

ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to the accepted June 1, 2015 employment incident.

FACTUAL HISTORY

On January 6, 2016 appellant, a 45-year-old rural carrier, filed a claim for recurrence (Form CA-2a) beginning June 1, 2015. She stopped work on June 17, 2015. Appellant claimed to have reinjured her right shoulder on June 1, 2015 while driving a postal service vehicle and opening mailboxes to deliver mail. She claimed her condition was causally related to her May 29, 2014 right shoulder traumatic injury claim (OWCP File No. xxxxxx756), which OWCP previously accepted for right shoulder sprain and superior labral tear from anterior to posterior (SLAP) lesion. Appellant had undergone OWCP-approved right shoulder surgery in July 2014 and resumed her full-time, regular duties in November 2014.

In a June 17, 2015 report Dr. Robert Morgan, a Board-certified orthopedic surgeon, diagnosed recurrent shoulder pain subsequent to a June 1, 2015 injury while reaching with weight in her hand at work. He reported that appellant had a previous right shoulder rotator cuff repair on July 3, 2014 and expressed his concerns for a re-tear of the rotator cuff.

On January 14, 2016 OWCP developed the claim as a new traumatic injury (OWCP File No. xxxxxx736), rather than a recurrence of her May 29, 2014 employment injury.⁴

In a January 21, 2016 claim development letter, OWCP advised appellant of the deficiencies of her claim, both factual and medical, and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a July 14, 2015 right shoulder magnetic resonance imaging (MRI) scan, which demonstrated post-surgical changes following rotator cuff repair without evidence of a recurrent rotator cuff tear.

On November 30, 2015 Dr. Morgan reported that appellant was 18-months status-post right rotator cuff repair and continued to have pain on the lateral aspect of the acromion, which was worsened with overhead movements. He recommended a right shoulder diagnostic arthroscopy with revision rotator cuff repair, if indicated. Dr. Morgan provided the following work restrictions: no overhead lifting greater than 15 pounds, no waist to shoulder lifting greater than 20 pounds, and no restrictions regarding floor to waist lifting with the right upper extremity.

By decision dated February 25, 2016, OWCP denied the claim because she failed to establish the factual component of fact of injury.

⁴ Under OWCP File No. xx-xxxx756, OWCP issued an August 31, 2015 decision denying wage-loss compensation beginning June 17, 2015 (recurrence) and determined that appellant had sustained a new work injury on June 1, 2015. The new traumatic injury claim was opened under OWCP File No. xxxxxx736.

On May 5, 2016 counsel requested reconsideration and requested that OWCP double the claim with OWCP File No. xxxxxx756. Appellant further submitted an August 8, 2015 narrative statement reiterating her claim and a February 18, 2016 operative report indicating that Dr. Morgan had diagnosed right shoulder rotator cuff recurrent tear and performed a revision arthroscopic right shoulder rotator cuff repair that day.

OWCP subsequently doubled the case files and reviewed the medical evidence. In particular, it indicated that it had reviewed a July 14, 2015 MRI scan of the right shoulder and reports dated July 17, August 31, and November 30, 2015 from Dr. Morgan. In his July 17, 2015 report, Dr. Morgan noted that appellant was one year status-post right shoulder rotator cuff repair and that she may have reinjured her right shoulder on June 1, 2015 due to reaching with weight in her hand at work. He found, however, that the right shoulder MRI scan showed no recurrent rotator cuff tear. On August 31, 2015 Dr. Morgan opined that appellant had reached maximum medical improvement (MMI) and was capable of returning to work without restrictions.

By decision dated July 8, 2016, OWCP modified its February 25, 2016 decision and accepted that appellant established both the factual and medical components of fact of injury. However, the medical evidence of record did not establish that the diagnosed right shoulder condition was causally related to the accepted June 1, 2015 employment incident. Consequently, OWCP modified the February 26, 2016 decision to reflect that appellant had established fact of injury, but did not establish causal relationship.⁵

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ 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.⁷

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a

⁵ On July 13, 2016 counsel requested an oral hearing with respect to OWCP’s July 8, 2016 decision. By decision dated August 8, 2016, OWCP’s hearing representative denied appellant’s request pursuant to 5 U.S.C. § 8125(b)(1) noting that she had previously requested reconsideration pursuant to 5 U.S.C. § 8128, and in response OWCP issued its July 8, 2016 decision. Consequently, appellant was not entitled to a hearing. The hearing representative also denied a discretionary hearing noting that appellant could instead file another request for reconsideration. As noted in the Board’s *Order Denying Request for Oral Argument* (issued March 2, 2017) counsel did not appeal the August 8, 2016 nonmerit decision, and therefore, the Board has not exercised jurisdiction over this particular decision. See 20 C.F.R. § 501.3(a).

⁶ See *supra* note 2.

⁷ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

personal injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹⁰

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹² 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 factor(s).¹³

ANALYSIS

OWCP accepted that the June 1, 2015 employment incident occurred as alleged and that a medical diagnosis was established. However, OWCP denied her traumatic injury claim because the medical evidence of record was insufficient to establish causal relationship. The Board finds that appellant failed to meet her burden of proof to establish that her claimed right shoulder condition was causally related to the June 1, 2015 employment incident.

In his reports, Dr. Morgan diagnosed recurrent shoulder pain subsequent to a June 1, 2015 injury while reaching with weight in her hand at work. He found, however, that a July 14, 2015 MRI scan of the right shoulder showed no recurrent rotator cuff tear. On August 31, 2015 Dr. Morgan opined that appellant had reached MMI and was capable of returning to work without restrictions. On November 30, 2015 he reported that appellant was 18-months status post right rotator cuff repair and continued to have pain on the lateral aspect of the acromion, which was worsened with overhead movements. Dr. Morgan subsequently diagnosed right shoulder rotator cuff recurrent tear and performed a revision arthroscopic right shoulder rotator cuff repair on February 18, 2016.

The Board finds that Dr. Morgan failed to provide sufficient medical rationale explaining how reaching with weight in her hand at work on June 1, 2015 caused or aggravated appellant's right shoulder condition. Dr. Morgan noted that appellant's condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed condition.¹⁴ His opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *See Robert G. Morris*, 48 ECAB 238 (1996).

¹² *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

¹⁴ *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁵ Dr. Morgan did not otherwise sufficiently explain how the June 1, 2015 employment incident caused or contributed to the diagnosed condition or revision surgery. Thus, the Board finds that the reports from Dr. Morgan are insufficient to establish that appellant sustained an employment-related injury.

Other medical evidence of record, including diagnostic test reports, is of limited probative value as it does not specifically address whether appellant's diagnosed conditions are causally related to the June 1, 2015 work incident.¹⁶

The Board finds that appellant failed to submit sufficient rationalized medical evidence to support her allegation of an injury to the right shoulder causally related to the accepted June 1, 2015 employment incident.

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 that she sustained a right shoulder condition causally related to a June 1, 2015 employment incident.

¹⁵ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁶ 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).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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