

FACTUAL HISTORY

On July 1, 2015 appellant, then a 53-year-old mail carrier, filed an occupational disease claim, (Form CA-2) alleging that she sustained an aggravated left shoulder labrum tear and painful callus-like growth at the base of the left thumb. She noted that at work she was required to lift her arm while casing mail, pick up and move mail of various heights and weights, as well as push and pull hampers and carts loaded with mail. These activities stressed appellant's left upper extremity. In an accompanying statement, she explained that she started having symptoms in her left shoulder beginning in 2006. Appellant stated that she first noted symptoms in her left hand in 2006 which developed over the years and were now interfering with her ability to grip or hold firmly without pain. She noted that she had undergone surgery on February 28, 2008 for a nearly complete tear of the right shoulder's rotator cuff, but that the positive effects of the surgery was reversed when she underwent rehabilitation therapy. Appellant noted that she used her left arm and hand to compensate for her right extremity.

In support of her claim, appellant submitted an April 19, 2007 report wherein Dr. Joseph M. Page, a Board-certified orthopedic surgeon, diagnosed a right rotator cuff tear involving supraspinatus and infraspinatus tendons with retraction. Dr. Page also noted that appellant had some weakness of her left deltoid muscle secondary to pain and diminished range of her shoulder and a positive Tinel's sign in both wrists consistent with carpal tunnel syndrome. He noted tenderness of her lower lumbar spine and some clicking in her left knee. Dr. Page indicated that appellant believed that her conditions were employment related. He opined that it was certainly possible that appellant developed a right rotator cuff tear by attrition of impinging the humeral against the acromion while lifting heavy packs of mail over an eight-year period of time with her dominant arm.

By letter dated July 9, 2015, OWCP informed appellant that further medical information was needed to support her claim, and afforded appellant 30 days to submit this information.

In a July 24, 2015 progress report, Dr. Clint Soppe, a Board-certified orthopedic surgeon, diagnosed left shoulder rotator cuff tear, and recommended a magnetic resonance imaging (MRI) scan.

In a July 28, 2015 MRI scan report of the left shoulder, Dr. Omid J. Jafari, a Board-certified radiologist, found moderate tendinosis of the supraspinatus and infraspinatus tendon, chronic articular surface tear of the subscapularis tendon and associated medial subluxation of the biceps tendon with the bicipital pulley system with moderate tendinosis, type III acromion may be suggestive of internal impingement, mild hypertrophic arthropathy of the acromioclavicular joint space, and large amount of subacromial bursal fluid may represent bursitis.

Dr. Kenton S. Horacek, a Board-certified orthopedic surgeon, in a July 28, 2015 report, noted that appellant reported working as a postal worker and that she had problems with her knees and left thumb which she indicated were related to her employment activities. He noted that these duties included standing, walking, pushing, pulling, bending, and lifting from floor to waist or higher while constantly bearing weights in excess of several tens of pounds. Dr. Horacek diagnosed chondromalacia of the patella bilaterally and early medial compartment

arthritis of the knee bilaterally, torn medial meniscus of right knee, and carpometacarpal arthritis at the base of the thumb. He noted that appellant believed strongly that it was the abuse of repetitive activities that led to the problems in her knees as well as the base of her thumb, but that at any rate, she is left with a component of arthritis in these areas. Dr. Horacek noted that appellant's knee condition would be treated for arthritis. He also related that he recommended appellant be seen by a hand surgeon regarding her thumb condition to determine whether it was symptomatic enough to warrant more vigorous treatment.

In a July 28, 2015 report, Carolyn Goble, a physician assistant under the supervision of Dr. M. Ramin Modabber, a Board-certified orthopedic surgeon, diagnosed left thumb carpometacarpal osteoarthritis. She noted appellant's work history, and indicated that basilar joint arthritis was often aggravated by repetitive tasks and heavy use of the hands.

By decision dated August 28, 2015, OWCP denied appellant's claim. It determined that none of the medical evidence provided a medical explanation as to how appellant's work factors caused her claimed left shoulder and left thumb injuries.

On September 28, 2015 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on May 18, 2016, the hearing representative explained to counsel that further medical information was necessary to support appellant's claim, and provided appellant 30 days to submit the evidence. No further evidence was received by OWCP within the allotted time period.

By decision dated August 1, 2016, the hearing representative affirmed OWCP's decision of August 28, 2015. He noted that the medical evidence was still deficient as it failed to establish a causal relationship between the claimed conditions and the factors of appellant's federal employment.

In an August 5, 2016 report, Dr. Horacek noted that he initially saw appellant on February 19, 2013 when she related having difficulty walking distances and descending stairs. He indicated that in November 2012 appellant experienced right knee pain while descending some steps from a mail delivery. Dr. Horacek reviewed appellant's employment duties as well as her medical treatment. He discussed appellant's multiple orthopedic issues, including those with her left shoulder and thumb. Dr. Horacek opined that appellant's employment factors, including the use of her arm repetitively in an overhead position, aggravated the left shoulder partial thickness tear of the subscapularis, infraspinatus, and supraspinatus tendons, as well as subluxation of the biceps tendon and bursitis. He noted that repetitive activities overhead tend to place demand on the tendons, and therefore aggravated the amount of tendinosis and bursitis found on the MRI scan. Dr. Horacek opined that, if appellant had done less overhead use of her shoulder, than her employment demanded, she would have less rotator cuff disease. He indicated that appellant may require intermittent modalities of physical therapy for her left shoulder, along with rare shots of cortisone, oral anti-inflammatories, and possible arthroscopy to debride and/or repair her rotator cuff disease. Dr. Horacek opined that the arthritis at the base of the left thumb certainly would have been aggravated by repetitive grasping, carrying mail, and squeezing between her left thumb and forefinger repetitively. He noted that this was a common area to wear out in women, but it would be accentuated by repetitive use and demands of the joint. Dr. Horacek suggested surgical intervention to correct the arthritis in appellant's thumb.

On November 22, 2016 OWCP received appellant's request for reconsideration. Counsel contended that appellant had established that her left shoulder rotator cuff disease and carpometacarpal arthritis at the base of her left thumb were causally related to her federal employment based on the medical evidence, and contended that the decision of the hearing representative should be reversed.

By decision dated March 30, 2017, OWCP denied modification of the prior decisions. It determined that the evidence was insufficient to modify the August 1, 2016 decision because Dr. Horacek had not substantiated causal relationship regarding whether a temporary aggravation had resolved or whether the aggravation caused a material change in the preexisting/underlying condition. OWCP concluded that to establish that an aggravation occurred there must be objective evidence of a physiological change in the claimant's preexisting condition.

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 the 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. The medical evidence must include a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁵

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999).

⁵ *Id.*

ANALYSIS

Appellant alleged that she sustained an aggravated left shoulder labrum tear and a painful callus-like growth on the base of her left thumb as a result of the factors of her federal employment as a mail carrier. OWCP denied appellant's claim as she had not established an injury causally related to the accepted factors of her federal employment.

The Board finds this case is not in posture for decision. Appellant submitted an August 5, 2016 report wherein Dr. Horacek provided a thorough review of appellant's employment duties and her medical treatment. Dr. Horacek opined that appellant's employment factors, including her repetitive activities overhead, placed increased demand on her tendons and therefore aggravated the amount of tendinosis and bursitis found on the MRI scan. He opined that if appellant had less overhead use of her shoulder, as required by her employment, she would have less rotator cuff disease. Dr. Horacek also opined that the arthritis at the base of appellant's left thumb would certainly have been aggravated by the repetitive grasping, carrying mail, and squeezing between her left thumb and forefinger.

The Board finds that, although Dr. Horacek's opinion is insufficiently rationalized to meet appellant's burden of proof on causal relationship, it is of sufficient probative value to warrant additional development.⁶ Dr. Horacek provided a detailed explanation of how the physical forces of appellant's employment caused an injury to her left shoulder and thumb. However, OWCP did not undertake further development of the medical record, such as referring appellant for a second opinion examination.⁷

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.⁸ This case must be remanded to OWCP for preparation of a statement of accepted facts and further development of the medical evidence. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision in the case.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

⁷ *See R.N.*, Docket No. 17-0497 (issued May 19, 2017).

⁸ *D.G.*, Docket No. 15-0702 (issued August 27, 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2017 is set aside, and the case is remanded for further development consistent with this opinion.

Issued: October 18, 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