United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 18-0381**
	)	**Issued: August 20, 2018**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Charlotte, NC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2017 appellant, through counsel, filed a timely appeal from an August 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The record provided to the Board includes evidence received after OWCP issued its August 15, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed bilateral rotator cuff conditions are causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 26, 2016 appellant, then a 58-year-old automation clerk, filed an occupational disease claim (Form CA-2) for bilateral rotator cuff tears, noting that the tear in her left shoulder was a retear. She attributed her rotator cuff tears to duties of her federal employment, including use of her arms to lift heavy trays of mail and pushing mail containers. Appellant identified April 25, 2016 as the date she first became aware of her condition and the date she first realized her condition was employment related. She did not stop work.[4]

In a report dated April 25, 2016, Dr. James Fleischli, a Board-certified orthopedic surgeon, examined appellant for complaints of bilateral shoulder pain. Appellant told him that the pain had begun approximately one month before the examination and that it had been affecting her ability to work and sleep. She further noted that she had previously undergone a left rotator cuff repair procedure in 2007, subsequent to a vehicular incident. On examination of the left shoulder, Dr. Fleischli noted a well-healed incision over the lateral aspect of appellant's acromion. Appellant had range of motion with forward elevation to approximately 80 degrees passively and 110 degrees actively; with external rotation to 30 degrees actively and passively; with internal rotation to L4; and with abduction of approximately 80 degrees passively and 100 degrees actively. On examination of the right shoulder, Dr. Fleischli observed range of motion with forward elevation to 120 degrees; with external rotation to 45 degrees; with internal rotation to L4; and with abduction of approximately 100 degrees. He noted 4/5 strength in appellant's rotator cuff musculature bilaterally. Dr. Fleischli reviewed x-rays of her bilateral shoulders, which revealed bilateral rotator cuff arthropathy. He diagnosed appellant with bilateral rotator cuff arthropathy. Dr. Fleischli recommended that she consider shoulder arthroplasty and administered a bilateral subacromial injection with no complications.

By development letter dated June 14, 2016, OWCP informed appellant that she had not submitted sufficient evidence to establish her claim. First, it noted that the medical evidence did not substantiate a diagnosis of bilateral rotator cuff tear as caused or aggravated by work-related factors. OWCP advised appellant to submit a narrative report from her physician, which included a rationalized medical opinion. It also requested additional information regarding employment factor(s) allegedly responsible for her claimed condition(s), as well as information regarding any outside activities and/or prior injuries to her upper extremities. OWCP afforded appellant at least 30 days to submit the requested factual and medical evidence.

On June 1, 2006 Dr. Steven R. Groman, a Board-certified orthopedic surgeon, examined appellant for difficulty with her left arm. He noted that she was involved in a motor vehicle incident in January 2006. Appellant was referred to a fracture clinic and was seen on January 17, 2006 where she was diagnosed as having a nondisplaced fracture of the left greater tuberosity of

[4] Under File No. xxxxxx461, OWCP previously accepted right carpal tunnel syndrome, which arose on or about August 1, 2012.

the humerus. She was noted to have a rotator cuff tear by magnetic resonance imaging (MRI) scan in April 2006, but did not undergo surgery. Dr. Groman reviewed her x-rays and noted that he was not certain that she had a greater tuberosity fracture, but that he was certain that her MRI scan demonstrated a large tear of the rotator cuff, with a completely avulsed supraspinatus, which had torn and retracted back to the medial part of the humeral head. The infraspinatus was involved in its upper half and the shoulder was subluxed posteriorly due to the lack of posterior and superior support. Dr. Groman recommended surgery for rotator cuff repair.

On June 16, 2006 appellant visited with Dr. Groman to discuss the surgery. Dr. Groman told her it was a large tear that had been present for the better part of six months. He noted that there was a possibility that it was not repairable, and that if it was repairable, it may not heal. Dr. Groman scheduled the surgery for June 27, 2006.

On August 15, 2006 Dr. Groman noted that appellant was six weeks post operation from a large left rotator cuff tear. He observed hypertrophy of the shoulder scar and recommended that she continue physical therapy.

In a report dated June 6, 2016, Dr. Nady Hamid, a Board-certified orthopedic surgeon, examined appellant for complaints of bilateral shoulder pain. He noted that she had a history of left open rotator cuff repair performed in 2007 after she was involved in a vehicular incident. Appellant told Dr. Hamid that she had a satisfactory postoperative outcome, but that she had been experiencing increasing pain in her left shoulder over the past several months. She also experienced discomfort in the right shoulder, but stated that her left shoulder pain was greater, with reduced range of motion bilaterally. Dr. Fleischli's subacromial injections on April 25, 2016 had not provided significant symptomatic relief. Dr. Hamid examined x-rays of appellant's bilateral shoulders, which demonstrated advanced rotator cuff arthropathy on the right with a superior glenoid wear pattern, as well as evidence of cuff arthropathy on the left with superior migration of the humeral head. On examination of the left shoulder, he noted a transverse scar from a prior open repair. Appellant had range of motion of the left shoulder with 60 degrees of active forward elevation and 100 degrees of passive elevation; with 15 degrees of active external rotation and 30 degrees of passive external rotation; with internal rotation to L4; a complete lag sign and a positive Hornblower's sign. Dr. Hamid further noted 3/5 strength of the infraspinatus and 4+/5 strength of the subscapularis. On examination of the right shoulder, he noted active forward elevation to 120 degrees, with external rotation to 45 degrees with a 15 degree lag sign, as well as internal rotation to L4 and a positive Hornblower's sign. The right shoulder demonstrated 4/5 strength of the supraspinatus and infraspinatus, as well as 5/5 strength of the subscapularis. Dr. Hamid diagnosed appellant with bilateral shoulder cuff tear arthropathy, with right superior glenoid bone wear. He assessed her with pain greater on the left than the right. Dr. Hamid recommended left reverse total shoulder arthroplasty and stated that appellant was also a candidate for right total shoulder arthroplasty and a left reverse total shoulder arthroplasty tendon transfer study.

Dr. Victor Ho, a Board-certified diagnostic radiologist, interpreted the June 16, 2016 MRI scan as revealing a full thickness rotator cuff tear of the left shoulder and severe degenerative joint disease with likely loose bodies.

In a follow-up report dated June 21, 2016, Dr. Hamid reviewed the June 16, 2016 MRI scan and diagnosed a massive irreparable rotator cuff tear of the left shoulder. He recommended a left reverse total shoulder arthroplasty with possible tendon transfer, to which she agreed.

On July 8, 2016 appellant responded to OWCP's inquiries. She stated that she had previously had a shoulder injury or diagnosed shoulder condition, and noted no engagement with sports, hobbies, or activities besides going to church. In an attached statement, appellant described working for the employing establishment since 1993, working in casing mail for 3 years and automation for 20 years. She stated that she loaded mail onto machines, swept mail into trays, lifted trays above her head, pulled the trays back down, and pushed carts of mail to designated areas. Appellant noted that the injury had occurred over the course of a decade.

By decision dated August 19, 2016, OWCP denied appellant's claim. It found that she had not established a causal relationship between the accepted factors of her federal employment and her diagnosed conditions. OWCP found that appellant had not provided a well-reasoned opinion from a physician relating her current conditions to the accepted factors of her employment and had not provided objective findings that she had sustained a condition in connection with the work exposure. It noted that Dr. Ho's June 16, 2016 diagnostic report did not contain a well-reasoned opinion supported by medical rationale as to how her current condition was related to duties of her federal employment.

By letter dated September 16, 2016, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

OWCP received a report revealing that appellant underwent a left reverse total shoulder arthroplasty and left latissimus and teres major tendon transfer with Dr. Hamid on August 4, 2016. The procedures were completed without complication.

In a postoperative report dated September 12, 2016, Dr. Hamid noted that physical examination of the left shoulder revealed a well-healed incision, with full digital extension and flexion, good range of motion into the elbow, intact deltoid function, mild stiffness with forward elevation, and external rotation to 30 degrees. He recommended that appellant restrict the use of her left upper extremity at work. Dr. Hamid noted that he had discussed the natural history and pathogenesis of treatment for osteoarthritis with her, explaining to her that her left shoulder arthritis was likely secondary to her prior rotator cuff deficiency, and that her symptoms were certainly exacerbated by her work conditions, which required significant use of her left upper extremity with shoulder and above-the-shoulder activities. He concluded, "In this manner, it is certainly likely that [appellant's] work conditions accelerated her need to undergo replacement on the left side."

By letter dated December 14, 2016, Dr. Cecilie Only, Board-certified in family medicine, noted that appellant was under her care for severe bilateral shoulder osteoarthritis with a rotator cuff injury, and had last been seen on May 16, 2016 for bilateral shoulder pain. She noted that appellant had worked at a general mail facility for several years, which included sorting mail and overhead reaching, which had caused bilateral rotator cuff tears. Dr. Only indicated that, since her last visit with appellant, she had undergone left shoulder surgery. Since the surgery, appellant had begun to experience significant pain of the right shoulder, which Dr. Only noted would also require a reversal of the total right shoulder arthroplasty. Dr. Only noted that because of appellant's

history of shoulder pain, dysfunction, and injury, appellant had difficulty with reaching overhead, with heavy lifting more than 10 pounds, and with repetitive movements. She explained that it was unclear whether appellant would ever have a full recovery, although even if she were to recover, duties of her employment would "put [appellant's] back into the same predicament of inability to perform the above[-]mentioned tests."

Appellant submitted letters dated December 22, 2016 and February 8, 2017 from certified physician assistants.

The hearing was held on April 4, 2017. At the hearing, appellant testified that she had previously experienced an injury to her left shoulder due to a vehicular incident that required shoulder cuff repair, seven years prior to the claimed injury. She clarified that this injury was not related to workers' compensation. Appellant noted that, prior to March 2016, she did not have problems with her shoulder. She began to experience pain in her shoulders, at first with the right worse than the left, and had undergone surgery for the left shoulder. Appellant told her physician that, over a period of time, she had sorted mail, lifted, and performed overhead reaching, which caused her arms to hurt, and that it was getting worse. She continued to work light duty after her left shoulder surgery in August 2016. Appellant alleged that, working with a delivery bar code sorter (DBCS) machine had caused problems with her shoulders, as working with the machine required loading it, sweeping it, lifting mail over her head, and pushing mail carts. She had performed this type of work for 20 years and for the employing establishment for 24 years. Appellant noted that Dr. Hamid had indicated that conditions of her work had caused problems with her left shoulder, and noted that, apart from the vehicular incident, she had not experienced any overt injuries to her shoulders. The hearing representative held the record open for 30 days to submit additional reports, and advised appellant that any report should differentiate between the effects of appellant's underlying condition and the worsening caused by work.

By decision dated May 16, 2017, OWCP's hearing representative affirmed OWCP's August 19, 2016 decision. She noted that no further evidence had been received subsequent to the telephonic hearing of April 4, 2017. The hearing representative explained that while Dr. Hamid had opined that appellant's work conditions had likely accelerated her need for left shoulder replacement, he had not provided sufficient rationale for this opinion. She noted that the medical reports of record did not differentiate the effects of appellant's work injury from her underlying shoulder condition, for which she previously had surgery, and that Dr. Groman, who performed the prior surgery, anticipated a poor prognosis even if the surgery was successful.

Appellant, through counsel, requested reconsideration of the decision dated May 16, 2017 on June 9, 2017.

In a report dated May 16, 2016, Dr. Only followed up with appellant for complaints of bilateral shoulder pain. She noted that appellant's pain had worsened. Dr. Only reported that appellant sorted mail and reached overhead. She noted that appellant had a rotator cuff repair on her left shoulder seven years before, and that appellant stated that she had retorn it. On examination Dr. Only noted that appellant was unable to lift her left shoulder above 90 degrees, and that her right shoulder also had limited range of motion. Appellant was able to externally rotate her shoulders. Dr. Only diagnosed appellant with rotator cuff injury.

On May 2, 2017 Dr. Hamid noted that appellant had been under his care since June 6, 2016. Appellant presented with severe pain in both her right and left shoulders, with the left more symptomatic than the right. Dr. Hamid noted that she had previously undergone rotator cuff repair in 2007, which resulted in a satisfactory postoperative outcome. However, in the months before appellant's visit with him, she developed worsening pain in her bilateral shoulders. Dr. Hamid recalled that she told him that her work activities increased the level of pain and made it more difficult for her to use her shoulder for activities of daily living. He noted that appellant had treatment prior to their first visit, including cortisone injections and anti-inflammatory medication. Appellant's x-rays at her initial presentation demonstrated end-stage rotator cuff tear arthropathy, involving both shoulders. She underwent a left reverse total shoulder arthroplasty with Dr. Hamid, which was completed without complications. Appellant last visited Dr. Hamid on January 23, 2017, and she continued to have improvements in her range of motion and function, but was not fully recovered at that time. She continued to have right shoulder pain. Dr. Hamid concluded, "It is difficult for me to give a direct causal relationship of [appellant's] symptoms and when exactly this began to be more symptomatic for her to the point where she required surgical intervention. This appears to be a chronic condition that was worsened by recent activities that may include work-type activities."

By decision dated August 15, 2017, OWCP evaluated the merits of appellant's claim and denied modification of its prior decision. It found that the evidence of record was insufficient to modify the decision of May 16, 2017, because the medical evidence did not provide sufficient medical rationale to support that she sustained a medical condition causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.[7]

Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be

[5] *Supra* note 2.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *See Robert G. Morris*, 48 ECAB 238 (1996).

based on a complete factual and medical background.[9] 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 factors.[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her bilateral rotator cuff conditions were either caused or aggravated by the accepted factors of her federal employment.

An April 25, 2016 report from Dr. Fleischli was received in support of appellant's claim. In this report, he diagnosed bilateral rotator cuff arthropathy and recommended that she consider shoulder arthroplasty, administering a bilateral subacromial injection. However, Dr. Fleischli's report failed to offer an opinion on the cause of appellant's diagnosed conditions. Similarly, Dr. Hamid's June 6 and 21, and August 4, 2016 reports, as well as Dr. Only's May 16, 2016 report and the June 16, 2016 MRI scan report, do not offer opinions on the cause of appellant's diagnosed conditions. 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.[12] Accordingly, these reports are insufficient to satisfy appellant's burden of proof on causal relationship.

In a postoperative report dated September 12, 2016, Dr. Hamid noted that he had discussed the natural history and pathogenesis of treatment for osteoarthritis with appellant, explaining to her that her left shoulder arthritis was likely secondary to her prior rotator cuff deficiency, and that her symptoms were certainly exacerbated by her work conditions, which required significant use of her left upper extremity with shoulder and above-the-shoulder activities. He noted, "In this manner, it is certainly likely that [appellant's] work conditions accelerated her need to undergo replacement on the left side." Dr. Hamid did not identify the specific employment activities he believed either caused or contributed to appellant's diagnosed upper extremity conditions. He also did not provide any rationale for his expressed opinion that it was likely that her work conditions accelerated her need to undergo surgery. As noted, a physician's opinion on causal relationship must be based on a complete factual and medical background, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition(s) and appellant's specific employment factors.[13] As Dr. Hamid neither identified appellant's specific

[9] *Supra* note 8.

[10] *Id.*

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[12] *Willie M. Miller*, 53 ECAB 697 (2002).

[13] *Supra* note 8.

employment duties involving shoulder and above-the-shoulder activities, nor explained how her diagnosed upper extremity conditions were employment related, his September 12, 2016 report is insufficient to establish causal relationship.[14]

By letter dated December 14, 2016, Dr. Only noted that appellant had worked at a general mail facility for several years, which included sorting mail and overhead reaching, which had caused bilateral rotator cuff tears. He noted that because of her history of shoulder pain, dysfunction, and injury, she had difficulty with reaching overhead, with heavy lifting more than 10 pounds, and with repetitive movements. Dr. Only's December 14, 2016 report failed to provide any medical rationale to support appellant's conclusion on causal relationship.[15] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the work factors were sufficient to result in the diagnosed medical condition is insufficient to meet the claimant's burden of proof to establish her claim.[16]

On May 2, 2017 Dr. Hamid noted, "It is difficult for me to give a direct causal relationship of [appellant's] symptoms and when exactly this began to be more symptomatic for her to the point where she required surgical intervention. This appears to be a chronic condition that was worsened by recent activities that may include work-type activities." While he noted that appellant's condition appeared to be worsened by activities, which may include activities related to her federal employment, this opinion was vague and speculative in nature and failed to explain the causal relationship between her work and her condition.[17] As such, it was insufficient to establish appellant's claim.

Finally, the letters dated December 22, 2016 and February 8, 2017, from certified physician assistants are of no probative value to establish appellant's claim, because physician assistants are not considered physicians as defined by FECA.[18]

As noted above, appellant bears the burden of proof to establish the essential elements of her claim. Because she has failed to provide sufficient medical evidence to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment, she has failed to meet her burden of proof to establish her claim.

On appeal counsel contends that OWCP's decision is contrary to fact and law. As discussed above, appellant has not established causal relationship between her diagnosed conditions and factors of her federal employment.

[14] *Id*.

[15] *J.F*., Docket No. 09-1061 (issued November 17, 2009); *A.D*., 58 ECAB 149 (2006).

[16] *J.D*., Docket No. 14-2061 (issued February 27, 2015).

[17] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[18] 5 U.S.C. § 8101(2) 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. *L.L*., Docket No. 13-0829 (issued August 20, 2013) (a physician assistant is not considered a physician under FECA).

Appellant may submit new evidence or argument as part of 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 her diagnosed bilateral rotator cuff conditions are causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 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