During surgery, a diagnostic arthroscopy confirmed the existence of a full-thickness rotator cuff tendon tear and fraying of the entire long head of the biceps tendon within the range of the tenosynovium and subacromial bursitis. Dr. Goldberg concluded that in young patients, a degenerative etiology of the tear was less common than a traumatic etiology from overuse of tendons, which was the most likely cause of appellant's rotator cuff tears and biceps pathology.

In a December 22, 2015 decision, OWCP denied appellant's June 30, 2015 request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

By letters dated December 28 and 29, 2015, appellant, through counsel, again requested reconsideration. Counsel contended that appellant's July 1, 2015 request for reconsideration of OWCP's July 1, 2014 decision was timely filed.

In a January 6, 2016 decision, OWCP denied modification of the July 1, 2014 decision. It found that Dr. Goldberg's June 30, 2015 opinion was speculative in nature and not rationalized and based on a complete and accurate factual and medical history of injury. OWCP stated that he did not explain how appellant's right shoulder condition was due to the claimed employment factors.

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.⁶ 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.⁷

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 Neither the fact that appellant's condition became apparent during a period of employment nor, her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁹

ANALYSIS

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

The Board has previously found that appellant did not meet her burden of proof to establish a right shoulder injury causally related to her accepted employment factors. Appellant requested reconsideration before OWCP and submitted a June 30, 2015 report from Dr. Goldberg, a Board-certified orthopedic surgeon and her attending physician.

In his June 30, 2015 report, Dr. Goldberg noted that appellant described her work duties, which included loading and unloading trays of mail, parcels, books, and bundles of magazine wrappings weighing 70 pounds from a belt and dumping them into containers, hampers, and cages, working on skids, and pulling, lifting, and pushing up to 1,100 pounds, and keying while using her dominant arm 8 hours a day and 12 hours during overtime. Appellant stated that

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

throwing heavy bundles was very irritating and painful, and loading and unloading 70-pound sacks caused her neck and shoulder pain. She noted that she had two 15-minute breaks and one 30-minute lunch break. Dr. Goldberg opined that appellant's torn right rotator cuff and torn labral and biceps tears, which eventually required surgery, were caused, accelerated, and precipitated by her accepted work duties, specifically, repetitive lifting between 35 and 70 pounds above her head. He further opined that a degenerative etiology of the tear was less common than a traumatic etiology from overuse of tendons, which was the most likely cause of her rotator cuff tears and biceps pathology. Dr. Goldberg explained that repetitive lifting caused stress on muscles and tendons and made them stiffer in response to loads, resulting in tears. The Board finds that this report, while not completely rationalized, is consistent in indicating that appellant sustained an employment-related right shoulder 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. It has the obligation to see that justice is done.¹⁰ Although Dr. Goldberg's report is not sufficiently rationalized to meet appellant's burden of proof to establish that she sustained a right shoulder injury causally related to the established factors of her federal employment, his report is uncontroverted in the record and raises an inference of causal relationship sufficient to require further development of the case record by OWCP.¹¹

The Board will remand the case to OWCP for referral to an appropriate medical specialist to determine the extent of any injury or aggravation of any preexisting conditions as a result of the established employment factors. Following this, and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

On appeal, counsel for appellant contends that Dr. Goldberg's June 30, 2015 report is sufficient to establish that appellant's right shoulder injuries were caused by repetitive lifting at work. However, the Board has found that the case is not in posture for decision. The case will be remanded for further development.

CONCLUSION

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

¹⁰ *Lourdes Davila*, 45 ECAB 139 (1993).

¹¹ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for additional development consistent with this decision of the Board.

Issued: April 14, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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