

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

T.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Macedon, NY, Employer**

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**Docket No. 17-0649
Issued: June 16, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 1, 2017 appellant, through counsel, filed a timely appeal from a December 21, 2016 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 the claim.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed left shoulder rotator cuff tear is causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 5, 2015 appellant, then a 42-year-old rural carrier, filed an occupational disease claim (Form CA-2) for left shoulder rotator cuff tear which she attributed to lifting and pulling trays and picking up packages with her left arm continuously throughout the workday. She indicated that she first became aware of her condition on October 1, 2014, but it was not until February 2, 2015 that she first realized her left shoulder condition was employment related. In an attached statement, appellant described her job duties as continuous use of her left arm to lift and pull mail and trays and to pick up packages.

In a January 26, 2015 report, Dr. James B. Mark, an orthopedic surgeon, noted that appellant worked as “a mail lady.” He further noted that she reported significant discomfort and loss of range of motion in her left shoulder since October 2014. Dr. Mark diagnosed bursae and tendon disorders of the shoulder region. He recommended a magnetic resonance imaging (MRI) scan.

A January 28, 2015 left shoulder MRI scan revealed a left shoulder rotator cuff tear.

In a February 2, 2015 report, Dr. Mark diagnosed bursae and tendon disorders shoulder region unspecified, pain joint shoulder region, and ruptured rotator cuff complete. He reported that appellant worked as a postal worker with repetition. Based on her job description, Dr. Mark noted that it appeared that the rotator cuff tear was consistent with that type of work. He explained that, without a history of any specific injury at work or at home, appellant had developed a chronic full-thickness left shoulder rotator cuff tear based on her job. Dr. Mark opined that she was temporarily disabled from using her left upper extremity and requested authorization for left shoulder arthroscopy with rotator cuff repair and physical therapy following surgery.

In a February 19, 2015 attending physician’s report (Form CA-20), Dr. Mark diagnosed bursae and tendon disorder, painful joint shoulder, and complete ruptured rotator cuff. He opined that the rotator cuff tear was employment related as it was consistent with appellant’s work. Dr. Mark indicated that surgery was needed.

In a March 2, 2015 report, Dr. Mark indicated that appellant was waiting for workers’ compensation to approve her left shoulder rotator cuff surgery and that she continued to have pain and weakness due to the full-thickness supraspinatus tear.

In a March 30, 2015 report, Dr. Mark diagnosed a complete ruptured rotator cuff, for which arthroscopic surgery was recommended. He checked a box marked “yes” on a form report that “the incident that [appellant] described [was] the competent medical cause of this injury/illness.”

In an April 13, 2015 report, Dr. Mark diagnosed sprains and strains rotator cuff (capsule) and ruptured rotator cuff complete, for which surgery was needed. He indicated that appellant's condition had worsened and that the delay of treatment created a situation where a good surgical repair might not be possible. Dr. Mark again checked a box marked "yes" on a form report that "the incident that [appellant] described [was] the competent medical cause of this injury/illness."

In an April 22, 2015 claim development letter, OWCP advised appellant of the deficiencies in her claim. It requested that she submit additional factual and medical evidence, including a physician's opinion supported by a medical explanation as to whether and how her work-related exposure resulted in or contributed to the specific diagnosed conditions. OWCP afforded appellant 30 days to submit the requested factual and medical information.

OWCP subsequently received a May 7, 2015 statement from appellant, indicating that she has had no previous problems with her shoulder. Appellant related that her shoulder problem was caused by continuously casing and pulling mail, loading truck with trays of mail and parcels, and picking up and pulling mail out of trays. She further indicated that the trays of mail were to the left of her in the truck. Appellant also indicated that she worked two to five days a week and her route sometimes varied.

OWCP received an April 27, 2015 report from Dr. Mark, who diagnosed bursae and tendon disorders shoulder region unspecified, ruptured rotator cuff complete, and sprains and strains rotator cuff (capsule). Dr. Mark requested authorization for left shoulder arthroscopy, with subacromial decompression, acromioplasty, and repair as well as postoperative physical therapy. He again opined by checking a box marked "yes" on a form report that the incident appellant described was the competent medical cause of the injury/illness.

In a May 6, 2015 report, Dr. Mark diagnosed ruptured rotator cuff complete and shoulder region affections not elsewhere classified. He again simply used a checkmark to indicate on a form report that "the incident that [appellant] described [was] the competent medical cause of this injury/illness." Dr. Mark reported that appellant clearly had a job which involved significant repetition. He noted that she had long-standing complaints and problems with her left shoulder with increasing problems in October 2014. Since October 2014, appellant has had increasing pain and difficulties with performing her duties. Dr. Mark indicated that the MRI scan showed full-thickness tear of the rotator cuff and based on progressive clinical examination, it was likely that the rotator cuff tear had progressed. He concluded that it was clear that this was a work-related injury based on appellant's type of work.

By decision dated June 4, 2015, OWCP denied the claim as the medical evidence of record did not demonstrate that the diagnosed left shoulder conditions were causally related to the accepted work duties.

Counsel timely requested a hearing with OWCP's Branch of Hearings and Review, which was held on February 18, 2016.

In a June 1, 2015 report, Dr. Mark diagnosed sprains and strains rotator cuff (capsule), ruptured rotator cuff complete and shoulder region affections. He recommended a left shoulder arthroscopic procedure to repair appellant's rotator cuff, as well as physical therapy following

surgery. Dr. Mark again used a checkmark on a form report to show that “the incident was the competent medical cause of this injury/illness.”

On June 11, 2015 Dr. Mark performed left shoulder surgery. This included diagnostic arthroscopy, debridement of superior labrum, subacromial decompression, and acromioplasty and debridement of stable undersurface rotator cuff tear. Postoperative diagnoses included small partial, stable, articular surface rotator cuff tear, significant impingement syndrome, and frayed superior labrum, stable.

By decision dated May 3, 2016, the hearing representative affirmed OWCP’s June 4, 2015 decision. She found that appellant had not established that the diagnosed left shoulder conditions were causally related to the accepted work duties.

On July 26, 2016 counsel requested reconsideration.

In an April 13, 2016 report, Dr. Mark indicated that appellant had completely recovered from the June 11, 2015 subacromial decompression acromioplasty and that she could return to work as a mail carrier. He noted that, as a mail carrier, she drove a small mail truck with the steering on the right side and continually reached back with her left arm for gathering large bundles of mail for distribution, which was a repetitious-type activity. Based on appellant’s description of her job, Dr. Mark opined that “one could conclude that [appellant’s] repetitious job could have been a factor in terms of creating impingement syndrome. Certainly, impingement syndrome is seen with repetition of the upper extremity.”

In a December 21, 2016 decision, OWCP denied modification of the May 3, 2016 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

³ 20 C.F.R. § 10.115(e) (f) (2014); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁴

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.⁵ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.⁶ A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.⁷

ANALYSIS

Appellant alleged that her left shoulder rotator cuff tear was due to her work duties of lifting and pulling trays in a continuous manner. OWCP accepted the work activities she claimed and that there was a diagnosis in connection with the claimed work activities. However, it denied appellant’s claim finding the medical evidence of record was insufficient to establish that her diagnosed left rotator cuff tear was causally related to the accepted factors of her federal employment.

As noted, causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁸ The mere fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.⁹ Temporal relationship alone will not suffice.¹⁰ Furthermore, appellant’s personal belief that her employment activities either caused or contributed to her condition is insufficient, by itself, to establish causal relationship.¹¹ The Board finds that appellant failed to provide sufficiently rationalized medical opinion evidence which established that her diagnosed left rotator cuff tear was causally related to the accepted work activities.

In his January 26, 2015 report, Dr. Mark noted that appellant reported significant discomfort and loss of range of motion in her left shoulder since October 2014. While he provided an assessment of bursae and tendon disorders shoulder region unspecific, he offered no opinion on the causal relationship of her diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on

⁴ *Victor J. Woodhams, id.*

⁵ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

⁶ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

⁸ *Robert G. Morris, supra* note 3.

⁹ 20 C.F.R. § 10.115(e).

¹⁰ *See D.I.*, 59 ECAB 158, 162 (2007).

¹¹ *Supra* note 9; *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

the issue of causal relationship.¹² Thus, this evidence is insufficient to meet appellant's burden of proof.

In his February 2, 2015 report, Dr. Mark provided an assessment of bursae and tendon disorders shoulder region unspecified, pain joint shoulder region, and ruptured rotator cuff complete. He noted that appellant worked as a postal worker with repetition and based on her job description, he found that it "appeared" that the findings of the rotator cuff tear were consistent with that type of work. Dr. Mark, however, failed to identify the factors of appellant's job or provide a rationalized opinion explaining the mechanism of how the repetitive factors of her federal employment caused or aggravated the diagnosed condition.¹³ He believed that, because there was no history of any specific injury at work or at home, the development of a chronic full-thickness left shoulder rotator cuff tear was based on her work duties. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed condition.¹⁴ Therefore, this report is insufficient to meet her burden of proof.

In his May 6, 2015 report, Dr. Mark noted that appellant had a job which involved significant repetition. He indicated that, since October 2014, she had increasing pain and difficulties performing her duties. Dr. Mark indicated that the MRI scan reflected a full-thickness tear of the rotator cuff and, based on progressive clinical examination, it was likely that the rotator cuff tear had progressed. He concluded that it was clear that this was a work-related injury based on appellant's type of work. However, Dr. Mark failed to provide a well-reasoned medical explanation with supporting objective findings as to how her repetitive work caused or aggravated the diagnosed conditions.¹⁵ He failed to indicate what appellant specifically did in her occupation and the duration of such duties. Dr. Mark also did not explain whether or how the duties caused or aggravated the diagnosed left shoulder conditions. Therefore, this report is insufficient to meet appellant's burden of proof.

In his April 13, 2016 report, Dr. Mark noted that, as a mail carrier, appellant drove a small mail truck with the steering on the right side. He indicated that she continually reached back with her left arm for gathering large bundles of mail for distribution and that this was a repetitious type activity. Based on appellant's description of her job, Dr. Mark opined that "one could conclude that [appellant's] repetitious job could have been a factor in terms of creating impingement syndrome. Certainly, impingement syndrome is seen with repetition of the upper extremity." While he provides some support for causal relationship, the Board finds that his report is speculative as he qualified his support when he opined that the repetitive job "could have" been a factor in causing the diagnosed condition.¹⁶ Furthermore, Dr. Mark provided no

¹² *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006).

¹³ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁴ *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁵ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁶ *D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

medical reasoning to support his opinion on causal relationship.¹⁷ He fails to provide how the nature and duration of these duties caused or aggravated appellant's left shoulder conditions. Therefore, this report is insufficient to meet her burden of proof.

In his March 30, April 13 and 27, May 6, and June 1, 2015 reports, Dr. Mark opined by checking a box marked "yes" on a form report that "the incident that [appellant] described [was] the competent medical cause of this injury/illness." However, these reports are of limited probative value as he fails to specifically address how appellant's left shoulder conditions were caused or aggravated by her work duties.¹⁸

The MRI scan report is diagnostic testing which is insufficient to establish appellant's claim as the physician failed to provide an opinion on the cause of her diagnosed conditions.¹⁹

Accordingly, the medical evidence contained in this case record is without a well-rationalized medical opinion establishing that the diagnosed left shoulder condition was causally related to the accepted employment duties.

On appeal, counsel contends that OWCP's wrongly increased appellant's burden of proof. He asserts that she provided good evidence of causal relationship. As noted above, however, the medical evidence is lacking rationalized support for causal relationship.

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 did not meet her burden of proof to establish that her diagnosed left shoulder rotator cuff tear is causally related to her accepted employment exposure.

¹⁷ See *D.G.*, Docket No. 15-0948 (issued February 10, 2016).

¹⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁹ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the December 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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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