

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts follow.

On July 27, 2015 appellant, then a 32-year-old sales and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2015 she sustained an injury to her right shoulder when she lifted several tubs of mail weighing 50 pounds or more. She stopped work on July 27, 2015 and returned on July 29, 2015.

Appellant was initially treated on July 27, 2015 by Dr. Timothy Trusowych, an osteopath who specializes in occupational medicine. Dr. Trusowych diagnosed shoulder and trapezius strain. He included a duty status report (Form CA-17), which outlined appellant's work restrictions.

Dr. Imran H. Kazmi, a Board-certified internist, also treated appellant. In July 29 and August 5, 2015 work activity status reports, he diagnosed shoulder and upper arm strain, trapezius strain, and cervical radiculopathy. Dr. Kazmi authorized appellant to return to work with restrictions of no reaching above the shoulders and no lifting with the right upper extremity.

In a July 29, 2015 report, Dr. Greg White, a Board-certified diagnostic radiologist, noted that appellant experienced an acute injury and shoulder pain. He observed acromioclavicular joint osteoarthritis and a full-thickness supraspinatus tendon tear that extended into the infraspinatus tendon. Dr. White also diagnosed subscapularis tendinosis, biceps tendon tear, ganglion cyst, subcoracoid bursitis, possible loose body near the torn infraspinatus tendon, and a likely degenerative-type labral tear.

On August 24, 2015 OWCP received appellant's statement dated August 4, 2015. Appellant related that on July 25, 2015 her supervisor asked her to empty three skids that contained tubs full of catalogs weighing more than 70 pounds. She explained that while driving home she felt a very sharp pain in her arm so she went to the emergency room. Appellant noted that the emergency room physician informed her that she pulled a nerve. She reported that when she returned to work the following Monday, she brought in a work restriction note that limited her to work with only her left arm. The postmaster informed appellant that there was no work within her limitations and advised her to go home.

Appellant was also treated by Dr. Kevin Tu, a Board-certified orthopedic surgeon, who specializes in sports medicine. In reports dated August 19 and September 23, 2015, Dr. Tu related that on July 25, 2015 she injured her right shoulder at work when she repetitively lifted tubs of mail, causing subsequent right shoulder pain. He reviewed appellant's history and noted that a right shoulder magnetic resonance imaging (MRI) scan revealed a large full-thickness rotator cuff tear with retraction present. Dr. Tu provided examination findings diagnosed right shoulder acute-on-chronic rotator cuff tear. He explained that because appellant had failed conservative treatment, surgery was her only remaining option to help her return to work and her normal activities. On September 11, 2015 Dr. Tu submitted a request for authorization for right

³ Docket No. 16-0227 (issued April 1, 2016).

shoulder arthroscopy surgery. He provided work activity status reports dated August 19 and September 23, 2015, which noted diagnoses of shoulder/upper arm strain, cervical radiculopathy, and trapezius/rhomboid strain.

By letter dated September 18, 2015, OWCP advised appellant that, although her claim was initially accepted as a minor injury, it was reopening her claim for review of the merits because she had not returned to work. It requested that she respond to an attached questionnaire and provide medical evidence to establish that she sustained a diagnosed condition as a result of the July 25, 2015 employment incident. Appellant was afforded 30 days to submit the requested information.

Appellant filed various claims for disability compensation (Form CA-7) for wage-loss compensation for the period September 12 to October 2, 2015.

On September 25, 2015 appellant provided a detailed description of the July 25, 2015 employment incident and noted that she lifted tubs of mail weighing 70 pounds or more. She related that she experienced significant pain in her right shoulder and sought treatment in the emergency room. Appellant indicated that she was placed on limited duty, but the employing establishment was unable to accommodate her restrictions. She described the medical treatment she received and explained that her condition did not significantly improve. Appellant noted that she was referred to an orthopedic surgeon who recommended surgery.

OWCP denied appellant's claim in a decision dated October 23, 2015. It accepted that the July 25, 2015 incident occurred as alleged and that she sustained a right shoulder condition, but it denied her claim because the medical evidence of record failed to establish how her diagnosed right shoulder condition was causally related to the accepted incident. OWCP found that Dr. Tu did not sufficiently explain how the accepted July 25, 2015 incident caused or contributed to the right shoulder condition.

Appellant appealed to the Board on November 13, 2015. By decision dated April 1, 2016, the Board affirmed OWCP's October 23, 2015 decision which had denied her traumatic injury claim. The Board found that the medical evidence of record was insufficient to establish causal relationship between appellant's right shoulder condition and the accepted July 25, 2015 employment incident. The Board determined that none of the medical reports contained a rationalized medical opinion regarding the cause of her right shoulder condition.

While the case was on appeal before the Board, appellant had continued to submit additional medical reports to OWCP from Dr. Tu dated November 4 to 11, 2015. Dr. Tu indicated that he was treating her for right shoulder acute on chronic rotator cuff tear. He provided examination findings of appellant's right shoulder similar to previous examinations. In a November 11, 2015 report, Dr. Tu explained that she injured her right shoulder while at work on July 25, 2015 when she was performing lifting activities, which resulted in pain in her right shoulder. He reported that appellant's mechanism of injury was lifting tubs out of skids, which caused an acute or chronic rotator cuff tear. Dr. Tu indicated that her physical examination was consistent with a full thickness rotator cuff tear because she had weakness with overhead activity and limitations in her range of motion.

OWCP received a work restriction note dated April 13, 2016 from Dr. Khadeer K.S. Ahmed, a Board-certified internist. Dr. Ahmed indicated that appellant was under his care for right rotator cuff injury and could return to work on April 18, 2016 with restrictions.

On July 20, 2016 OWCP received appellant's July 1, 2016 request for reconsideration. Appellant explained that she was still attempting to work, although use of her right hand was restricted. She explained that she would begin to experience pain in her left arm after four to five hours because she only worked with her left hand. Appellant stated that she wanted to return to her regular, full-time work, which was why she hoped that OWCP would reconsider her claim.

Appellant provided medical reports dated June 20 and 24, 2016 from Dr. Eugene Lopez, a Board-certified orthopedic surgeon, who specializes in sports medicine. Dr. Lopez related her complaints of right shoulder pain and noted a diagnosis of complete rotator cuff tear or rupture of right shoulder. He reported that the onset of appellant's symptoms was related to a July 25, 2015 employment injury when she was lifting heavy boxes at work. Dr. Lopez noted the medical treatment appellant received. Appellant reported that her symptoms had worsened, including severe, constant right side pain, weakness, limited range of motion, and sleep disturbances. Dr. Lopez reviewed her history and diagnostic test findings. Upon examination of appellant's right shoulder, he observed moderate subacromial crepitus and tenderness, but no evidence of any masses. Dr. Lopez reported weakness on testing of the rotator cuff. Range of motion was full with pain on flexion over the head, horizontal adduction, and internal rotation. Drop Arm testing and Impingement sign were positive.

After physical examination and review of appellant's diagnostic test results, Dr. Lopez diagnosed work-related right complete rotator cuff tear, right shoulder superior glenoid labrum tear, right shoulder bursitis, right biceps rupture, and right biceps strain. He opined:

"All of the above diagnoses are work related and directly caused by aggravation that is temporary due to heavy lifting at work. To my knowledge, Ms. Ahmed did not have an injury to her right shoulder before July 25, 2015. It is with a reasonable degree of medical certainty that because of her job duties that require her to lift heavy boxes, she tore her right rotator cuff, ruptured her right biceps, and tore her superior labral which requires medical treatment."

Dr. Lopez indicated that without proper medical treatment appellant was permanently, partially disabled.

In a letter dated September 16, 2016 and received by OWCP on November 3, 2016, appellant again requested reconsideration of the April 11, 2016 decision. She asserted that her right shoulder injury occurred while she worked at the employing establishment. Appellant explained that she was experiencing financial problems due to her physician visits and reduced work hours. She requested that workers' compensation cover her surgery so that she could return to work full duty. Appellant submitted a copy of the Board's April 1, 2016 decision with handwritten notations in the margins.

Dr. Lopez continued to treat appellant. In an October 12, 2016 Form CA-17, he noted a date of injury of July 25, 2015 and clinical findings of right shoulder rotator cuff tear. Dr. Lopez indicated that appellant was able to resume work on October 12, 2016 with restrictions.

By decision dated November 21, 2016, OWCP denied modification of the April 1, 2016 merit decision. It found that the medical evidence of record was insufficient to establish that appellant's right shoulder condition was causally related to the accepted July 25, 2015 employment incident. OWCP determined that Dr. Lopez' opinion was of diminished probative value to establish causal relationship as he did not provide any medical rationale for his conclusion on causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

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.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.¹⁰

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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

⁴ *Supra* note 1.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

the employee.¹² The weight of the 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.¹³

ANALYSIS

Appellant alleged that on July 25, 2015 she sustained a right shoulder injury as a result of lifting heavy tubs filled with mail in the performance of duty. OWCP accepted that the July 25, 2015 incident occurred as alleged, but denied her claim by decision dated October 23, 2015, finding that the medical evidence of record failed to establish that her right shoulder condition was causally related to the accepted incident. The Board affirmed the October 23, 2015 denial of appellant's claim by decision dated April 1, 2016. The Board's review of the previously submitted medical evidence of record is *res judicata* and therefore need not be addressed again in this decision.¹⁴

While the case was on appeal before the Board, appellant continued to submit medical evidence to OWCP. She subsequently requested that OWCP reconsider her claim. By decision dated November 21, 2016, OWCP denied modification of its prior decision.

The Board, following review of the new medical evidence submitted following its prior decision, finds that appellant has failed to meet her burden of proof to establish that her right shoulder condition was causally related to the accepted employment incident.

The Board has held that 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 Dr. Ahmed's April 13, 2016 work restriction note was devoid of any opinion relative to the cause of appellant's right shoulder condition. It is therefore of limited probative value.

Dr. Tu examined appellant subsequently on November 11, 2015 and described the July 25, 2015 employment incident and indicated that the July 29, 2015 MRI scan report of her right shoulder revealed a large full-thickness rotator cuff tear with retraction present. He provided findings on examination and diagnosed right shoulder acute-on-chronic rotator cuff tear. Dr. Tu related that appellant injured her right shoulder at work on July 25, 2015 when she was performing lifting activities. He reported that her mechanism of injury which was lifting tubs out of skids which caused acute or chronic rotator cuff tear.

The Board finds that Dr. Tu's opinion fails to establish causal relationship because he did not provide sufficient medical rationale explaining how appellant's right shoulder rotator cuff

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ *E.L.*, Docket No. 16-0635 (issued November 7, 2016).

¹⁵ *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).

tear was caused by the accepted activity of lifting tubs of mail at work.¹⁶ Dr. Tu merely repeated the physical activity that appellant performed at work without adequate medical rationale explaining how or why that physical activity caused or contributed to appellant's diagnosed conditions.¹⁷ His report is therefore insufficient to establish appellant's traumatic injury claim.

Appellant also provided medical reports by Dr. Lopez dated June 20 and 24, 2016. Dr. Lopez related that on July 25, 2015 she sustained a right shoulder injury when she lifted heavy boxes at work. He reviewed appellant's history and diagnostic test findings. Dr. Lopez provided physical examination findings and diagnosed work-related right complete rotator cuff tear, right shoulder superior glenoid labrum tear, right shoulder bursitis, right biceps rupture, and right biceps strain. He opined that appellant's diagnosed conditions were "directly caused by aggravation that is temporary due to heavy lifting at work." Dr. Lopez noted that she did not have an injury to her right shoulder before the July 25, 2015 incident. Although his reports contain an accurate description of the July 25, 2015 employment incident and an affirmative statement of causation, they do not contain a sufficient explanation, based on medical rationale, of how lifting tubs filled with mail on July 25, 2015 would have physiologically caused or contributed to her right shoulder conditions.¹⁸ Instead, Dr. Lopez attributes appellant's medical conditions to her employment based on the fact that she did not have a right shoulder injury before July 25, 2015. The Board has held, however, that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without additional medical rationale, to establish causal relationship.¹⁹ Therefore, Dr. Lopez' opinion is insufficient to meet appellant's burden of proof.

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.²⁰ Because appellant has not provided such probative medical evidence in this case, the Board finds that she did not meet her burden of proof to establish her claim.

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 condition causally related to the accepted July 25, 2015 employment incident.

¹⁶ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale. *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁷ *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁸ *See M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹⁹ *Michael S. Mina*, 57 ECAB 379 (2006).

²⁰ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2017
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board