

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

D.P., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Grand Rapids, MI, Employer**

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**Docket No. 17-0148
Issued: May 18, 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

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 31, 2016 appellant, through counsel, filed a timely appeal from a September 29, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to factors of her federal employment.

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 contends the decision is contrary to fact and law.

FACTUAL HISTORY

On March 1, 2016 appellant, then a 63-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that on December 30, 2015 she first realized that her right shoulder condition was due to prolonged repetitive use in the course of her federal employment. She did not stop work.

In a December 30, 2015 report, Dr. Joseph Yacisen, a treating Board-certified orthopedic surgeon, noted that appellant was seen for right shoulder pain complaints, which she related had been occurring for the past four to six years. Appellant attributed her condition to her employment as a rural carrier. A physical examination of appellant's right shoulder revealed positive O'Brien's test, 180 degrees forward flexion, and intact internal and external rotation. Dr. Yacisen reviewed an x-ray which showed a type 2 acromion with a 10-millimeter spur. He diagnosed right shoulder pain, suspected labral tear, shoulder impingement, and lipoma.

A January 12, 2016 right shoulder magnetic resonance imaging (MRI) scan was interpreted as showing a large supraspinatus tendon tear and a superior labrum at the biceps insertion (SLAP) tear.

Dr. Yacisen, in a February 18, 2016 report, noted appellant's complaints and provided a history of appellant's condition and examination findings. The physical examination of the right shoulder showed positive O'Brien's test, 160 degrees forward flexion, 5+/5 internal and external rotation strength, and positive impingement signs. Dr. Yacisen related that review of appellant's MRI scan showed subchondral cyst at the supraspinatus insertion, complete supraspinatus tendon tear, and SLAP tear. He diagnosed rotator cuff tear and SLAP tear of the right shoulder.

In a March 23, 2016 report, Dr. Yacisen reiterated appellant's history of injury and examination findings. A physical examination performed that day revealed 150 degrees right shoulder forward flexion, positive drop arm test, positive Obrien's test, and 5+/5 internal and external rotation strength. Diagnoses included SLAP tear, shoulder pain, and rotator cuff tear of the right shoulder.

In a letter dated April 15, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her regarding the medical and factual evidence required to establish her claim. Appellant was afforded 30 days to provide the requested information.

On May 13, 2016 Dr. Yacisen reported the dates on which appellant was evaluated for complaints of right shoulder pain. He related that there was no known injury mechanism for the last four to five years. Dr. Yacisen related that appellant's positive O'Brien's test was indicative of a shoulder labral tear, x-ray interpretations revealed a 10-millimeter subacromial spur and two acromion, and her MRI scan showed a SLAP tear, supraspinatus tendon tear with retraction, and subchondral cyst at the supraspinatus insertion. He explained that the positive impingement sign was indicative of subacromial impingement and the drop arm test was indicative of a supraspinatus tear. Dr. Yacisen recommended surgery and released appellant to regular-duty

work. He observed that work could have contributed to the diagnosed conditions if the work duties required carrying heavy loads with her hands, carrying or lifting heavy loads above or on the shoulders, working at intervals of more than 15 minutes at a time with arms raised above the shoulders, pulling or pushing heavy loads, and repetitive wrist or arm movements with force for long periods of time.

By decision dated May 26, 2016, OWCP denied appellant's claim. It found the medical evidence of record was insufficient to establish a causal relationship between the diagnosed right shoulder supraspinatus tear and SLAP tear.

On July 6, 2016 OWCP received appellant's request for reconsideration. In support of her request, appellant submitted a June 29, 2016 letter from Dr. Yacisen. Dr. Yacisen opined that in his expert opinion appellant's right shoulder conditions were "likely directly related and/or caused" by the repetitive movements, overhead work, and repeated heavy lifting for over 23 years.

By letter dated August 18, 2016, OWCP informed appellant that additional evidence was required to establish a causal relationship between her work factors and the diagnosed right shoulder conditions. It noted that she had been copied on a letter it had sent to Dr. Yacisen regarding further development. OWCP advised appellant that it was her responsibility to ensure the additional evidence from Dr. Yacisen was received within the time frame allocated in the letter.

In a letter to Dr. Yacisen, dated August 18, 2016, OWCP provided a statement of accepted facts and accepted definitions sheet for review. It requested Dr. Yacisen explain how appellant's work exposure caused or aggravated the diagnosed conditions and requested a response be submitted within 30 days from the date of the letter. No response was received.

By decision dated September 29, 2016, OWCP denied modification. It found that Dr. Yacisen had failed to provide a firm and rationalized opinion supported by objective findings to establish that the factors of appellant's employment caused or contributed to her right shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 and/or specific condition for which compensation is claimed are causally related to the

³ 5 U.S.C. § 8101 *et seq.*

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

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁸ 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 the employee.⁹

ANALYSIS

Appellant attributed her right shoulder condition to prolonged repetitive use. The Board finds that appellant failed to submit sufficient medical evidence to establish a right shoulder condition causally related to accepted factors of her employment as a rural carrier. For this reason, appellant did not discharge her burden of proof.

In support of her claim, appellant submitted reports from Dr. Yacisen covering the period December 30, 2015 to June 29, 2016. Dr. Yacisen diagnosed right shoulder pain and suspected labral tear, lipoma, and shoulder impingement in a December 30, 2015 report. In reports dated February 18 and March 23, 2016, he diagnosed rotator cuff tear, shoulder pain and SLAP tear. None of these reports by Dr. Yacisen contain any opinion regarding the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer any opinion regarding

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁸ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

In a May 13, 2016 report, Dr. Yacisen diagnosed labral tear, SLAP tear, supraspinatus tendon tear with retraction, chondral cyst at the supraspinatus insertion, 10-millimeter subacromial spur, and two acromion. He opined that the diagnosed conditions could be due to her work if it involved carrying heavy loads, lifting or carrying heavy loads above or on her shoulders, working at intervals of 15 minutes with her arms raised above her shoulder, repetitive wrist or arm movements with force for extended periods of time, and pulling or pushing heavy loads. Similarly, in a June 29, 2016 letter, Dr. Yacisen explained that appellant's overhead work, repetitive movements, and repeated heavy lifting for the past 23 years were the likely cause of appellant's right shoulder conditions. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.¹¹ Furthermore, a mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed condition is insufficient to meet appellant's burden of proof.¹² Dr. Yacisen's opinion is of limited probative value as it does not contain any medical rationale explaining how appellant's job duties physiologically caused the diagnosed shoulder conditions.¹³

OWCP attempted to assist appellant in obtaining a rationalized medical opinion from Dr. Yacisen. On August 18, 2016 it provided a statement of accepted facts and accepted definitions for his use in explaining how appellant's work duties caused or contributed to her diagnosed condition. However Dr. Yacisen did not respond. As such his existing reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion regarding causal relationship.

The remaining evidence submitted by appellant is insufficient to establish causal relationship. The diagnostic test results of record fail to provide an opinion addressing the causal relationship of appellant's condition.¹⁴

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds the attorney's arguments are not substantiated.

¹⁰ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹¹ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

¹² See *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹³ *S.H.*, Docket No. 16-1227 (issued February 9, 2017).

¹⁴ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

CONCLUSION

The Board finds appellant has not met her burden of proof to establish a right shoulder condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2016 is affirmed.

Issued: May 18, 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