

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Missoula, MT, Employer**

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**Docket No. 16-0215
Issued: May 6, 2016**

Appearances:

*Torrance L. Coburn, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2015 appellant, through counsel, filed a timely appeal from a May 20, 2015 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 over the merits of this case.

ISSUE

The issue is whether appellant has established an injury causally related to an accepted March 27, 2013 employment incident.

FACTUAL HISTORY

On June 5, 2013 appellant, then a 55-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) for an incident on March 27, 2013. She alleged that as she was closing her mail delivery vehicle door and stepping back from the vehicle, the ball of her foot hit

¹ 5 U.S.C. § 8101 *et seq.*

a curb and she fell backwards. Appellant claimed a right elbow abrasion, right hand palm bruise, wrenched right shoulder, and a right hip contusion. She completed the claim form on March 27, 2013 and her supervisor received the form on June 5, 2013.

When appellant's claim was received, it appeared to be a minor injury that had resulted in minimal or no lost time from work. OWCP administratively approved payment of a limited amount of medical expenses as the employing establishment had not controverted continuation of pay or challenged the case. On July 5, 2013 appellant filed a (Form CA-7) claim for wage-loss compensation. Along with the claim, she submitted an undated written statement from the employing establishment declining medical treatment for the injury, a March 27, 2013 statement from C. Wilson of the employing establishment, a June 17, 2013 work release form, a June 19, 2013 physical therapy note, and an SF-50 personnel action form. Appellant also submitted new medical evidence.

In a June 18, 2013 medical report, Dr. Christopher B. Smith, a Board-certified family practitioner, reported complaints of right arm and shoulder pain after a fall at work as a letter carrier on March 27, 2013. Initially, there were no symptoms, but the right arm and shoulder worsened over time. Dr. Smith assessed right shoulder pain. A course of physical therapy was ordered.

OWCP reopened appellant's case for formal review and adjudication of the claim. By letter dated July 12, 2013, it advised her of the deficiencies in her claim and afforded her 30 days in which to submit additional factual and medical evidence, to include a diagnosis of a medical condition sustained as a result of the claimed event and a physician's rationalized medical opinion explaining how the reported work incident caused or aggravated a medical condition.

OWCP received a June 18, 2013 x-ray report of the right shoulder.

In an August 1, 2013 report, Dr. Smith noted that this was appellant's second visit regarding right shoulder pain that started after a March 27, 2013 fall at work. A diagnosis of shoulder pain was provided. Dr. Smith indicated that appellant's examination and history were consistent with rotator cuff injury and that a magnetic resonance imaging (MRI) scan study was needed. He ordered the requested MRI scan and provided an August 1, 2013 work release form.

By decision dated August 16, 2013, OWCP denied the claim as the medical component of fact of injury was not established. It found that the event occurred as described, but the medical evidence was insufficient to establish a medical condition diagnosed in connection with the work event.

On August 14, 2014 OWCP received an August 10, 2014 letter from appellant's counsel requesting reconsideration. Counsel contended that the MRI scans and a report from Dr. Bruce Turlington, a Board-certified diagnostic radiologist, demonstrated that she suffered a full-thickness or near full-thickness tear in her right shoulder. Appellant's medical records from 1997 to the date of injury were enclosed to establish that she had never had an injury to, or problem with, her right shoulder prior to the March 27, 2013 work event.

Along with that reconsideration request several medical reports that preexisted the March 27, 2013 work incident were received along with duplicative copies of medical evidence

already of record. Medical reports pertaining to conditions other than the right shoulder were also received.

In a June 17, 2013 medical status form, a provider with an illegible signature, included work restrictions for right hand/wrist and limitations for grasping, pulling, pushing, fine manipulation, and reaching on right side.

In a June 18, 2013 referral for physical therapy, Dr. Smith noted right shoulder rotator cuff tendinitis.

A March 21, 2014 MRI scan report contained a clinical indication of right shoulder pain after a fall one year ago. Dr. Turlington interpreted an MRI scan to reveal a diagnosis of full-thickness or near full-thickness tear of the right shoulder and degeneration (tendinosis) involving intraarticular segment long head biceps tendon with degeneration or type 1 or 2 superior labrum anterior posterior (SLAP) lesion at the biceps anchor.

On March 11, 2015 OWCP received a March 1, 2015 letter from appellant's counsel, referring to his earlier request for reconsideration of the August 16, 2013 OWCP decision that counsel contended had been previously submitted on August 10, 2014. He requested an explanation as to why there had not yet been a decision or response to his reconsideration request.

By decision dated May 20, 2015, OWCP denied modification of the August 16, 2013 decision as there was no medical report by a qualified physician identifying a firm diagnosis resulting from the March 27, 2013 work incident.²

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.³ 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.⁴

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single

² The Board notes that initially OWCP denied appellant's request for reconsideration of its August 16, 2013 merit decision as untimely filed and failing to demonstrate clear evidence of error. However, OWCP subsequently conceded that she had timely requested reconsideration on August 14, 2014 and issued a merit decision denying modification of the August 16, 2013 decision. Thus, the May 20, 2015 merit decision supersedes the May 20, 2015 nonmerit decision.

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

workday or shift.⁵ 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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 the claimant.⁷

ANALYSIS

The Board initially notes that appellant's August 10, 2014 request for reconsideration, received by OWCP on August 14, 2014 was timely filed within one year of the August 16, 2013 OWCP merit decision. OWCP, therefore, properly exercised its discretion and granted appellant a merit review.

The Board finds that appellant has not met her burden of proof to establish a traumatic injury caused by the accepted March 27, 2013 employment incident. OWCP found that the claimed incident occurred. However, the Board finds the medical evidence insufficient to establish that appellant's diagnosed condition was causally related to the accepted March 27, 2013 employment incident.

Dr. Smith first examined appellant on June 18, 2013. He noted the history of the March 27, 2013 fall and that her right arm and shoulder pain worsened over time. After providing examination findings, Dr. Smith assessed right shoulder pain. He did not provide a medical diagnosis regarding appellant's right shoulder pain. The Board has held that pain is a symptom, not a compensable medical diagnosis.⁸ While Dr. Smith referred appellant to physical therapy for right shoulder rotator cuff tendinitis on June 18, 2013 his report is of diminished probative value as he did not provide an opinion explaining how right shoulder rotator cuff tendinitis was caused or aggravated by the accepted March 27, 2013 employment incident.⁹ In his August 1, 2013 report, he also diagnosed shoulder pain. While Dr. Smith noted that appellant's examination and history were consistent with rotator cuff injury, he again offered no

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *K.W.*, Docket No. 12-1590 (issued December 18, 2012).

⁹ See *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).

medical explanation as to how her accepted fall would have caused the medical condition. Thus, his reports are insufficient to establish her claim.

Dr. Turlington interpreted the March 18, 2014 MRI scan of the right shoulder as positive for a tear and tendinosis involving intraarticular segment long head biceps tendon with degeneration or type 1 or 2 SLAP lesion at the biceps anchor. He noted that appellant fell a year ago. Dr. Turlington did not provide an opinion explaining how her current right shoulder condition was caused or aggravated by the accepted work incident.¹⁰ Thus, his report is insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹¹

The Board finds that the evidence of record does not establish that appellant's diagnosed condition was causally related to her March 27, 2013 employment incident. Consequently, appellant failed to establish the medical component of fact of injury.

On appeal, appellant's counsel contends that she sustained a right shoulder injury at work on March 27, 2013 and that the MRI scan report supports such a finding. As found the medical evidence of record does not establish appellant's injury claim. The fact that a medical condition was diagnosed during a period of employment does not establish that the condition was causally related to the employment.¹² The March 18, 2014 MRI scan report of Dr. Turlington is insufficient to establish causal relationship.

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 established that she sustained an injury causally related to the accepted March 27, 2013 employment incident.

¹⁰ See *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹¹ See *A.R.*, Docket No. 14-550 (issued June 9, 2014).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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