United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
and	)	**Docket No. 16-0719**
	)	**Issued: October 26, 2016**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, New Cumberland, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 29, 2016 appellant filed a timely appeal from a January 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met her burden of proof to establish a traumatic injury causally related to a January 7, 2015 employment incident.

FACTUAL HISTORY

On January 29, 2015 a traumatic injury claim (Form CA-1) was filed on appellant's behalf by the employing establishment. Appellant, then a 60-year-old materials examiner and

[1] 5 U.S.C. § 8101 *et seq.*

identifier (forklift operator), alleged that she sustained bilateral rotator cuff tears on January 7, 2015 after tearing open a cardboard box and pulling a strap to secure material to a cart. The employing establishment controverted the claim because there was no evidence to support her claim and because she failed to report the injury when it occurred. Appellant stopped work on February 9, 2015 to undergo surgery. She worked modified duty intermittently before being released back to work with restrictions on August 24, 2015.

In a January 28, 2015 disability status report (Form CA-17), Dr. Curtis Goltz, a Board-certified osteopath specializing in orthopedic surgery, advised that appellant was able to return to light duty until her surgery scheduled for February 10, 2015.

In a January 28, 2015 statement, appellant advised that she tore open a cardboard box after having difficulty removing its staples. She noted that she felt pain in both shoulders, but did not pay it any attention. Appellant indicated that later, when she went to pull the strap to secure the material to the cart, she felt severe shoulder pain. She advised that she continued the remainder of her shift after taking pain medication and sought medical treatment on January 9, 2015. Appellant noted that she did not report the incident immediately because she did not know it was a serious injury until diagnostic testing revealed bilateral rotator cuff tears.

By letter dated February 2, 2015, OWCP advised appellant of the type of evidence needed to establish her claim.

In a January 30, 2015 report, Dr. Goltz advised that appellant complained of bilateral shoulder pain. He noted that she related that on January 7, 2015 she tore open a cardboard box after having difficulty removing the staples. Appellant felt pain in both shoulders, but did not pay any attention to it. When she went to pull the strap to secure the material to the cart she felt severe shoulder pain. On examination Dr. Goltz noted good right shoulder alignment, no erythema, no ecchymosis, pain with forward elevation, positive impingement sign, and left shoulder pain and weakness. He assessed left complete rotator cuff tear and probable internal derangement or tear of the right rotator cuff. Dr. Goltz recommended right shoulder magnetic resonance imaging (MRI) scan and a right shoulder arthroscopy with open repair of the rotator cuff.

On March 2, 2015 Dr. Goltz advised that appellant was status post left rotator cuff repair. Appellant had reduced range of motion and decreased functional mobility. On examination of the left shoulder active range of motion was recorded at 83 degrees for flexion, 90 degrees for abduction, and 75 degrees for external rotation. In a March 4, 2015 disability status report, Dr. Goltz advised that appellant was unable to use her left arm and right arm lifting was limited to five pounds. He advised that the restrictions were in effect until her next evaluation on April 3, 2015.

By letter dated March 13, 2015, the employing establishment offered appellant a light-duty assignment consistent with Dr. Goltz's restrictions.

By decision dated March 16, 2015, OWCP denied appellant's claim, finding that medical evidence submitted failed to establish that appellant sustained a medical condition causally related to the accepted work event.

In an April 3, 2014 disability status report, Dawn Hynicker advised that appellant was able to return to work on April 6, 2015 with a five-pound lifting restriction.

Appellant submitted an April 13, 2015 request for an oral telephone hearing, before an OWCP hearing representative, received by OWCP on April 15, 2015.

Thereafter, appellant continued to provide medical evidence. On January 9, 2015 Dr. Goltz advised that appellant had severe left shoulder pain and moderate right shoulder pain. Appellant experienced this pain over the past several months, but did not recall a specific injury. On left shoulder examination she had good gross alignment, no erythema, no ecchymosis, pain with forward elevation and abduction, moderate weakness, positive impingement signs, no gross sensory changes distally. Right shoulder examination showed good gross alignment, no erythema, no ecchymosis, positive impingement sign, negative apprehension sign, and negative frank drop-arm test. A cervical spine x-ray revealed mild-to-moderate mid-cervical degenerative changes with straightening of her normal lordosis. Bilateral shoulder x-rays revealed mild AC joint degenerative changes and no fracture or dislocation. Dr. Goltz assessed bilateral rotator cuff tendinitis and possible left rotator cuff tear. He recommended a left shoulder MRI scan.[2]

In a February 10, 2015 operative report, Dr. Goltz advised that appellant underwent a left shoulder arthroscopy with debridement of the labrum, partial synovectomy, an open acromioplasty with repair of the rotator cuff. He noted that appellant had progressive weakness of the left shoulder and that the MRI scan demonstrated a torn rotator cuff.

In a February 25, 2015 postoperative status report, Dr. Goltz advised that appellant was noncompliant as she was not wearing her sling and indicated that she recently shoveled snow. On examination he noted a well-healing left shoulder incision, no point tenderness, no gross sensory changes distally, marked loss of forward elevation and abductions, and positive drop-arm test. Dr. Goltz reiterated to appellant that she was not to use her left arm for any active range of motion.

In an April 2015 statement, appellant advised that her job duties included opening boxes, removing materials from boxes, counting and inspecting documents, processing orders, and shipping. She noted that on January 7, 2015 she encountered an unusually large box which required her to use as industrial staple remover. Appellant contended that the staple remover was not effective in removing the staples, so she decided to manually open the box. She noted that as she opened the box she felt something rip in both shoulders followed by a sharp pain in both sides. Appellant indicated that she took medication and attempted to continue her shift, but the pain worsened causing her to seek medical attention on January 9, 2015. She detailed her

[2] A January 9, 2015 x-ray report found mild-to-moderate mid-cervical degenerative changes with straightening of her normal lordosis. A January 16, 2015 MRI scan showed a full-thickness tear of the anterior fibers of the supraspinatus tendon extending into the subscapularis tendon, medial subluxation of the long head of the biceps tendon anterior to the humeral head, tendinosis of the long head bicep tendon, and prominent tendinosis of the infraspinatus tendon. A February 6, 2015 MRI scan of the right shoulder revealed an abnormal appearance of the proximal biceps tendon which was concerning for tear, tendinopathy of the subscapularis tendon without full-thickness tear, full-thickness tear of the distal supraspinatus tendon, and degenerative changes of the acromioclavicular joint with hypertrophy of the joint.

treatment history, including February 10, 2015 left shoulder surgery, and noted that Dr. Goltz failed to send medical reports to OWCP. Appellant requested reconsideration.

In an April 3, 2015 report, Dr. Goltz advised that appellant complained of stiffness and soreness in the right shoulder and pain in the left shoulder. Physical examination revealed normal stance and gait, well-healed left shoulder incision, good gross alignment, no erythema, no ecchymosis, and no point tenderness. Dr. Goltz noted that appellant had full forward elevation, abduction, internal, and external rotation. He assessed status post repair of the left rotator cuff and right rotator cuff tear secondary to a workers' compensation injury. Dr. Goltz advised that appellant related that she was performing her normal duties including opening boxes, removing materials counting and inspecting items, and stocking at the time of the injury. He noted that she encountered an unusually large box that required a heavy duty staple remover to open the box, and when she manually opened it, she felt a ripping sensation in both shoulders followed by sharp pain and immediate weakness. Dr. Goltz noted that appellant related that she believed this occurred when she injured her shoulders and he opined that with a reasonable degree of medical certainty appellant's bilateral rotator cuff tears matched the mechanism as she described. He recommended surgical intervention on the right shoulder, physical therapy, and activity modification.

In a May 6, 2015 operative report, Dr. Goltz advised that appellant underwent a right shoulder arthroscopy with tenotomy biceps debridement of the labrum and open acromioplasty with repair of the rotator cuff. He noted that following a workers' compensation injury, appellant was treated conservatively until deciding on surgery. Appellant had a preoperative diagnosis of internal derangement of the right shoulder.

In a May 18, 2015 report, Dr. Goltz advised that appellant was approximately two weeks status post right rotator cuff repair. On examination he noted that appellant's wounds were healing nicely, there was no erythema, no significant ecchymosis, no evidence of obvious infection, good range of motion of the elbow, and distally the upper extremity was neurovascularly intact. Dr. Goltz advised that appellant would begin a therapy program, continue use of a shoulder immobilizer, and remain off work until her next visit.

In an August 21, 2015 disability status report, Dr. Goltz advised that appellant was able to return to work with restrictions on August 24, 2015. Appellant was restricted from lifting more than 15 pounds.

On November 3, 2015 a telephone hearing took place. Appellant's union representative advised that she delayed in reporting her injury because she needed assistance filing her claim. Appellant noted that she explained to her physician that her work duties involved lifting and he opined that she damaged both shoulders which diagnostic testing later confirmed.

By decision dated January 19, 2016, an OWCP hearing representative affirmed OWCP's previous decision finding that medical evidence of record remained insufficient to establish that appellant's rotator cuff tears were caused by the January 7, 2015 employment incident.

On appeal appellant argues that evidence was sufficient to establish that her injury was work related. She contends that Dr. Goltz knew that her condition was caused by years of heavy lifting on the job, but indicated that he did not want to cooperate in the matter.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA, that he or she filed the claim within the applicable time limitation,[4] that he or she sustained an injury in the performance of duty as alleged, and that disability from work, if any, was causally related to the employment injury.[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

There is no dispute that on January 7, 2015 the incident with the box occurred as alleged. However, the Board finds that medical evidence of record is insufficient to establish that the employment incident on January 7, 2015 caused or aggravated appellant's diagnosed conditions.

In his April 3, 2015 report, Dr. Goltz advised that appellant related that she was performing her normal duties of opening boxes, removing materials, counting and inspecting items, and stocking at the time of the injury. He noted that she encountered an unusually large box that required a heavy duty staple remover, and when she manually opened it she felt a ripping sensation in both shoulders followed by sharp pain and immediate weakness. Dr. Goltz noted that appellant related that she believed this was when she injured her shoulders and he

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

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

opined that with a reasonable degree of medical certainty appellant's bilateral rotator cuff tears matched the mechanism as she described. He indicated that appellant attributed her condition to the January 7, 2015 employment incident but he did not offer his own opinion as to the cause of her condition. The Board has held that a physician's opinion regarding causal relationship that appears to be primarily based on appellant's own representations, rather than on objective medical findings, is of limited probative value.[8] Dr. Goltz merely opined that appellant's conditions were consistent with the mechanism as she described. He did not explain how or why the alleged incident caused bilateral rotator cuff tears. Medical opinions not containing rationale on causal relationship are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[9]

In his January 30, 2015 report, Dr. Goltz advised that appellant felt pain in both shoulders, on January 7, 2015 when she tore open a cardboard box at work. Although he provided the history of the injury as related by appellant, he did not provide his own unequivocal opinion regarding the cause of appellant's diagnosis. The Board has held that a report without an opinion as to causal relationship is of little probative value.[10] As a result, this report is insufficient to discharge appellant's burden of proof.

In his January 9, 2015 report, Dr. Goltz advised that appellant had severe pain in her left shoulder and moderate right shoulder pain over the last several months and that she did not recall a specific injury. This report is insufficient to discharge appellant's burden of proof as it does not discuss the January 7, 2015 work incident. Furthermore, the report indicates that appellant had preexisting shoulder pain and notes that she did not recall a specific injury. Other reports by Dr. Goltz are insufficient to discharge appellant's burden of proof as they do not specifically support that the accepted incident caused a diagnosed condition.[11]

Likewise other medical reports of record are also insufficient to discharge appellant's burden of proof as they do not address causal relationship.[12]

On appeal appellant argues that evidence submitted was sufficient to establish that her injury was job related. She contends that Dr. Goltz knew that her condition was caused by years of heavy lifting on the job, but indicates that he did not want to cooperate in the matter. It is appellant's burden of proof to provide rationalized medical evidence sufficient to establish causal relation. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[13] The physician must accurately describe

[8] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[9] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[10] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] Dr. Goltz's May 6, 2015 report refers to appellant's injury as a workers' compensation injury. However he did not provide his own unequivocal opinion as to whether work activities caused appellant's condition.

[12] *See supra* note 10.

[13] *See supra* note 6.

appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.[14] The need for medical rationale is particularly important given that appellant waited three weeks to report the injury and the most contemporaneous medical report advised that appellant's shoulder pain predated the January 7, 2015 work incident and appellant did not recall a specific injury at that time.

Appellant may submit new evidence or argument as part of 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 her burden of proof to establish a traumatic injury causally related to a January 7, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2016
Washington, DC

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

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

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

[14] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).