

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

D.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Houston, TX, Employer)

**Docket No. 16-0985
Issued: August 17, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 8, 2016 appellant filed a timely appeal of a January 13, 2016 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease of the left shoulder in the performance of duty.

FACTUAL HISTORY

On November 16, 2015 appellant, then a 39-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that on November 9, 2015 she became aware of a strain and shoulder pain which she attributed to her employment duties.

¹ 5 U.S.C. § 8101 *et seq.*

In a letter dated November 23, 2015, OWCP noted receiving appellant's claim form, but no other information in support of her claim. It requested that she describe how her injury occurred, provide a medical diagnosis for her condition, and provide a physician's opinion as to how employment activities caused, contributed to, or aggravated her medical condition.

Appellant submitted a note and a duty status report (Form CA-17) from Dr. Kamran Shabtai, a physician Board-certified in preventative medicine, providing a date of injury of November 9, 2015. Dr. Shabtai noted that appellant started experiencing pain in her left shoulder while working and diagnosed synovitis and tenosynovitis of the left shoulder. He provided work restrictions. Dr. Shabtai noted that appellant had decreased range of motion in her left shoulder with weakness and swelling. He found diffuse tenderness and positive impingement. Dr. Shabtai reviewed x-rays which were normal. He reexamined appellant on November 23, 2015 for pain in her left shoulder while working on November 9, 2015. Dr. Shabtai diagnosed synovitis and tenosynovitis left shoulder.

Appellant also sought treatment from Dr. Marcos Masson, a Board-certified orthopedic surgeon, who examined her on November 12 and December 3, 2015. Dr. Masson noted that appellant developed left shoulder pain from repetitive overhead reaching and had a previous diagnosis of thoracic outlet syndrome. He diagnosed left brachial plexus disorders.

The employing establishment submitted a statement from appellant noting that on November 7, 2015 she reported pain in her left shoulder. On November 9, 2015 appellant indicated that she was not clear how her shoulder pain began, but when she started to reach up to case mail she could feel pain. She denied hitting her shoulder, twisting, or sudden jerks. On November 12, 2015 appellant described her onset of shoulder pain, noting that on November 9, 2015 she was performing her normal work including picking up tubs of flats from the floor and placing them on her case. She alleged, "After I emptied all the mail from the tubs, I began to case the flats. An hour or and an hour and a half in casing the flats, I noticed a sharp pain in my left shoulder when I would reach up."

The employing establishment provided appellant's job description which included casing, delivering, and collecting mail along a prescribed rural route using a vehicle.

Dr. Shabtai examined appellant on December 11 and 30, 2015 and repeated his earlier diagnoses and findings. He recommended additional physical therapy and a magnetic resonance imaging scan.

By decision dated January 13, 2016, OWCP denied appellant's claim. It found that she failed to submit factual evidence as to how her federal employment contributed to her condition.

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

² 20 C.F.R. § 10.5(q).

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.³

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁴ Moreover, an injury does not have to be confirmed by eyewitnesses. An employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁵

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 employment duties is insufficient to establish causal relation.⁶

ANALYSIS

In order to establish her occupational disease claim, appellant must submit a medical report diagnosing a condition. She has provided medical evidence from Drs. Shabtai and Masson diagnosing synovitis and tenosynovitis, and left brachial plexus disorder, respectively.

The next requirement to establish an occupational disease claim is the identification of the implicated employment factors. OWCP denied the claim on this basis. However, as noted, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. The record contains appellant's description of her employment duties as provided to the employing establishment. Appellant initially reported pain in her left shoulder to the employing establishment on November 7, 2015. On November 9, 2015 she reported that she was experiencing pain while reaching up to case mail. On November 12, 2015 appellant provided a more detailed description to the employing establishment, noting that on November 9, 2015 she was performing her normal work including picking up tubs of flats from the floor and placing

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

⁴ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁵ *Betty J. Smith*, 54 ECAB 174 (2002).

⁶ *Supra* note 3.

them on her case and casing the flats of mail. She asserted that, after an hour or more of casing flats, she noticed a sharp pain in her left shoulder when she reached up. The Board finds that appellant has indicated that she experienced shoulder pain for a period longer than one workday or work shift and attributed this condition to her duties of lifting tubs and casing flats. There are not such inconsistencies in the evidence as to cast serious doubt on whether the claimed work factors occurred as alleged. The Board finds that appellant has sufficiently identified and established the work factors she alleged caused her diagnosed condition.⁷

CONCLUSION

The Board finds that appellant has met her burden of proof to establish factors of her federal employment that she has alleged caused an occupational disease of the left shoulder.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action in conformance with this decision.

Issued: August 17, 2016
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

⁷ See *Louise F. Garnett*, 47 ECAB 639 (1996); *Louise G. Moore*, 20 ECAB 165 (1968).