

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

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C.F., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Kearny, NJ, Employer )

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**Docket No. 16-1859**  
**Issued: February 23, 2017**

*Appearances:*

*James D. Muirhead, Esq.*, for the appellant<sup>1</sup>

*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 20, 2016 appellant, through counsel, filed a timely appeal from an August 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 his burden of proof to establish an injury causally related to factors of his federal employment.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> On October 25, 2013 appellant then a 56-year-old clerk filed an occupational disease claim (Form CA-2) alleging that he developed shoulder and arm pain as a result of repetitively opening and closing truck and dock bay doors while in the performance of duty. He first became aware of his condition on October 11, 2013 and realized it was causally related to his employment on October 18, 2013. Appellant did not stop work. OWCP denied his claim by decision dated June 30, 2015. In a decision dated November 17, 2015, the Board affirmed the June 30, 2015 OWCP decision. The Board found that appellant had not met his burden of proof to establish that his claimed conditions were causally related to his federal employment. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts relating to this appeal are set forth below.

On May 11, 2016 appellant, through counsel, requested reconsideration of the denial of his claim. Appellant submitted a February 15, 2016 report updated on May 4, 2016 from Dr. David Weiss, an osteopath, who advised that appellant suffered work injuries in the course of employment. Dr. Weiss indicated that appellant worked as a dispatcher for the employing establishment for about 18 years and his duties included opening and closing heavy bay doors or trucks, approximately 100 doors per day, eight hour days, and five days a week. In 2013 appellant developed shoulder pain. Dr. Weiss reviewed appellant's treatment at that time noting that x-rays and magnetic resonance imaging (MRI) scans in 2013 indicated a right shoulder rotator cuff tear. On May 15, 2014 appellant underwent a right shoulder arthroscopy with subacromial decompression, distal clavicle excision, debridement of a complex circumferential labral tear with biceps tenotomy, lysis of adhesions, and manipulation under anesthesia for frozen shoulder. On February 15, 2016 Dr. Weiss noted right shoulder examination findings that included no focal acromioclavicular point tenderness, no crepitus, and positive Hawkins' impingement sign. Range of motion tests revealed deficits on forward elevation and abduction, and intact muscle strength testing. Dr. Weiss' diagnoses included cumulative repetitive trauma disorder, occupational right shoulder syndrome, right shoulder chronic rotator cuff tendinopathy with rotator cuff tear, right shoulder glenoid labral tear, right shoulder impingement syndrome, and adhesive capsulitis/frozen right shoulder. He opined that given the nature of appellant's work-related requirements at the employing establishment, including opening and closing heavy bay doors, five days a week, 100 doors per day, it was apparent that he had sustained an occupational disorder.

Dr. Weiss referenced medical literature to support that risk factors for shoulder issues included postural working above the shoulders in high force with repetition. He also noted that medical literature indicated that high repetitive work along or in combination with other factors yielded evidence of shoulder tendinopathy, impingement, and rotator cuff tears. Dr. Weiss opined that based upon his orthopedic evaluation and current medical literature, appellant had sustained a cumulative repetitive trauma disorder with an occupational right shoulder syndrome secondary to his work at the employing establishment for 18 years. He further opined that the cumulative repetitive trauma work injury was the competent producing factor of appellant's

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<sup>3</sup> Docket No. 15-1649 (issued November 17, 2015).

subjective and objective findings. Dr. Weiss also rated permanent impairment for schedule award purposes.

By decision dated August 5, 2016, OWCP denied modification of its June 30, 2015 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. The employee must also establish that such event, incident, or exposure caused an injury.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 factors identified by the claimant.<sup>5</sup>

### **ANALYSIS**

OWCP accepted that appellant's work duties as a clerk and expeditor included repetitively opening and closing truck and dock bay doors. However, the Board finds that the medical evidence submitted was insufficient to establish that his diagnosed conditions are causally related to factors of his federal employment.

Appellant submitted a February 15, 2016 report updated on May 4, 2016 from Dr. Weiss who noted appellant's work duties and reviewed his treatment history. Dr. Weiss' diagnoses

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<sup>4</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

included cumulative repetitive trauma disorder, occupational right shoulder syndrome, chronic rotator cuff tendinopathy with rotator cuff tear to the right shoulder, glenoid labral tear to the right shoulder, impingement syndrome to the right shoulder, and adhesive capsulitis/frozen right shoulder. He opined that given the nature of appellant's work-related requirements at the employing establishment, including repetitively opening and closing heavy bay doors daily, it was apparent that he had sustained an occupational disorder. Dr. Weiss further opined that the cumulative repetitive trauma work injury was the competent producing factor of appellant's subjective and objective findings. The Board notes that although this report provides some support for causal relationship, it is insufficient to establish the claim as Dr. Weiss provided insufficient medical reasoning to support his conclusion on causal relationship.<sup>6</sup> In this report, Dr. Weiss failed to explain the process by which opening and closing bay doors and trucks could have caused or aggravated appellant's claimed condition or why such condition was not due to a nonwork-related condition such as age-related degenerative changes. Therefore, this report is insufficient to meet appellant's burden of proof.<sup>7</sup> Additionally, Dr. Weiss referenced literature and books in support of his medical opinion. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>8</sup> Dr. Weiss did not sufficiently explain how the medical literature applied to appellant's specific circumstances.<sup>9</sup>

On appeal, counsel asserts that Dr. Weiss' report provided a thorough explanation of how his work injury occurred and a rationalized opinion addressing how opening and closing bay doors could cause such an injury. As explained, he has not presented sufficient medical evidence to establish causal relationship between his diagnosed conditions and particular factors of his employment.

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.

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<sup>6</sup> *Id.*

<sup>7</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>8</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989). *See also Roger G. Payne*, 55 ECAB 535 (2004) (excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation in a case).

<sup>9</sup> Dr. Weiss also rated permanent impairment. However, a schedule award under 5 U.S.C. § 8107 can only be paid for a condition related to an employment injury. *See Veronica Williams*, 56 ECAB 367 (2005). As appellant has not established an employment-related injury, it is premature to consider his eligibility for benefits under 5 U.S.C. § 8107.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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