

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

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**B.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Crown Point, IN, Employer**

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**Docket No. 16-1614  
Issued: September 21, 2017**

*Appearances:*

*Joseph E. Allman, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On August 5, 2016 appellant, through counsel, filed a timely appeal from a February 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 an occupational disease causally related to factors of her federal employment.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 13, 2015 appellant, then a 55-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained left shoulder, upper arm, back, and neck sprains/strains and thoracic back pain due to her employment duties. She alleged that she first became aware of the claimed conditions and their relationship to her federal employment on June 9, 2012.<sup>3</sup> Appellant stopped work on July 15, 2014.

Appellant, in an undated statement, attributed her condition to an incident occurring on June 9, 2012 when she lost her balance while delivering two packages. She described the medical treatment she received, problems with the workers' compensation process, the difficulty her physician had with the paperwork, and that she returned to work in September 2012. Next, appellant related that OWCP failed to accept her shoulder condition, that in November 2013 she was approved for light-duty work for four hours per day, and that working four hours was very painful. In August 2014, she stated that she underwent shoulder surgery, which she contended should have been covered by OWCP as the condition was work related. Appellant concluded that she had only sustained one injury.

In support of her claim, appellant submitted medical evidence including progress notes covering the period June 18, 2012 to August 4, 2014. The relevant medical evidence is set forth below.

A June 28, 2012 magnetic resonance imaging (MRI) scan reported an unremarkable cervical spine. Under clinical history, the report noted a lifting injury occurring about two weeks ago and complaints of bilateral shoulder and cervical pain.

An April 24, 2013 office note reported that appellant was seen by Dr. Vineet P. Shah, a treating osteopathic physician specializing in orthopedic surgery, for left shoulder pain complaints.<sup>4</sup> Appellant related having bilateral shoulder pain for the past 10 months which she attributed to carrying boxes. The report noted no specific trauma as the cause of the pain. A physical examination was performed with a diagnosis of trapezius strain with cervical radiculopathy.

Dr. Shodhan L. Patel, a diagnostic radiologist, diagnosed a negative left shoulder after review of a May 2, 2013 x-ray interpretation. He reviewed MRI scans dated May 2, 2013 and diagnosed a left shoulder full-thickness supraspinatus tendon tear with diffuse tendon contusion and no cervical abnormalities. Dr. Patel noted that appellant complained of left shoulder and neck pain and reported a lifting injury approximately one year ago.

Dr. Shah, in July 3, 2013 progress notes, diagnosed left shoulder rotator cuff pathology.

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<sup>3</sup> Appellant has an accepted traumatic injury claim for thoracic and cervical strain sustained on June 9, 2012 under OWCP File No. xxxxxx446.

<sup>4</sup> There was no signature on this document.

In progress notes dated February 13, 2014, Dr. John Diveris, a treating Board-certified orthopedic surgeon, provided examination findings and diagnoses of left brachial radiculitis, left supraspinatus muscle strain, left shoulder and upper arm trapezial and periscapular strain, and left shoulder bursa disorder.

On August 4, 2014 Dr. Diveris performed arthroscopic surgery based on a diagnosis of left shoulder impingement syndrome. He reported that, in June 2012, appellant injured herself when she stepped the wrong way while carrying a large box and then fell.

By letter dated June 16, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her occupational disease claim. It advised her regarding the medical and factual evidence required and afforded her 30 days to provide the requested evidence.

In response to OWCP's request, appellant submitted progress notes dated June 11, 2012 and a March 21, 2014 report.

In the June 11 2012 progress notes, Dr. Nadezda Djurovic, a treating physician specializing in internal medicine, provided physical examination findings and diagnoses of thoracic pain, neck sprain, right upper extremity sprain, and spinal ligament sprain. She reported that appellant injured herself on June 9, 2012 due to carrying heavy boxes and placed her off work from June 11 to 18, 2012.

Dr. Diveris, in a March 21, 2014 report, indicated that appellant sustained a work injury on June 9, 2012. He noted her treating physician attributed her shoulder problems to a neck injury. Based on his evaluation on August 9, 2013, he diagnosed subacromial bursitis and rotator cuff intrasubstance degeneration as conditions caused by the June 9, 2012 injury.

By decision dated August 12, 2015, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish the factual portion of her claim.

On September 8, 2015 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on December 18, 2015.

In a January 22, 2016 report, Dr. Diveris opined that appellant sustained a left shoulder injury due to a June 9, 2012 work incident. He noted the duties required of appellant's position, described how the June 9, 2012 incident occurred, and noted that appellant had no left shoulder pain prior to June 9, 2012. Next, Dr. Diveris discussed physical examination findings and treatment received. Based on examination findings and injury history, he diagnosed radiculitis or brachial neuritis, left shoulder region bursae disorder and tendons, supraspinatus muscle tendon, and shoulder and upper arm strain. Dr. Diveris noted that shoulder surgery was performed on August 4, 2014 based on a preoperative diagnosis of left shoulder impingement syndrome. Postoperative diagnoses were biceps tendon tear, left subscapularis tendon tear, posterior supraglenoid labrum tear, and subacromial and subclavicular impingement syndrome. Dr. Diveris opined that the diagnosed left shoulder conditions were directly caused by the June 9, 2012 work incident. He also determined that, as a result of her June 9, 2012 work injury, she was partially disabled from performing the duties of a letter carrier.

By decision dated February 9, 2016, OWCP's hearing representative affirmed the denial of appellant's claim. He found that appellant failed to identify any job duties occurring over several shifts as having caused her claimed left shoulder condition. Instead, appellant attributed her left shoulder condition to the accepted June 9, 2012 employment incident under OWCP File No. xxxxxx446.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."<sup>8</sup> 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.<sup>9</sup>

The employee's burden of proof includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant failed to meet her burden of proof to establish an occupational disease causally related to factors of her federal employment.

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<sup>5</sup> 5 U.S.C. § 8101 *et seq.*

<sup>6</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(q).

<sup>9</sup> *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).

<sup>10</sup> *J.C.*, Docket No. 16-1663 (issued January 18, 2017); *P.G.*, Docket No. 15-1345 (issued August 23, 2016); *Lori A. Facey*, 55 ECAB 217 (2004).

Appellant filed an occupational disease claim alleging that on June 9, 2012 she developed left shoulder, upper arm, back, and neck sprains/strains, and thoracic back pain while delivering boxes in the performance of her federal job duties. She did not submit any additional factual evidence in support of her occupational disease claim. Instead of providing information regarding her occupational disease claim, appellant continued to provide information and details regarding her prior accepted June 9, 2012 work incident. She did not respond to OWCP's request for an additional description of her employment exposures other than continuing to provide information regarding the June 9, 2012 work incident and OWCP's failure to accept a left shoulder condition. The only factual evidence identifying work factors in the record pertains to a June 9, 2012 work incident, which was assigned OWCP File No. xxxxxx446. OWCP did not accept a left shoulder condition under this claim. Appellant filed an occupational disease claim for a left shoulder condition due to the June 9, 2012 incident. As noted, she has the burden of proof to submit a detailed description of the employment factors or conditions that she believes caused or adversely affected the condition or conditions for which she claims compensation.<sup>11</sup> The facts and medical evidence presented by appellant pertain only to a traumatic injury claim that had previously been adjudicated by OWCP under OWCP File No xxxxxx446.<sup>12</sup>

The Board finds that appellant failed to respond to OWCP's request that she describe in greater detail the work factors alleged to have caused or contributed to her left shoulder condition or further specify and describe work duties occurring over more than one shift, which caused this claimed condition.<sup>13</sup>

Consequently, the Board finds that appellant has failed to sufficiently identify employment activities alleged to have caused or contributed to her claimed left shoulder condition.<sup>14</sup> As appellant has not established the employment factors or exposures alleged to have caused an injury, it is unnecessary to consider the medical evidence with respect to causal relationship.<sup>15</sup>

On appeal counsel argues that appellant filed the incorrect form.<sup>16</sup>

As set forth above, the Board finds that appellant has not met her burden of proof to establish an occupational disease claim.

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<sup>11</sup> See *id.*; see also *J.D.*, Docket No. 12-0073 (issued May 10, 2012); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>12</sup> Under FECA, a traumatic injury is defined as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(ee).

<sup>13</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>14</sup> *J.C.*, *supra* note 10; *R.Z.*, Docket No. 13-1911 (issued September 15, 2014).

<sup>15</sup> See *id.*; *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>16</sup> Appellant is not precluded from requesting expansion of her claim under OWCP File No. xxxxxx446.

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 failed to meet her burden of proof to establish an occupational disease causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 9, 2016 is affirmed.

Issued: September 21, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board