



## ISSUE

The issue is whether appellant met his burden of proof to establish an injury due to the accepted February 2, 2016 employment incident.

## FACTUAL HISTORY

On February 2, 2016 appellant, a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) for a left shoulder injury that allegedly occurred that morning while shaking a postal container (postcon) loose from another postcon. He reported feeling his left shoulder pop or tear. Appellant stopped working the following day. He did not submit any medical evidence with his Form CA-1.

By letter dated February 16, 2016, OWCP advised appellant that it required medical evidence to determine whether he was eligible for FECA benefits. It afforded him 30 days to submit a comprehensive medical report from his treating physician.

OWCP subsequently received a February 2, 2016 report from Dr. Robin Mackoff, a family practitioner, who advised that appellant had been experiencing left shoulder pain for two months. Dr. Mackoff noted that appellant aggravated his left shoulder pain after shaking a container earlier that day. She reported that the pain was intermittent and worsened with movement. Dr. Mackoff also noted that appellant's left shoulder x-ray revealed no acute fracture or dislocations. She also provided a February 2, 2016 duty status report (Form CA-17) noting that appellant was currently unable to work.

Appellant also submitted a February 11, 2016 report from Dr. David J. Weissberg, a Board-certified orthopedic surgeon. Dr. Weissberg advised that appellant was experiencing left shoulder pain which he attributed to the alleged February 2, 2016 work injury. He reported that appellant injured his shoulder while shaking apart heavy equipment. Appellant described the pain as constant, severe, sharp, and worsening. Dr. Weissberg reported that appellant had missed two weeks of work and noted that he underwent x-rays and ultrasound of the left shoulder. The results of the x-ray showed an abnormal sclerosis and the ultrasound revealed a partial left biceps tear. Dr. Weissberg administered a corticosteroid injection to the left shoulder and advised that appellant sustained a left shoulder injury at work which occurred when he was shaking a rolling container. He noted that appellant's complaints and the objective findings were consistent with his history of the injury/illness. Dr. Weissberg opined that appellant was totally disabled due to the work injury and recommended that he undergo a magnetic resonance imaging (MRI) scan of the left shoulder. He also prescribed a course of physical therapy.

In a February 25, 2016 report, Dr. Weissberg essentially reiterated his previous findings and conclusions.

OWCP received additional duty status reports (Form CA-17) from Dr. Weissberg dated February 11 and 25, 2016 as well as physical therapy treatment records from February 29, 2016.

A March 4, 2016 left shoulder MRI scan reviewed by Dr. Alex Rosioreanu, a Board-certified diagnostic radiologist, revealed a massive, full-thickness rotator cuff tear of the

supraspinatus and infraspinatus tendons, subscapularis tendinosis with partial-thickness articular sided tearing, tendinosis of the long head of the biceps tendon, degeneration of the acromioclavicular and glenohumeral joints, and posterior subluxation of the humeral head at the glenohumeral joint.

Dr. Weissberg provided March 10, 2016 progress notes and a corresponding duty status report (Form CA-17). He noted the results of appellant's recent left shoulder MRI scan. Dr. Weissberg attributed appellant's left upper extremity condition to the February 2, 2016 employment injury.

By decision dated March 22, 2016, OWCP denied appellant's claim based on failure to establish causal relationship. It indicated that the medical evidence failed to adequately explain how the February 2, 2016 employment incident either directly caused or aggravated appellant's diagnosed left shoulder rotator cuff tear and left biceps partial tear.

In a March 4, 2016 report, received by OWCP on March 25, 2016, Dr. Robert Drazic, Board-certified in orthopedic surgery, advised that appellant had sustained a work-related left shoulder injury on February 2, 2016 which occurred while trying to pull out a mail container which was stuck inside another container. He reported that appellant was experiencing difficulty raising his left arm over his head and placing it behind his back. Dr. Drazic also noted that appellant denied having any prior injuries and advised that he was awaiting the results of the left shoulder x-ray tests. He reported that appellant was currently totally disabled.

In a March 17, 2016 report, received by OWCP on March 30, 2016, Dr. Weissberg advised that appellant continued to experience severe pain in his left shoulder and was considering having arthroscopic surgery to repair the damaged left rotator cuff. He maintained appellant's total disability status. Dr. Weissberg also provided similar progress notes dated March 31, 2016.

In an April 18, 2016 report, Dr. Weissberg reiterated that appellant continued to experience severe left shoulder pain which was attributable to the February 2, 2016 work incident. He advised that appellant sustained a prior injury to his left shoulder in 2013 in which he incurred a partial tear to his left supraspinatus tendon, as noted in a June 6, 2013 MRI scan.<sup>4</sup> Dr. Weissberg advised that this injury was treated conservatively with physical therapy and anti-inflammatory medication, with good results. He noted that, following the February 2, 2016 work incident, appellant underwent another MRI scan which showed a massive, complete left rotator cuff tear, full-thickness tear of both supraspinatus and infraspinatus muscles, as well as tendinosis of the subscapularis and biceps tendons. Dr. Weissberg opined that these findings were directly related to the February 2, 2016 work incident. He recommended that appellant undergo arthroscopic repair of his left rotator cuff tear.

On May 4, 2016 appellant, through counsel, requested reconsideration of the March 22, 2016 decision.

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<sup>4</sup> Appellant also submitted a radiologist's report regarding the June 6, 2013 left shoulder MRI scan.

In reports dated May 13, 27, and June 10, 2016, Dr. Weissberg essentially reiterated his previous findings and conclusions.

In a June 21, 2016 report, Dr. Weissberg reiterated that appellant had a full-thickness tear of his left rotator cuff and that he required arthroscopic surgery. He advised that appellant's condition was causally related to the February 2, 2016 work incident and that he was awaiting authorization from OWCP prior to scheduling the proposed surgery. Dr. Weissberg noted that appellant had an increased risk of long-term disability in his left shoulder because of the lapse in time since the February 2, 2016 work incident, and because the torn rotator cuff had not been surgically repaired.

By decision dated August 2, 2016, OWCP denied modification of the March 22, 2016 decision. It found that the evidence appellant presented was insufficient to establish that his diagnosed left upper extremity conditions were related to the accepted February 2, 2016 work injury.

### **LEGAL PRECEDENT**

A claimant 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 evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury.<sup>7</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>8</sup>

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>9</sup>

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<sup>5</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

<sup>8</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>9</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>10</sup>

### ANALYSIS

OWCP accepted that the February 2, 2016 employment incident occurred as alleged and that appellant received a contemporaneous medical diagnosis with respect to his left upper extremity. However, it denied appellant's traumatic injury claim because the medical evidence of record was insufficient to establish a causal relationship between the diagnosed condition and the accepted employment incident. The Board finds that appellant has failed to meet his burden of proof to establish causal relationship.

Appellant submitted reports from Drs. Mackoff, Weissberg, and Drazic. While these reports noted complaints of left shoulder pain which they generally attributed to the February 2, 2016 work incident, they did not contain a probative, rationalized opinion as to whether the February 2, 2016 work incident caused or contributed to appellant's left upper extremity condition. Dr. Mackoff noted in her February 2, 2016 report that appellant had been experiencing left shoulder pain for two months and further noted severe left shoulder pain after shaking a container earlier that day. She advised that left shoulder x-rays taken that day showed no acute fracture or dislocations.

In his February 11, 2016 report, Dr. Weissberg noted that appellant was experiencing severe left shoulder pain which he attributed to the February 2, 2016 work incident. He reported that x-ray testing demonstrated an abnormal sclerosis and that an ultrasound of the left shoulder showed a partial left biceps tear. Dr. Weissberg opined that appellant's complaints and the objective findings were consistent with his history of injury. He scheduled a left shoulder MRI scan and prescribed physical therapy.

In subsequent reports, Dr. Weissberg advised that appellant continued to experience severe pain in his left shoulder which was attributable to the February 2, 2016 work incident. He opined that appellant required arthroscopic surgery to repair the left rotator cuff. Dr. Weissberg advised in his April 18, 2016 report that appellant had a prior injury to the left shoulder in 2013 in which he had incurred a partial tear to his left supraspinatus tendon, as noted in a June 6, 2013 MRI scan. He advised that the March 4, 2016 MRI scan showed a massive, complete left rotator cuff tear, full-thickness tear of both supraspinatus and infraspinatus muscles, as well as tendinosis of the subscapularis and biceps tendons. Dr. Weissberg opined that these findings were directly related to the February 2, 2016 work incident. Dr. Drazic advised in his March 4, 2016 report that appellant had sustained a work-related left shoulder injury on February 2, 2016 which occurred while trying to pull out a mail container which was stuck inside another container. Appellant reported experiencing difficulty raising his left arm over his head and placing it behind his back. Dr. Drazic advised that appellant was totally disabled and that he denied having any prior injuries.

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<sup>10</sup> *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

These reports failed to sufficiently explain how he would have sustained a left biceps/shoulder injury trying to remove a mail container stuck inside another container. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>11</sup> Dr. Weissberg presented a diagnosis of appellant's left shoulder condition and generally asserted that the condition resulted from the February 2, 2016 work incident in which he removed a mail container from another container. However, he did not adequately address how this condition was causally related to the February 2, 2016 work incident or how the incident might have aggravated a preexisting left shoulder condition.<sup>12</sup>

In his March 4, 2016 MRI scan report, Dr. Rosioreanu diagnosed a massive rotator cuff tendon tear, comprising of complete full-thickness tears of the supraspinatus and infraspinatus tendons; subscapularis tendinosis with partial-thickness articular sided tearing; tendinosis of the long head of the biceps tendon; degeneration of the acromioclavicular and glenohumeral joints; and posterior subluxation of the humeral head at the glenohumeral joint. Diagnostic test reports, however, do not discuss the cause of the diagnosed conditions and are therefore of limited probative value regarding causal relationship.<sup>13</sup>

Drs. Mackoff, Weissberg, and Drazic fails to explain how he could have sustained a left shoulder injury while removing a mail container from another container on February 2, 2016. There is insufficient rationalized evidence in the record that appellant's left shoulder condition was related to the accepted work incident. Therefore, their reports failed to demonstrate a causal connection between appellant's February 2, 2016 work incident and his claimed left shoulder injury.<sup>14</sup>

On appeal counsel argues that Dr. Weissberg's reports and the 2013 MRI scan indicate that appellant had a prior left shoulder injury of partial tear of the left supraspinatus tendon in 2013, which was aggravated by the February 2, 2016 work incident. He argues that this resulted in the full-thickness left rotator cuff tear shown by the March 4, 2016 MRI scan. Counsel also notes that Dr. Weissberg opined that appellant's moving heavy containers on February 2, 2016 aggravated the preexisting left shoulder condition, resulting in a personal injury. However, as discussed above, Dr. Weissberg failed to submit a probative, rationalized medical opinion explaining how appellant could have sustained a left shoulder injury or aggravated a preexisting left shoulder condition while removing a stuck mail container on February 2, 2016. There is insufficient rationalized evidence in the record that appellant's left shoulder injury was work related. The Board further notes that Dr. Mackoff advised in her February 2, 2016 report that appellant's left shoulder pain was already present for two months, and that Dr. Drazic reported on March 4, 2016 that appellant denied having any prior injuries.

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<sup>11</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>12</sup> See *Victor J. Woodhams*, *supra* note 7.

<sup>13</sup> *L.B.*, Docket No. 16-0486 (issued June 28, 2016).

<sup>14</sup> See *supra* note 7.

OWCP advised appellant of the evidence required to establish his claim. However, appellant failed to submit such evidence. He failed to provide a medical opinion which described or explained the process through which the February 2, 2016 employment incident would have caused the claimed injury. Accordingly, appellant failed to establish that his claimed left upper extremity condition was due to the employment incident.

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 failed to establish an injury due to the accepted February 2, 2016 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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