

labral tear from anterior to posterior (SLAP) of the right shoulder when she lifted a tray full of mail from a lower shelf and had to swing the tray above her head to a higher shelf. In an accompanying narrative statement, she reported that the tray of mail weighed 15 to 20 pounds and she had to lift it approximately 12 inches over her head to place it on the top shelf. Appellant explained that she first felt shoulder pain on September 26, 2015 and sought emergency medical treatment on September 29, 2015 after the pain did not subside. She was restricted from work until October 2, 2015 and sought treatment with her attending physician on October 5, 2015. Appellant reported that she first notified her supervisor of the injury on October 7, 2015. On the reverse side of the form, appellant's supervisor controverted the claim stating that appellant failed to report the injury on September 26, 2015.

A September 29, 2015 emergency department work release form from the Sisters of Charity Hospital advised that appellant was treated on that date and could return to work on October 2, 2015 with no restrictions.²

In medical notes dated October 5 and 13, 2015, Dr. Rebecca Simons, Board-certified in family practice, provided light-duty work restrictions.

In a November 11, 2015 medical note, Dr. Simons reported that appellant was evaluated on November 10, 2015 and was diagnosed with a SLAP III tear of the right shoulder. She explained that this was a tear in the labrum, a soft tissue fibrous part of the shoulder joint. Dr. Simons restricted appellant from work through December 15, 2015.

By letter dated November 24, 2015, the employing establishment controverted the claim noting that it was not filed within 30 days of injury.

By letter dated November 30, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised of the medical and factual evidence needed. OWCP noted that her Form CA-1 indicated a September 29, 2015 date of injury, while her statement identified a September 26, 2015 injury when she experienced pain in her shoulder while performing her employment duties. It requested she provide clarification regarding this discrepancy. Appellant was afforded 30 days to submit the necessary evidence.

In a November 6, 2015 diagnostic report, Dr. Hari Gopal, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the right shoulder revealed a likely SLAP III tear; infraspinatus and supraspinatus tendinosis, a concealed tear within the supraspinatus tendon; slight fluid surrounding the extra-articular long head of the biceps, possibly due to mild tenosynovitis; mild spurring of the acromioclavicular joint indenting the musculotendinous junction of the supraspinatus with trace of subacromial bursal fluid; and scarring and thickening contiguous with the inferior glenohumeral ligaments.

In a November 10, 2015 medical note, Dr. Simons reported that a November 6, 2015 MRI scan of the right shoulder revealed a soft tissue tear. She provided appellant with work restrictions and referred her for an orthopedic evaluation.

² The physician's signature is illegible.

In a November 25, 2015 attending physician's report (Form CA-20), Dr. Simons reported that appellant complained of right shoulder pain beginning around September 1, 2015. She diagnosed right shoulder SLAP III tear and tendinosis and reported that the condition was possibly aggravated by doing work on high shelves and lifting.

In a December 22, 2015 narrative statement, appellant reported that her injury occurred on September 26, 2015. When the pain did not subside, she sought medical treatment on September 29, 2015. Appellant's narrative statement described her course of medical treatment.

By decision dated January 6, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed right shoulder condition was causally related to the accepted September 26, 2015 employment incident.³

On January 19, 2016 appellant requested an oral hearing before an OWCP hearing representative.

In a January 15, 2016 medical report, Dr. Rajiv Jain, Board-certified in internal medicine and sports medicine, reported that appellant presented for evaluation of right shoulder pain due to an occupational injury. He explained that appellant injured her right shoulder when lifting crates of mail above her head in September 2015. A December 10, 2016 x-ray of the right shoulder revealed no acute fracture, dislocation, or focal significant pathologic sclerosis or lysis. An MRI scan of the right shoulder revealed SLAP III tear, infraspinatus tendinosis, and supraspinatus tendinosis with concealed distal insertional tear. Dr. Jain diagnosed pain in the right shoulder, small distal supraspinatus tear, and superior glenoid labrum lesion of the right shoulder. He checked the box marked "yes" when asked if the incident the patient described was the competent medical cause of this injury. Regarding appellant's rotator cuff injury, Dr. Jain recommended icing the shoulder before bed. He provided a physical therapy referral and restricted appellant from returning to work until further notice.

In a January 18, 2016 therapy note, Scott Dinse, a treating physical therapist (PT), reported that appellant injured her right shoulder on September 1, 2015 when lifting boxes of mail overhead. He diagnosed right shoulder tendinopathy and partial cuff tear.

In a May 6, 2016 medical report, Dr. Jain reported that appellant presented for follow up of right shoulder pain from an occupational injury. He noted that she injured her right shoulder while lifting a mailbox about one year prior while working at the employing establishment and had not been back to work for almost a year. Dr. Jain provided findings on physical examination and diagnosed pain in the right shoulder, superior glenoid labrum lesion of the right shoulder, and adhesive capsulitis of the left shoulder. He checked the box marked "yes" when asked if the incident the patient described was the competent medical cause of this injury.

By letter dated August 8, 2016, OWCP notified appellant that her hearing would be held on September 13, 2016 at 12:00 p.m. Eastern Standard Time (EST). It provided her with a toll free number to call at that time to be connected to the hearing representative and court reporter.

³ OWCP noted that the date of injury was corrected to September 26, 2015 as identified in appellant's December 22, 2015 narrative statement.

By decision dated October 3, 2016, OWCP's hearing representative found that appellant had abandoned her request for an oral hearing. She noted that appellant received written notice 30 days in advance of the hearing, but failed to participate. The hearing representative also found no evidence that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain her failure to appear.

On December 13, 2016 appellant requested reconsideration of the January 6, 2016 OWCP decision.

In a November 22 2016 medical note, Dr. Jain reported that he first evaluated appellant on January 15, 2016 for a right shoulder injury sustained at work on September 1, 2015. He opined that this injury was causally related to repeatedly lifting heavy crates of mail overhead while working as a postal employee, which aggravated underlying degenerative changes in her rotator cuff and labrum.

By decision dated March 20, 2017, OWCP affirmed the January 6, 2016 decision finding that the evidence of record failed to establish that appellant's diagnosed right shoulder injury was causally related to the accepted September 26, 2015 employment incident.

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 or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁷ The opinion of the physician

⁴ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁵ Michael E. Smith, 50 ECAB 313 (1999).

⁶ Elaine Pendleton, *supra* note 4.

⁷ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

OWCP accepted that the September 26, 2015 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a right shoulder injury. The Board finds that she failed to submit sufficient medical evidence to establish that her right shoulder condition is causally related to the September 26, 2015 employment incident.⁹

In medical notes dated October 5 through November 11, 2015, Dr. Simons noted a tear in the labrum of the right shoulder joint and diagnosed right shoulder SLAP III tear. Dr. Simons failed to discuss the September 26, 2015 employment incident or provide any opinion regarding the cause of appellant's condition.¹⁰ The Board has held that 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 As such, these reports are insufficient to establish appellant's traumatic injury claim.

In a November 25, 2015 Form CA-20, Dr. Simons noted complaints of right shoulder pain which started around September 1, 2015. The Board notes that Dr. Simons' Form CA-20 does not provide support for a traumatic injury having occurred on September 26, 2015 as appellant's shoulder complaints predate the employment incident. Moreover, Dr. Simons' opinion on causation is highly speculative as she reported that the right shoulder SLAP III tear and tendinosis were possibly aggravated by doing work on high shelves/lifting. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹² Although Dr. Simons had some understanding of appellant's employment duties, she failed to provide a firm medical conclusion

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *See Robert Broome*, 55 ECAB 339 (2004).

¹⁰ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² *Rickey S. Storms*, 52 ECAB 349 (2001).

that the September 26, 2015 employment incident caused or aggravated appellant's injury.¹³ As such, the reports of Dr. Simons are insufficient to meet appellant's burden of proof.¹⁴

The Board finds that Dr. Jain's medical reports dated January 15 through November 22, 2016 are also insufficient to establish appellant's traumatic injury claim. In his January 15, 2016 report, Dr. Jain noted that appellant presented for evaluation of right shoulder pain due to an occupational injury, explaining that she injured her right shoulder when lifting crates of mail above her head in September 2015. He diagnosed small distal supraspinatus tear and superior glenoid labrum lesion of the right shoulder. Dr. Jain checked the box marked "yes" when asked if the incident the patient described was the competent medical cause of injury.

Dr. Jain, however, failed to specifically address the September 26, 2015 employment incident and only generally repeated appellant's allegations pertaining to the cause of her injury. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the physical activity actually caused the diagnosed conditions.¹⁵ Moreover, though Dr. Jain checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by the accepted September 26, 2015 employment incident, the Board has held that a report that addresses causal relationship by checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹⁶ Without explaining physiologically how the movements involved in the September 26, 2015 employment incident caused or contributed to the diagnosed right shoulder conditions, Dr. Jain's opinion is of limited probative value and insufficient to meet appellant's burden of proof.¹⁷

Dr. Jain's May 6, 2016 report is also insufficient to establish appellant's traumatic injury claim as the physician provides a conflicting narratives pertaining to her right shoulder injury. He notes follow-up for an occupational right shoulder injury from one year prior when lifting a mail box at work. Based on this report, it is unclear if appellant experienced a prior right shoulder injury having occurred in May 2015 as Dr. Jain failed to discuss any aspect of appellant's medical history. His November 22, 2016 report also fails to cure this discrepancy as he reported evaluating appellant for a right shoulder injury sustained at work on September 1, 2015. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to the diagnosed medical condition.¹⁸ With no discussion of the

¹³ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

¹⁴ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁵ *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁶ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁷ *Supra* note 9.

¹⁸ *John W. Montoya*, 54 ECAB 306 (2003).

specific September 26, 2015 employment incident and circumstances surrounding the injury, the reports of Dr. Jain fail to provide support for a traumatic injury having occurred on that date.¹⁹

In his November 22, 2016 report, Dr. Jain opined that appellant's right shoulder injury was causally related to repeatedly lifting heavy crates of mail overhead while working as a postal worker. However, he failed to identify a firm medical diagnosis which he attributes to her employment injury, nor did he discuss how the accepted employment incident described would cause the mechanism of injury.²⁰ As such this report is of diminished probative value. Dr. Jain further noted that appellant's work activity aggravated the underlying degenerative changes in her rotator cuff and labrum. He did not address why appellant's complaints were not caused by a preexisting degenerative condition, nor did he discuss whether her preexisting degenerative injury had progressed beyond what might be expected from the natural progression of that condition.²¹ A well-rationalized opinion is particularly warranted when there is a history of preexisting conditions.²² As such, Dr. Jain's reports are of limited probative value and insufficient to meet appellant's burden of proof.²³

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's right shoulder injury and the September 26, 2015 employment incident. Dr. Gopal's November 6, 2015 report is of no probative value as he interpreted diagnostic imaging studies with no opinion on the cause of injury.²⁴

The January 18, 2016 physical therapy report is insufficient to establish appellant's claim as physical therapists are not considered physicians as defined under FECA, their opinions are of no probative value.²⁵

The Board finds that record lacks rationalized medical evidence establishing causal relationship between the September 26, 2015 employment incident and her diagnosed right shoulder injury. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

¹⁹ S.R., Docket No. 12-1098 (issued September 19, 2012).

²⁰ T.D., Docket No. 17-0649 (issued June 16, 2017).

²¹ R.E., Docket No. 14-868 (issued September 24, 2014).

²² T.M., Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

²³ *John W. Montoya*, 54 ECAB 306 (2003).

²⁴ G.C., Docket No. 17-0675 (issued June 15, 2017).

²⁵ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). Physical therapists are not physicians and a physical therapist's opinion regarding diagnosis or causal relationship is of no probative value. *V.C.*, Docket No. 14-1124 (issued November 3, 2014).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her right shoulder injury is causally related to the accepted September 26, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2017
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