

February 12, 2014 work injury. Appellant alleged that due to right shoulder surgery he overused his left arm due to the inability to use his right shoulder and arm. He stopped work on February 8, 2015.

Dr. David B. Cohen, a Board-certified orthopedic surgeon, examined appellant on March 25, 2015 due to left shoulder pain. He noted that appellant's left shoulder pain had increased in the last two weeks, but had been ongoing for over a month. Dr. Cohen opined that, following his right shoulder total replacement, appellant had had to use his left arm more consistently during recovery. He diagnosed impingement syndrome left shoulder and subacromial bursitis of the left shoulder. Appellant also submitted a note dated March 25, 2015, from Maria Gagliardi, a medical assistant.

In a letter dated May 14, 2015, OWCP noted appellant's left shoulder claim due to overuse. It indicated that it had received no other documentation with his claim. OWCP requested that appellant provide additional factual and medical evidence and afforded him 30 days for a response. Appellant responded on May 29, 2015 and attributed his left arm condition to overuse based on his inability to use his right arm due to an accepted employment injury and surgery in File No. xxxxxx971. He noted that prior to his right shoulder surgery his supervisor required him to use his left arm for sorting mail for five to six hours a day, five days a week. Appellant alleged that use of the left arm was prohibited by postal regulations. He reported that he had performed light duty since February 12, 2014 including lifting weight restrictions, limited repetitive motion, and limited reaching above the shoulder. Appellant indicated that his right hand was dominant and that he had not been able to use both arms equally since February 12, 2014.

Appellant submitted a narrative statement dated May 1, 2015 and alleged his claim should coincide with File No. xxxxxx971 for his right shoulder injury and resulting surgery on November 7, 2014. He contended that he used his left arm and shoulder to perform his duties as a letter carrier, as well as for activities of daily living following his right shoulder surgery. Appellant asserted that three months after his right shoulder surgery, he began noting weakness in his left arm. He attributed this weakness to overcompensating with use of his left arm since his right arm was not fully functional. Appellant determined that his left arm pain was unbearable and sought treatment at the emergency room. He argued that his left arm condition was not a direct work injury, but was due to overcompensation as a result of an accepted work injury to his right shoulder and should be attached to his original claim number or associated and approved as an aftermath to a work-related injury. Appellant asserted that his medical documents established weakness and subsequent delay in my return to work from the original surgery with a continuing need for treatment due to his new but related problem.

Dr. Cohen provided a form report dated April 17, 2015 and indicated that appellant's injury was work related. He provided work restrictions which included no repetitive motion or reaching with either arm. On June 19, 2015 Dr. Cohen reviewed appellant's left shoulder magnetic resonance imaging (MRI) scan and found work-related left labral tear as well as moderate osteoarthritis of the left shoulder. He provided work restrictions for both shoulders. Dr. Cohen opined, "I believe his left shoulder osteoarthritis is preexisting but exacerbated by his right shoulder issues."

By decision dated July 16, 2015, OWCP denied appellant's claim as the medical evidence failed to establish a causal relationship between the diagnosed conditions and the identified work factors. It noted that Dr. Cohen did not explain the exact functions that caused, contributed to, or aggravated his left shoulder.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."² 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

ANALYSIS

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he developed a left shoulder condition due to factors of his federal employment.

Appellant filed an occupational disease claim on August 16, 2015 and attributed his left shoulder condition to overuse following employment-related surgery on his right shoulder.⁴ In support of his claim, he submitted reports from Dr. Cohen beginning March 25, 2015 diagnosing impingement syndrome and subacromial bursitis of the left shoulder. Dr. Cohen indicated that appellant had developed a left shoulder condition following his right shoulder surgery. He opined that appellant had had to use his left arm more consistently during recovery from his right shoulder surgery. This report provides a diagnosed condition in support of appellant's occupational disease claim and an opinion that this condition was developed as a consequence of appellant's employment-related right shoulder surgery. However, Dr. Cohen did not address causal relationship between appellant's diagnosed condition and any specific employment activities as required to establish an occupational disease claim. Due to the lack of medical

² 20 C.F.R. § 10.5(q).

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁴ The Board notes that appellant has asserted that his left shoulder condition evolved as a consequence of his work-related right shoulder injury and resulting surgery under OWCP File No. xxxxxx971. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.7 (January 2013) (addresses development of consequential injury claims).

evidence establishing causal relationship between appellant's condition and his specific employment duties, this report is insufficient to establish appellant's occupational disease claim.

Dr. Cohen continued to opine that appellant's left shoulder conditions were employment related on April 17 and June 19, 2015. He diagnosed moderate osteoarthritis of the left shoulder and work-related labral tear. Dr. Cohen opined, "I believe his left shoulder osteoarthritis is preexisting but exacerbated by his right shoulder issues." He again provided a medical diagnosis, but failed to implicate specific employment duties necessary to establish an occupational disease claim. Dr. Cohen did not provide a specific description of how and why the left shoulder osteoarthritis was exacerbated. This report does not provide the medical opinion evidence necessary to establish an occupational disease due to specific employment duties.

Appellant also submitted a note from Ms. Gagliardi, a medical assistant. Healthcare providers such as nurses, medical assistants, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.⁵

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 met his burden of proof to establish that he developed a left shoulder condition causally related to factors of his federal employment.

⁵ 5 U.S.C. § 8101(2); *see also* *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board