

ISSUE

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

FACTUAL HISTORY

On January 25, 2016 appellant, then a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury caused or aggravated by repetitive motion at work. She became aware of her condition and realized its relationship to her employment on December 21, 2015.

In a January 26, 2016 letter, appellant contended that since December 2011 she felt dull pain in her right shoulder. She related that aspirin and rest made her condition bearable. Appellant claimed that she had right shoulder pain all day on December 21, 2015. She related that her pain worsened after completing her job duties. After arriving at home that evening, appellant's pain was so excruciating that she went to an emergency room. She asserted that the motion required in her work caused her pain to worsen and to become chronic. Appellant further asserted that this motion also caused bursitis in her right rotator cuff.

Appellant submitted a December 26, 2015 letter from Jesse A. Larbey, a physician assistant. Mr. Larbey noted that appellant was seen on that day and requested that she be excused through December 31, 2015. Appellant also submitted a December 28, 2015 work/school excuse with an illegible signature. The excuse note indicated that appellant may return to work on December 28, 2015 and should perform light duties until December 29, 2015. In a December 30, 2015 letter, R. David Hunziger, a nurse practitioner, noted that appellant was seen on that day and requested that she be excused from work through January 8, 2016. On December 31, 2015 he advised her that a radiologist identified calcification in the area of the deltoid bursa and deltoid muscle. Mr. Hunziger related that this was not likely from an acute injury. He recommended follow-up with her physicians. OWCP also received an unsigned record indicating that appellant underwent therapy.

In a January 7, 2016 letter, Dr. Kurt Bravata, an attending Board-certified family practitioner, noted that appellant was seen on that day for right shoulder pain. He requested that she be excused from work from January 9 to 14, 2016. In a January 14, 2016 letter, Dr. Bravata released appellant to return to full-duty work with no restrictions. An unsigned report dated January 14, 2016 from Parkview Orthopedic Clinic indicated that appellant was seen on January 12, 2016.

By letter dated March 14, 2016, OWCP informed appellant of the deficiencies of her claim and requested that she submit additional medical evidence and respond to its inquiries within 30 days.

In a March 31, 2016 letter, appellant attributed her damaged rotator cuff to repetitive motion at work. She cased mail which involved reaching upward to put pieces of mail into designated slots over many hours. Appellant sorted and delivered mail which required a lot of reaching, twisting, bending, and stretching. She reiterated the history of her claimed right

shoulder injury and treatment on December 21, 2015. Appellant noted her continuing right shoulder symptoms.

Appellant submitted a March 30, 2016 report from Dr. Bravata in which he advised that appellant first complained of right shoulder pain during a visit with Mr. Hunziger on December 30, 2015. Dr. Bravata indicated that he saw her on January 7, 2016 for the same issue. He had referred appellant to Dr. Juris P. Simanis, a family practitioner, who saw her on January 12, 2016 and diagnosed predominant right shoulder rotator cuff calcific tendinopathy, bilateral subacromial impingement, and bilateral scapular dysfunction with secondary bilateral shoulder bursitis and right proximal biceps tendinopathy. Dr. Bravata maintained that this diagnosis was typically seen with chronic repetitive overuse of an extremity and, hence, advised that it could easily be work related.

By decision dated May 9, 2016, OWCP denied appellant's occupational disease claim. It found that the medical evidence did not contain a physician's rationalized opinion, supported by a medical explanation, as to how the established employment factors caused, contributed to, or aggravated her right shoulder condition.

In a letter dated June 6, 2016 and received on June 10, 2016, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

Appellant submitted the January 12, 2016 clinic progress note from Dr. Simanis. Dr. Simanis noted a history of appellant having right shoulder pain for five years. He reviewed medical records and reported findings on physical examination. Dr. Simanis advised that appellant's complaint, physical examination, and radiological tests were most consistent with a diagnosis of predominant right shoulder rotator cuff calcific tendinopathy, bilateral subacromial impingement, and bilateral scapular dysfunction with secondary bilateral shoulder bursitis and right proximal biceps tendinopathy.

Appellant also submitted a January 30, 2017 report from Dr. Bravata. Dr. Bravata noted a history of appellant's right shoulder injury and noted that appellant had described her work duties, which included being on a workroom floor three to four hours while preparing her daily route. Appellant also noted casing mail and sorting mail overhead, which included bending, stretching, reaching, and lifting. She was required to reach to the side or below her waist for three to four hours and to perform these same movements while delivering mail for the same amount of hours. Appellant had one of the longest routes which she delivered to about 1,000 addresses and had performed these job duties for 15 years. She experienced pain and sore arms and muscles for five years. Dr. Bravata reiterated Dr. Simanis' diagnoses of predominant right shoulder rotator cuff calcific tendinopathy, bilateral subacromial impingement, and bilateral scapular dysfunction with secondary bilateral shoulder bursitis and right proximal biceps tendinopathy. He opined that it seemed likely that appellant's symptoms were the result of a work-related injury through repetitive movement and recurrent physical strain demanded by her job requirements.

By decision dated March 20, 2017, an OWCP hearing representative affirmed the May 9, 2016 decision. He found that Dr. Bravata's January 30, 2017 opinion was speculative and insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 employment injury.³ 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.⁴

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) a 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.⁵

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.⁶

ANALYSIS

OWCP accepted as factual that appellant performed repetitive work duties of a rural carrier, which involved casing, sorting, and delivering mail. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a right shoulder injury caused or aggravated by the accepted work factors.

Dr. Bravata, in a March 30, 2016 report, Dr. Simanis' diagnoses of predominant right shoulder rotator cuff calcific tendinopathy, bilateral subacromial impingement, and bilateral scapular dysfunction with secondary bilateral shoulder bursitis and right proximal biceps tendinopathy. He advised that, these diagnoses were typically seen with chronic repetitive overuse of an extremity and, therefore, concluded that they could easily be work related. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Id.*

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4.

terms of a reasonable degree of medical certainty.⁷ The Board finds that Dr. Bravata's opinion on causal relationship is speculative in nature and thus, is not entitled to probative value. Moreover, Dr. Bravata's report is entitled to little probative value as he did not provide a probative, rationalized opinion regarding whether the accepted work factors caused a personal injury.⁸ He did not sufficiently explain how appellant could have sustained the diagnosed conditions due to casing, sorting, and delivering mail at work. For these reasons, the Board finds that Dr. Bravata's report is insufficient to establish causal relationship.

Likewise, Dr. Bravata's January 30, 2017 report is insufficient to establish causal relationship. He noted appellant's description of her accepted work factors and restated Dr. Simanis' condition of bilateral shoulder and right biceps and opined that it "seemed likely" that appellant's symptoms were the result of repetitive movement and recurrent physical strain demanded by her job requirements. Again, his opinion on causal relationship was expressed as speculative in nature, and therefore cannot establish causal relationship.⁹ In addition, Dr. Bravata again failed to adequately explain how the established employment factors caused or contributed to the diagnosed conditions.¹⁰ The Board finds that Dr. Bravata failed to provide a clear and unequivocal opinion as to the cause of appellant's diagnosed conditions. His remaining reports addressed appellant's work capacity, but failed to provide a firm diagnosis of a particular medical condition,¹¹ note a history of injury,¹² or offer a specific opinion as to whether the established employment factors caused or aggravated appellant's conditions and resultant disability.¹³

Dr. Simanis, in a January 12, 2016 clinic progress note, reviewed medical records and diagnostic test results. He examined appellant and as previously noted, diagnosed predominant right shoulder rotator cuff calcific tendinopathy, bilateral subacromial impingement, and bilateral scapular dysfunction with secondary bilateral shoulder bursitis and right proximal biceps tendinopathy. However, Dr. Simanis did not offer a medical opinion addressing whether the

⁷ See *T.H.*, Docket No. 15-311 (issued June 2, 2015) (physician's opinion that employee's injury was most likely attributable to work factors was considered speculative and insufficient to establish claim); *Ricky E. Storms*, 52 ECAB 349 (2001) (medical opinions which are speculative or equivocal in character have little probative value).

⁸ See *R.C.*, Docket No. 15-315 (issued May 4, 2015); *Cecilia M. Corley*, 56 ECAB 662 (2005) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ *Supra* note 6.

¹⁰ *Supra* note 7.

¹¹ See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

¹² *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

¹³ *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) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

diagnosed conditions were causally related to the established work factors.¹⁴ As well the Board finds that Dr. Simanis' progress note is insufficient to meet appellant's burden of proof.

The reports signed by a nurse practitioner and a physician assistant have no probative value as a nurse practitioner and physician assistant are not considered physicians under FECA.¹⁵ Additionally, the December 28, 2015 work/school excuse and a therapy report, which contained illegible signatures, and an unsigned report dated January 14, 2016 from Parkview Orthopedic Clinic are of no probative medical value. The Board has held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.¹⁶

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.¹⁷ The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right shoulder condition was caused or aggravated by the established employment factors. Appellant, therefore, did not meet her burden of proof.

On appeal, counsel generally contends that the clear and unambiguous meaning of a medical report of record shows causal relationship. He asserts that this report is not speculative or equivocal. As discussed above, however, Dr. Bravata's reports failed to provide an unequivocal and rationalized medical opinion explaining how the established employment factors caused or contributed to appellant's diagnosed bilateral shoulder and biceps conditions. Thus, the Board finds that this evidence fails to establish 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 has failed to meet her burden of proof to establish a right shoulder injury causally related to factors of her federal employment.

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8101(2); *D.C.*, Docket No. 16-1457 (issued May 18, 2017) (nurse practitioner); *Allen C. Hundley*, 53 ECAB 551 (2002) (physician assistant).

¹⁶ *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

¹⁷ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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