

ISSUE

The issue is whether appellant has met her burden of proof to establish cervical and right shoulder conditions causally related to the accepted April 14, 2017 employment incident.

FACTUAL HISTORY

On April 14, 2017 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she developed pain between her neck and shoulder while lifting a tray from a bottom shelf at work on that date.³ She stopped work on the date of the alleged injury.

In an April 26, 2017 medical report, Dr. Philip M. Rafiy, an attending Board-certified orthopedic surgeon, related a history that appellant was status post work-related right shoulder and neck injuries sustained on April 14, 2017. He noted that she tried to lift a large and heavy tray on a lower shelf and felt pain between her right shoulder and neck, accompanied by numbness and tingling sensations in her right anterior arm. Dr. Rafiy noted that appellant informed him that, at the time of injury, she felt as though her right shoulder was falling off and she was unable to turn her neck to the left. Appellant denied any prior injury to the right shoulder. She reported that her right shoulder pain caused difficulties with lifting her arm above shoulder level or moving the shoulder backwards. Dr. Rafiy noted a history of appellant's medical treatment and additional physical limitations. He provided findings on physical examination and reviewed the results of right shoulder and cervical spine x-rays performed on his date of examination. Dr. Rafiy indicated that appellant also received an injection of Lidocaine and Depo-Medrol into the right trapezius on the date of his examination. He addressed her treatment plan which included additional diagnostic testing and physical therapy. Dr. Rafiy related that disability forms had been completed.

Also, on April 26, 2017 Dr. Rafiy completed a duty status report (Form CA-17) in which he reiterated a history that, on April 14, 2014, appellant lifted a heavy tray from a bottom shelf. He described clinical findings and diagnosed right shoulder derangement and cervical discogenic pain due to injury. Dr. Rafiy advised that appellant could not resume work and listed her work restrictions.

Dr. Rafiy, in an April 26, 2017 right shoulder magnetic resonance imaging (MRI) scan report, provided an impression of acromioclavicular (AC) joint hypertrophy, mild arthrosis of the AC joint, small subacromial bursal effusion, a 2 x 2-centimeter subchondral proximal humeral cyst, and trace glenohumeral joint effusion. He also provided an impression of increased signal supraspinatus tendon consistent with supraspinatus tendinitis, thinning of the supraspinatus tendon, and possible supraspinatus tendon tear best seen on coronal image number 13 and sagittal image number 11.

In an April 26, 2017 cervical spine MRI scan report, Dr. Rafiy provided an impression of C4-5 posterior bony ridge with superimposed left paracentral disc bulge resulting in moderate left-sided foraminal stenosis of the C5 nerve, C5-6 posterior disc osteophyte complex with bony ridge,

³ OWCP assigned the present claim OWCP File No. xxxxxx871. Appellant previously filed a claim under OWCP File No. xxxxxx474 for an injury sustained on July 13, 2006. On October 23, 2006 OWCP accepted that claim for right shoulder and right neck sprain.

and superimposed right paracentral disc bulge resulting in mild-to-moderate right-sided foraminal stenosis, and straightening of the cervical spine with loss of cervical lordosis consistent with muscle spasms.

In an April 28, 2017 New York State Workers' Compensation Board form report, Dr. Rafiy restated a history of appellant's claimed right shoulder and neck injuries sustained on April 14, 2017. He diagnosed cervical disc disorder with radiculopathy, unspecified cervical region. Dr. Rafiy also diagnosed other specific joint derangements of the right shoulder. He checked a box marked "yes" indicating that the incident described by appellant was the competent medical cause of her injury/illness. Dr. Rafiy checked additional boxes marked "yes" indicating that her complaints were consistent with her history of injury/illness and that her history of injury/illness was consistent with his objective findings.

OWCP, by development letter dated May 26, 2017, noted that appellant's claim initially appeared to be a minor injury that resulted in minimal lost time from work. It had approved a limited amount of medical expenses without considering the merits of her claim. OWCP reopened appellant's claim because she had not returned to work in a full-time capacity. It requested that she provide additional medical evidence in support of her traumatic injury claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. OWCP afforded appellant 30 days to submit the necessary evidence.

In an additional New York State Workers' Compensation Board form report dated May 17, 2017, Dr. Rafiy again noted April 14, 2017 as the date of injury and provided diagnoses of cervicgia and right shoulder pain.

In a May 24, 2017 Form CA-17 report, Dr. Rafiy restated the history of appellant's claimed April 14, 2017 right shoulder and cervical injuries. He described clinical findings, but did not provide a medical diagnosis. Dr. Rafiy reiterated his prior opinion that appellant could not resume work and provided her work restrictions.

Dr. Miguel Vargas, a physiatrist, noted in a June 8, 2017 attending physician's report (Form CA-20), that appellant developed right shoulder and neck pain with numbness and tingling in the right arm on April 14, 2017. He examined her and diagnosed cervical discogenic pain with muscle spasms, cervical stenosis, and right shoulder internal derangement. Dr. Vargas ruled out a rotator cuff tear. He indicated by checking the box marked "yes" that appellant's injury was caused or aggravated by the described employment activity. Dr. Vargas related that she felt pain while lifting a large and heavy tray at work. He advised that appellant was totally disabled indefinitely commencing on the date of injury.

By decision dated June 28, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not contain a rationalized opinion explaining how her diagnosed right shoulder and cervical conditions were causally related to the accepted April 14, 2017 employment incident.

OWCP subsequently received reports from appellant's physical therapist who addressed the treatment of appellant's cervical and right shoulder conditions on intermittent dates from June 13 through 29, 2017.

In additional New York State Workers' Compensation form reports dated June 30 and July 5 through 26, 2017, Dr. Rafiy referred appellant to physical therapy to treat her diagnoses of cervical radiculopathy and right shoulder internal derangement.

In an April 14, 2017 progress note and a June 27, 2017 New York State Workers' Compensation Board form report, Dr. Jason D. Idelson, an internist, related the history of appellant's alleged April 14, 2017 right neck/shoulder injury. He discussed findings on physical examination and assessed a work-related shoulder sprain due to lifting at work on April 14, 2017.

By appeal request form received on July 18, 2017 by OWCP, appellant requested reconsideration of the June 28, 2017 decision. In an accompanying letter dated July 14, 2017, she contended that, on April 14, 2017, she sustained work-related right shoulder and cervical injuries for which she was currently receiving physical therapy.

Appellant submitted Form CA-17 reports dated May 24 and July 3, 2017 from a physician whose signature is illegible. The reports provided a history of the April 14, 2017 employment incident, described clinical findings, and listed appellant's work restrictions. The report did not provide a medical diagnosis due to injury.

Dr. Rafiy again reiterated in a May 24, 2017 Form CA-17 report the history of appellant's claimed April 14, 2017 right shoulder and cervical injuries, clinical findings, and opinion that she could not resume work. He did not provide a medical diagnosis due to injury.

Additional reports from appellant's physical therapist addressed the treatment of appellant's right shoulder and cervical spine conditions on July 5 and 20, 2017.

By letter dated September 27, 2017, counsel submitted a report of the same date from Dr. Rafiy. In his report, Dr. Rafiy again related a history of appellant's claimed April 14, 2017 right shoulder and cervical spine injuries. He also noted her medical history which included the 2006 work-related right shoulder and cervical spine injuries. Dr. Rafiy reviewed the April 26, 2017 right shoulder and cervical spine x-ray and MRI scan diagnostic test results and reported findings on physical examination. He provided an impression of right shoulder rotator cuff supraspinatus tendon tear and cervical disc osteophyte complex with foraminal stenosis and nerve impingement. Dr. Rafiy opined that appellant sustained injuries to the cervical spine and right shoulder as a direct result of the work-related April 14, 2017 accident. He maintained that she sustained post-traumatic cervical radiculopathy secondary to the posterior cervical disc osteophyte complex with paracentral disc bulge resulting in cervical foraminal stenosis and nerve root impingement. Dr. Rafiy listed appellant's right shoulder and cervical spine physical restrictions and provided a treatment plan. He concluded that her injuries were permanent in nature and that she was totally disabled and unable to return to her usual letter carrier work duties. Dr. Rafiy again noted appellant's prior 2006 work-related cervical spine and right shoulder injuries and maintained that she was in her usual state of health with no complaints of neck pain or right shoulder pain prior to the April 14, 2017 employment incident.

By decision dated October 18, 2017, OWCP denied modification of its June 28, 2017 decision, finding that the medical evidence submitted by appellant did not contain a rationalized medical opinion on causal relationship between her right shoulder and cervical spine conditions and the accepted April 14, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁵ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁷ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified incidents.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical or right shoulder conditions caused or aggravated by the accepted April 14, 2017 employment incident.

Appellant submitted a series of reports from her attending physician, Dr. Rafiy. In his most comprehensive report dated September 27, 2017, Dr. Rafiy related appellant's examination

⁴ *Supra* note 2.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

findings, reviewed diagnostic test results, and diagnosed right shoulder rotator cuff supraspinatus tendon tear and cervical disc osteophyte complex with foraminal stenosis and nerve impingement. He opined that the diagnosed conditions and her resultant total disability from her usual letter carrier work duties directly resulted from the accepted April 14, 2017 employment incident, noting that, while she sustained accepted work-related right shoulder and cervical conditions in 2006, she was in her usual state of health with no complaints of neck pain or right shoulder pain prior to the April 14, 2017 employment incident. The Board, however, has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹² Dr. Rafiy failed to provide sufficient medical rationale explaining how appellant's current right shoulder and cervical conditions and disability status were caused or aggravated by the April 14, 2017 work incident.¹³ The Board finds therefore that his report is insufficient to meet her burden of proof.

Similarly, Dr. Rafiy's April 26, 2017 Form CA-17 report is insufficient to establish appellant's burden of proof. While it contains an affirmative opinion that her diagnosed right shoulder derangement and cervical discogenic pain and resultant disability from work were related to the April 14, 2017 employment incident, the report does not contain any medical rationale explaining how the lifting incident at work on that date actually caused or aggravated the diagnosed conditions and resultant disability.¹⁴

In his New York State Workers' Compensation Board form report dated April 28, 2017, Dr. Rafiy diagnosed cervical disorder with radiculopathy and right shoulder derangement. Although he checked a box marked "yes" on the form report when asked if the April 14, 2017 work incident caused the diagnosed conditions, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.¹⁵ Dr. Rafiy failed to explain how physiologically appellant's diagnosed cervical and right shoulder conditions were caused or aggravated by lifting a tray from a shelf at work on April 14, 2017. Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to the diagnosed condition, his opinion regarding causal relationship is equivocal in nature and of limited probative value.¹⁶ Because Dr. Rafiy failed to provide a well-rationalized explanation regarding the causal relationship between appellant's diagnosed conditions and the accepted employment incident, his report is of limited probative value.

¹² *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹³ See *T.C.*, Docket No. 15-1534 (issued March 1, 2016) (medical reports without adequate rationale are of diminished probative value and do not meet an employee's burden of proof).

¹⁴ *Id.*

¹⁵ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁶ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

Dr. Rafiy's remaining reports are insufficient to meet appellant's burden of proof. Within these additional reports, he did not provide an opinion concluding that the accepted April 14, 2017 employment incident caused or aggravated her diagnosed right shoulder and cervical conditions, disability status, medical treatment, and work restrictions.¹⁷

Dr. Vargas, in a June 8, 2017 Form CA-20 report, diagnosed cervical discogenic pain with muscle spasms, cervical stenosis, and right shoulder internal derangement. He advised that appellant was totally disabled indefinitely commencing April 14, 2017. While Dr. Varga checked a box marked "yes," that the diagnosed condition was caused or aggravated by the April 14, 2017 employment incident, he failed to offer medical rationale explaining how her diagnosed cervical and right shoulder conditions and disability status were caused or aggravated by lifting a tray from a shelf at work on that day.¹⁸ Thus, the Board finds that his report is insufficient to establish appellant's burden of proof.

In his April 14, 2017 progress note and June 27, 2017 New York State Workers' Compensation Board form report, Dr. Idelson diagnosed right shoulder sprain due to the April 14, 2017 employment incident. However, he provided no medical rationale explaining how the accepted work incident caused or aggravated appellant's diagnosed condition.¹⁹

The May 24 and July 3, 2017 Form CA-17 reports which contained a physician's illegible signature are of no probative value as the author cannot be identified as a physician.²⁰ This evidence is insufficient to establish appellant's claim.

The reports from appellant's physical therapist are likewise insufficient to establish appellant's claim as reports by a physical therapist are of no probative value because a physical therapist is not considered a physician under FECA.²¹

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish neck and right shoulder conditions causally related to her employment on April 14, 2017. Appellant therefore did not meet her burden of proof.

On appeal, counsel contends that appellant sustained a work-related condition and disability based on the medical evidence of record. He notes that she did not engage in any other

¹⁷ See *T.M.*, Docket No. 16-1456 (issued January 10, 2017); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *A.D.*, 58 ECAB 149 (2006) (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).

¹⁸ *Supra* note 15.

¹⁹ *Supra* note 13.

²⁰ See *L.D.*, Docket No. 17-1808 (issued December 28, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²¹ 5 U.S.C. 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law; *J.G.*, Docket No. 15-0251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not considered physicians as defined under FECA).

activities which could have caused, aggravated, accelerated, or precipitated her claimed work-related condition and resultant disability. Counsel further contends that OWCP's failure to conclude that appellant has a work-related disability violates its procedures as well as applicable and well-established case law, statute, and regulations. Based on the findings and reasoning set forth above, the Board finds that his arguments are not substantiated. The Board finds that OWCP properly evaluated the evidence of record in its obligation to properly adjudicate appellant's claim. As appellant has not submitted sufficiently rationalized medical evidence to support her allegation that she sustained neck and right shoulder conditions causally related to the April 14, 2017 employment incident, she has failed to meet her burden of proof to establish a claim for compensation.

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 cervical and right shoulder conditions causally related to the accepted April 14, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2018
Washington, DC

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

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

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