

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

L.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cordova, TN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-1537
Issued: December 1, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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 July 6, 2017 appellant, through counsel, filed a timely appeal from a May 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 met her burden of proof to establish a right shoulder injury causally related to the accepted November 12, 2015 employment incident.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

On appeal counsel asserts that appellant submitted probative evidence establishing causation.

FACTUAL HISTORY

On December 2, 2015 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail on November 12, 2015, she tore her right shoulder rotator cuff when reaching behind to get a package. She stopped work on November 16, 2015 and returned on December 1, 2015.

By letter dated December 8, 2015, OWCP informed appellant of the evidence needed to perfect her claim. In answers to a form questionnaire, signed by her on December 15, 2015, appellant indicated that she informed her supervisor that her shoulder hurt when she returned to the employing establishment on November 12, 2015. She also indicated that she had similar work-related injuries. In a December 17, 2015 statement, an employing establishment supervisor indicated that appellant reported a work injury on November 12, 2015.

On December 24, 2015 Dr. Thomas W. Throckmorton, a Board-certified orthopedic surgeon, noted a history of right shoulder pain since November 12, 2015 when appellant felt sharp pain while reaching for something in her mail truck. He described physical examination findings, noting that it was significant for a positive Hawkins sign. Dr. Throckmorton diagnosed right rotator cuff strain. He advised that appellant could return to work with a lifting restriction of five pounds and no overhead work.

Appellant also submitted a prior occupational disease claim (Form CA-2) dated March 31, 2006, and medical evidence which dated back from March 30 to May 17, 2006.³ These medical reports included diagnoses of shoulder, wrist, and arm pain.

By decision dated January 12, 2016, OWCP denied appellant's claim. It accepted that the November 12, 2015 incident occurred as alleged, but found that the evidence submitted in support of her claim was insufficient to establish that her medical condition was caused by the accepted November 12, 2015 employment incident.

On March 29, 2016 appellant requested reconsideration.⁴ In a January 5, 2016 treatment note, Dr. Throckmorton indicated that appellant felt her shoulder had somewhat improved, but that her pain had not resolved. He recommended a magnetic resonance imaging (MRI) scan. On February 1, 2016 Dr. Throckmorton indicated that when appellant reached for a parcel in her mail truck on November 12, 2015 she felt a pull or pop in her right shoulder, and that this action was the direct cause of her current shoulder condition. On a February 1, 2016 attending physician's report (Form CA-20), he noted a positive Hawkins sign, diagnosed bursitis and right shoulder rotator cuff impingement, and reiterated appellant's physical restrictions.

³ The occupational disease claim, assigned File No. xxxxxx593, was for bilateral shoulder and hand pain. The claim was adjudicated by OWCP on June 16, 2006 and was denied. File No. xxxxxx593 is not before the Board in the present appeal. The instant claim was adjudicated by OWCP under File No. xxxxxx693.

⁴ Appellant had initially requested a review of the written record with OWCP's Branch of Hearings and Review. On March 18, 2016 she withdrew the request.

A February 24, 2016 MRI scan of the right shoulder was normal. In a treatment note dated February 24, 2015, Dr. Throckmorton noted that appellant had significant right shoulder pain. He described the MRI scan findings and noted the positive biceps tenderness and Hawkins tests. Dr. Throckmorton diagnosed right shoulder impingement and right biceps tendinitis. He recommended right shoulder arthroscopic surgery.

In a June 27, 2016 decision, OWCP denied modification of the prior decision. It found the medical evidence of record insufficient to establish the claim.

On March 1, 2017 appellant, through her present counsel, requested reconsideration. A form operative report dated July 25, 2016 indicated that Dr. Throckmorton performed right shoulder arthroscopic surgery. In a treatment note dated August 22, 2016 he referenced his February 1, 2016 report. Dr. Throckmorton advised that appellant was first treated by a Dr. Murphy on November 16, 2015 and was then referred to him for treatment of right shoulder pain. At that time appellant reported a roughly two-day history that, when she was reaching back for a parcel, she heard a popping in her shoulder that led to progressive pain.

An August 28, 2016 emergency department report, completed by Dr. Timothy Edward Long, a Board-certified internist, noted that appellant was three weeks post right shoulder surgery and had right arm pain and swelling. He described examination findings and diagnosed swelling of upper extremity, carpal tunnel syndrome, hypertension, and diabetes.

A September 7, 2016 electromyogram (EMG) demonstrated severe right brachial plexopathy involving all peripheral nerves in the right upper extremity, with the median nerve distribution most affected.

On September 9, 2016 Dr. Throckmorton discussed the EMG findings and noted physical examination findings which demonstrated a resting tremor in the right hand. He advised that appellant essentially could not be examined due to pain. Dr. Throckmorton diagnosed status post right shoulder arthroscopy with biceps tenodesis, subacromial decompression, and labral debridement, and right reflex sympathetic dystrophy *versus* Parsonage-Turner syndrome. In a September 16, 2016 application for leave under the Family and Medical Leave Act, Dr. Throckmorton noted positive EMG findings and advised that appellant could work with one hand only.⁵

On January 16, 2017 Dr. Apurva R. Dalal, Board-certified in orthopedic surgery, noted a history of previous surgery and ongoing severe right shoulder pain and loss of range of motion. He described physical examination findings noting minimal tenderness over the acromioclavicular (AC) joint and diminished right shoulder motion. Right shoulder ultrasound demonstrated fluid collection in the subacromial space and moderate arthrosis of the AC joint with a normal-appearing rotator cuff. Dr. Dalal injected appellant's right shoulder. On January 23, 2017 he noted full right shoulder range of motion with negative supraspinatus and impingement tests. Dr. Dalal diagnosed right shoulder rotator cuff tendinitis.

⁵ The record does not indicate when appellant stopped work.

On February 16, 2017 Dr. Dalal noted that appellant's right shoulder was doing well, but that she had significant problems in the median nerve distribution with burning pain and significantly decreased pinch strength. He noted the EMG findings and reported evidence of brachial plexopathy and carpal tunnel syndrome on examination with positive Phalen's and Tinel's tests. Dr. Dalal diagnosed right carpal tunnel syndrome and injected appellant's right hand.

Appellant also submitted a traumatic injury claim form (Form CA-1) dated March 8, 1998 for a head and neck injury. Medical evidence dated March 18, 1998 included diagnoses of cervical strain and musculoskeletal pain.⁶ An April 17, 2006 form report included a diagnosis of carpal tunnel syndrome. This report was signed by a nurse and included an additional signature which was illegible.

In a merit decision dated May 19, 2017, OWCP denied modification. It noted that the only medical evidence of record that addressed causal relationship was Dr. Throckmorton's August 22, 2016 note. OWCP again found that the medical evidence submitted did not contain sufficient explanation addressing how the accepted November 12, 2015 employment incident caused or aggravated a right shoulder condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA⁷ has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,⁸ including that he or she is an employee within the meaning of FECA and that he or she filed the claim within the applicable time limitation.⁹ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability from work, if any, was causally related to the employment injury.¹⁰

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 she actually experienced the employment incident at

⁶ The record before the Board contains no additional evidence regarding a 1998 claim.

⁷ *Supra* note 2.

⁸ *J.P.*, 59 ECAB 178 (2007).

⁹ *R.C.*, 59 ECAB 427 (2008).

¹⁰ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). OWCP regulations 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 workday or shift. 20 C.F.R. § 10.5(ee). OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

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.¹¹

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹² The opinion of the physician 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 incident identified by the employee.¹³ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁴

ANALYSIS

There is no dispute that the employment incident of November 11, 2015 occurred as alleged. The Board finds, however, that the medical evidence submitted by appellant is insufficient to establish how the accepted employment incident caused or aggravated any of her diagnosed right shoulder conditions.

In support of her claim appellant submitted diagnostic testing reports. The reports of her February 24, 2016 right shoulder MRI scan and September 7, 2016 EMG study did not provide a cause of any diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ Moreover, the MRI scan was within normal limits.

Appellant also submitted medical reports from Dr. Dalal who provided treatment, reviewed diagnostic testing results, and diagnosed right shoulder rotator cuff tendinitis and carpal tunnel syndrome on the right. She also submitted a report from Dr. Long who provided examination findings postsurgery. However, none of the reports from these physicians contain an opinion as to the cause of any diagnosed condition and are therefore of limited probative value on the issue of causal relationship.

Appellant also provided the medical reports of Dr. Throckmorton in support of her claim. The only evidence of record that addresses causal relationship are Dr. Throckmorton's February 1 and August 22, 2016 treatment notes. In the February 1, 2016 report, he noted that when appellant reached for a parcel in her mail truck on November 12, 2015 and felt a pull or pop in her right shoulder, that this action was the direct cause of her current shoulder condition. On August 22, 2016 Dr. Throckmorton referenced his February 1, 2016 report and also noted

¹¹ *T.H.*, 59 ECAB 388 (2008).

¹² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁵ *Willie M. Miller*, 53 ECAB 697 (2002).

that at that time she reported a roughly two-day history of reaching back for a parcel when she heard a popping in her shoulder that led to progressive pain. Medical reports that merely assert causal relationship cannot discharge appellant's burden of proof.¹⁶ A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹⁷ The Board finds that the reports of Dr. Throckmorton lack sufficient explanation addressing how the accepted work incident of November 12, 2015 would have caused or aggravated any of the diagnosed right shoulder conditions.¹⁸

Dr. Throckmorton also indicated that appellant was first treated by a Dr. Murphy on November 16, 2015 who referred her to him for treatment of right shoulder pain. The record before the Board does not contain a report from Dr. Murphy. Furthermore, it does not contain a copy of the full July 25, 2016 operative report which would have described any operative findings.

It is appellant's burden of proof to establish an injury causally related to the accepted November 12, 2015 employment incident. Contrary to counsel's assertion on appeal, the record contains insufficient evidence to establish an injury caused by this 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 has not met her burden of proof to establish a right shoulder injury causally related to the accepted November 12, 2015 employment incident.

¹⁶ See *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁷ See *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹⁸ *Supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2017
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