

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Foxworth, MS, Employer**

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**Docket No. 17-1950
Issued: April 2, 2018**

Appearances:
Appellant, pro se
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 September 18, 2017 appellant filed a timely appeal from June 12 and July 19, 2017 merit decisions and an August 30, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a right shoulder injury causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence on appeal. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that she sustained a work-related right shoulder injury.

FACTUAL HISTORY

On July 11, 2016 appellant, then a 63-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a torn rotator cuff of the right shoulder. She alleged that she first became aware of the condition and its relationship to her federal employment on February 16, 2016. Appellant asserted that working with heavy mail without a rural carrier associate (RCA) and with a staff shortage caused or aggravated her condition. She stopped work on July 9, 2016.

In support of her claim, appellant submitted a June 29, 2016 progress note from Dr. Robert R. Herrington, a Board-certified family practitioner. Dr. Herrington reported that appellant was a rural mail carrier who presented with right shoulder pain and stated that she fell in January 2016. Appellant related to him that while getting out of a vehicle, she slipped on a wet surface and fell forward with both arms flexed, landing on her elbow, and causing pain in her shoulder. She also related that she opened and closed 500 to 600 mailboxes a day. Appellant had a prior fall while trying to get back into a vehicle after being rushed by several bulldogs. She lunged backwards and fell striking her left hip. Appellant still had persistent pain. Dr. Herrington noted appellant's medical and family background and discussed findings on physical examination. He provided an impression of right shoulder and left hip pain, osteoarthritis involving multiple joints, family history of coronary artery disease, malaise, and fatigue.

In a July 7, 2016 letter, appellant claimed that she had been experiencing worsening pain for five months or longer. She reiterated the factual history of injury she provided in the July 11, 2016 Form CA-2. Appellant described her right shoulder symptoms and medical treatment. A copy of an accident report regarding the claimed February 16, 2016 right shoulder injury was submitted.

OWCP, by development letter dated July 19, 2016, advised appellant of the deficiencies in her claim and afforded her 30 days to submit additional medical evidence.

OWCP subsequently received a July 21, 2016 prescription that contained an illegible signature and restricted appellant from heavy lifting of more than 25 pounds.

In a July 25, 2016 right shoulder magnetic resonance imaging (MRI) scan report, Dr. Juan A. Velez, Jr., a radiologist, provided an impression of partial tears of the supraspinatus tendon and infraspinatus tendon and torn biceps labral complex.

In an August 1, 2016 work status report form, Dr. Brian E. Humphreys, an attending orthopedic surgeon, indicated that the date of injury was unknown. He advised that appellant had a right shoulder condition and that she could return to work with a lifting restriction.

On August 1, 2016 appellant responded to OWCP's July 19, 2016 development letter. She restated the history of her claimed February 2016 right shoulder injury.

In a September 6, 2016 work status report, Dr. Humphreys recommended a right shoulder rotator cuff repair to be performed on September 13, 2016. He advised that appellant could not

return to work until he saw her again. On September 21, 2016 Dr. Humphreys reported that she could return to work on March 7, 2017 with lifting restrictions.

By decision dated September 26, 2016, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment factors.

Appellant requested reconsideration on October 17, 2016. She related that on December 30, 2015 she sustained a right shoulder injury when she slipped and fell as she returned to her sport utility vehicle after delivering a package at work. Appellant again described her claimed February 2016 right shoulder injury and reported continuous pain. She contended that her pain worsened due to repeatedly reaching for 590 boxes every day and working without an RCA. Appellant first sought medical treatment on June 29, 2016 and had rotator cuff surgery on September 13, 2016. She noted her restrictions and physical therapy treatment. Appellant resubmitted Dr. Humphreys' September 21, 2016 work status report.

In a November 7, 2016 decision, OWCP denied modification of its September 26, 2016 decision. It found that appellant had not submitted a rationalized medical opinion to establish that her right shoulder condition was causally related to employment factors.

In appeal request forms and letters received on December 5, 2016 and January 3, 2017, appellant requested reconsideration. In her letters, she contended that she had submitted medical evidence to establish her claim. Appellant reiterated the factual history of her December 2015 and February 2016 right shoulder injuries and medical treatment.

Appellant submitted a partial copy of an unsigned November 29, 2016 progress note printed by a nurse. The progress note provided examination findings and a diagnosis of a complete tear of the right rotator cuff. The report also provided an assessment that appellant was status post right shoulder rotator cuff repair that was associated with a December 2015 injury and a February 2016 recurrent injury which both occurred at work. Appellant still had pain symptoms two weeks and two months postsurgery. Arthroscopy pictures were reviewed and it was determined that the repair seemed to be solid.

By decision dated February 17, 2017, OWCP denied modification of its November 7, 2016 decision.

On March 14, 2017 appellant requested reconsideration. She submitted a full copy of the November 29, 2016 progress note which was authored by Dr. Humphreys. Dr. Humphreys related a history of appellant's claimed right shoulder injuries and her September 13, 2016 right shoulder rotator cuff repair and previous medical treatment.

In statements dated December 30, 2015 and March 7, 2017, appellant reiterated the history of her December 2015 and February 2016 right shoulder injuries.

By decision dated June 12, 2017, OWCP again denied modification, finding that the medical evidence of record did not contain a rationalized medical opinion to establish that appellant's right shoulder condition was causally related to federal employment factors.

In an appeal request form and a letter received on July 6, 2017, appellant requested reconsideration. She submitted a June 20, 2017 report from Dr. Humphreys. Dr. Humphreys provided a history of appellant's medical treatment, including his own treatment. He reviewed her job description and opined that she was unable to perform the requirements of the position based on her lifting restriction. Dr. Humphreys maintained that repeated use of appellant's right arm could cause further pain and damage to her shoulder.

By decision dated July 19, 2017, OWCP denied modification of its prior decision.

On August 7, 2017 appellant, in a letter dated July 31, 2017, requested reconsideration and contended that she sustained a work-related right shoulder injury. She asserted that she had a very strenuous job that she had performed for 21 years. Appellant described her job duties, which required reaching over her head while casing mail for 1 hour and 30 minutes every morning. She related that she also loaded mail and packages and started her route, which involved reaching, lifting, and pulling on 500 to 600 mailboxes all day on a daily basis. Appellant noted her September 13, 2016 right shoulder surgery, continuing pain, physical restrictions, and disability from work. She submitted a copy of a rural carrier position description.

In an August 30, 2017 decision, OWCP denied appellant's request for reconsideration of her claim, finding that the evidence submitted was insufficient to warrant merit review of the July 19, 2017 decision.

LEGAL PRECEDENT -- ISSUE 1

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 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 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 required to establish causal relationship is rationalized medical opinion evidence. The

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 -- ISSUE 1

OWCP accepted as factual that appellant lifted packages while working as a rural carrier. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a right shoulder condition caused or aggravated by work factors.

Dr. Humphreys' November 29, 2016 progress note discussed findings and diagnosed a complete right rotator cuff tear. He opined that appellant was status post right shoulder rotator cuff repair that was associated with her right shoulder injury sustained at work in December 2015 and February 2016. However, Dr. Humphreys did not provide a probative, rationalized opinion regarding how the accepted work factors caused a personal injury.⁷ He did not sufficiently explain the reasons why, medically, appellant would have sustained a right shoulder injury that required surgery due to lifting heavy packages at work. While his remaining reports dated August 1 and September 6 and 21, 2016, and June 20, 2017 noted that appellant had a right shoulder condition that required surgery, Dr. Humphreys failed to provide a specific opinion as to whether the diagnosed condition and resultant surgery were caused or aggravated by the accepted employment factors.⁸ As such, the Board finds that his reports are insufficient to meet appellant's burden of proof.

Similarly, Dr. Herrington's June 29, 2016 progress note and Dr. Velez's July 25, 2016 diagnostic test report are of diminished probative value on the issue of causal relationship. He noted appellant's description of her work duties and falls at work. Dr. Herrington examined her and provided an impression of, among other things, right shoulder and left hip pain and osteoarthritis involving multiple joints. Dr. Velez reported that a right shoulder MRI scan revealed partial tears of the supraspinatus tendon and infraspinatus tendon and torn biceps labral complex. Neither physician provided a medical opinion addressing whether the diagnosed conditions were caused or aggravated by the established employment factors.⁹

The July 21, 2016 prescription which contained an illegible signature has no probative value, as it is not established that the author is a physician.¹⁰

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁸ *A.D.*, 58 ECAB 159 (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).

⁹ *Id.*

¹⁰ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

The Board finds that appellant has failed to submit any rationalized, probative medical evidence sufficient to establish that she sustained a right shoulder injury causally related to the accepted employment factors. Appellant therefore did not meet her burden of proof.

On appeal appellant contends that she sustained a work-related right shoulder injury. The Board finds that the weight of the medical evidence of record does not establish that appellant's right shoulder condition for which she underwent surgery on September 13, 2016, was caused or contributed to by the accepted employment factors.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.¹¹ Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).¹² This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³ Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her occupational disease claim.

The Board finds that in an August 7, 2017 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Appellant reiterated her contention that she sustained a right shoulder injury due to the accepted employment factors. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.608(a).

¹³ *Id.* at § 10.606(b)(3).

¹⁴ *Id.* at § 10.608(b).

constitute a basis for reopening a case.¹⁵ Therefore, appellant's contention is insufficient to warrant further merit review of her claim.

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered with her August 7, 2017 request for reconsideration. The issue on reconsideration was whether there was a causal relationship between appellant's right shoulder rotator cuff tear and her accepted rural carrier duties. Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹⁶ The rural carrier position description therefore cannot suffice for purposes of establishing causal relationship as it does not constitute medical evidence. Any medical evidence which OWCP relies upon to resolve an issue must be in writing and signed by a qualified physician.¹⁷ Because appellant did not provide any probative relevant and pertinent new evidence, she is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁸

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁹

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. The Board further finds, that OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

¹⁵ *D.K.*, 59 ECAB 141 (2007).

¹⁶ *See Robert G. Morris*, 48 ECAB 238 (1996).

¹⁷ *James A. Long*, 40 ECAB 538 (1989).

¹⁸ 20 C.F.R. § 10.606(b)(3)(iii).

¹⁹ *See A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the August 30, July 19, and June 12, 2017 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 2, 2018
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