

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

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**L.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cleveland, OH, Employer**

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**Docket No. 17-1407  
Issued: January 19, 2018**

*Appearances:*

*Alan J. Shapiro, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 14, 2017 appellant, through counsel, filed a timely appeal from an April 25, 2017 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 the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish right shoulder conditions causally related to the accepted 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**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On October 3, 2014 appellant, then a 51-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder "flare-up" as a result of factors of her federal employment. The claim was assigned OWCP File No. xxxxxx069. Appellant noted that she was unable to work from July 9 through 17, 2014. She explained that she had delayed filing the claim because she thought that she should file a claim for recurrence of disability arising from her previously accepted August 17, 2011 occupational disease claim.<sup>4</sup> Appellant's supervisor noted on the claim form that appellant had been on limited duty since she returned to work following her previous injury.

In an October 13, 2014 progress note, Dr. Kimberly Togliatti-Trickett, Board-certified in physical medicine and rehabilitation, diagnosed rotator cuff strain/shoulder and shoulder sprain/strain. She noted that appellant was going to file a new claim for her right shoulder condition because it was aggravated by her new job as a custodian. Dr. Togliatti-Trickett noted that appellant had reached maximum medical improvement on January 1, 2013 following her initial right shoulder injury, but had continued having occasional exacerbation of pain in her right shoulder. She related that appellant reagravated her right shoulder on May 8, 2014.

In an October 14, 2014 attending physician's report (Form CA-20), Dr. Togliatti-Trickett diagnosed appellant's conditions as right shoulder strain/sprain and right rotator cuff strain. She checked a box marked "yes" indicating that she believed that appellant's conditions were caused or aggravated by her employment. Dr. Togliatti-Trickett related that appellant was totally disabled from work July 9 through 17, 2014, and partially disabled from work July 17 to October 13, 2014.

On October 21, 2014 appellant submitted a claim for compensation (Form CA-7) for wage loss from July 9 to 17, 2014.

By letter dated November 10, 2014, OWCP informed appellant that further factual and medical evidence was necessary to support her claim. Appellant was afforded 30 days to submit the necessary evidence. In response, she submitted additional evidence.

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<sup>3</sup> *Order Remanding Case*, Docket No. 16-0225 (issued May 4, 2016).

<sup>4</sup> Appellant had previously filed an occupational disease claim on August 17, 2011 wherein she alleged an injury to her right shoulder as a result of constant lifting and handling of trays and buckets on the automatic induction flats sorting machine. OWCP assigned the claim OWCP File No. xxxxxx153 and on July 25, 2011 accepted the claim for strain and sprain of her shoulder and upper arm. Appellant subsequently filed a claim for a recurrence of disability (Form CA-2a) as of July 9, 2014. On September 25, 2014 OWCP denied her claim for recurrence as she had not established that she was further disabled due to a material change/worsening of her accepted employment-related condition, and after review of the written record, this decision was affirmed by the hearing representative in a July 7, 2015 decision.

In a November 11, 2013 magnetic resonance imaging (MRI) scan of the right shoulder report, Dr. Braxton McClung, a Board-certified radiologist, found stable rim rent tear at the footplate of the middle fibers of the supraspinatus, partial articular surface tearing of the mid fibers of the infraspinatus, mild acromioclavicular joint osteoarthritis and subacromial bursitis, degenerative tearing of the superior and posterior/superior labrum, and nonspecific bone marrow reconversion.

In a progress note dated July 9, 2014, Dr. Togliatti-Trickett noted that appellant had experienced increased pain in her right shoulder during the last week. She noted that appellant had been working custodial work, but had been off work for the past week and had been resting her right arm and taking Celebrex daily for pain. Dr. Togliatti-Trickett again listed appellant's diagnoses as rotator cuff strain/shoulder and shoulder sprain/strain. She noted that appellant was limited in the use of her right shoulder due to pain, and that she was to continue to avoid overhead activities and remain off work for one week and then return with restrictions.

In a December 4, 2014 response to OWCP's request for additional information, appellant stated that the work of shoveling snow between December 2013 and February 2014, and unsuccessful attempts at starting a gas grass trimmer in May 2014, contributed to her right shoulder conditions.

By decision dated February 2, 2015, OWCP denied appellant's occupational disease claim as the medical evidence of record was insufficient to establish that her diagnosed right shoulder conditions were causally related to the accepted factors of her federal employment.

On February 9, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a February 25, 2015 letter to OWCP, Dr. Togliatti-Trickett noted that appellant worked as a custodian for the employing establishment, and that she had a prior work injury from June 1, 2011 which resulted in a sprain of the right shoulder and arm and a right rotator cuff sprain. She noted that appellant was able to continue with work activities until she developed an increase in pain to the right shoulder because of her work activities. Dr. Togliatti-Trickett opined within a reasonable degree of medical certainty that appellant's action on May 8, 2014 of pulling string to start a grass trimmer was a direct and proximate cause of a reagravation of her June 17, 2011 right shoulder injury.

In a March 26, 2015 letter, Dr. Andre F. Wolanin, an orthopedic surgeon, indicated that documentation through physical examinations and MRI scans revealed a progression of an intrasubstance tear now becoming a full-thickness tear of the supraspinatus and spreading to the infraspinatus. He opined that there was a direct link between the May 8, 2014 event, which caused a partial thickness tear, and the full-thickness tear. Dr. Wolanin further indicated that appellant would benefit from arthroscopic rotator cuff repair in order to not develop further complications such as cuff arthropathy in the future.

During the hearing, held on August 11, 2015, appellant testified that on May 8, 2014 she injured her right shoulder while pulling the string to start a gas grass trimmer. She noted that she did not seek medical treatment for this injury until July 8, 2014. Appellant further testified that

she did not report the injury in May 2014 because she already had a regularly scheduled medical appointment in July. She noted that she initially felt a sharp pain and then had a flare-up a couple of days later. Appellant stated that she wrote her supervisor a note at the time of the injury, but did not file a formal claim at that point.

By decision dated October 23, 2015, OWCP's hearing representative affirmed the February 2, 2015 decision. She found that appellant had not provided sufficient medical evidence to establish causal relationship between her right shoulder conditions and the accepted factors of her federal employment.

On December 28, 2015 appellant, through counsel, appealed to the Board. Counsel argued that appellant sustained a recurrence of disability and that she should never have been advised to file a claim for a new injury. He contended that she never stopped having problems relating to her previously accepted right shoulder injury and intermittently sought medical treatment for that injury.

By order dated May 4, 2016, the Board remanded the case to OWCP. The Board found that as appellant's claim for a new injury dealt with the same bodily member accepted under OWCP File No. xxxxxx153, and as she was arguing that OWCP mischaracterized her condition as a new injury rather than a recurrence, medical evidence relating to the earlier accepted occupational disease claim was necessary for the adjudication of the present claim. Accordingly, the Board determined that the case was not in posture for decision. The case was remanded for OWCP to combine the case files and reconstruct the case record, to be followed by the issuance of an appropriate decision.<sup>5</sup>

By decision dated July 6, 2016, OWCP reviewed the history of the claim in OWCP File No. xxxxxx153. With regard to the present occupational disease claim, OWCP File No. xxxxxx869, it noted that the evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted employment factors.

On July 18, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. During the hearing held on February 13, 2017, counsel contended that appellant's employment duties did not cause a new injury, but rather a worsening of her previously accepted right shoulder rotator cuff condition.

By decision dated April 25, 2017, the hearing representative affirmed the February 2, 2015 decision as appellant had not submitted any rationalized medical evidence to support that the claimed right shoulder conditions were due to factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</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

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> *Supra* note 2.

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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</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>8</sup>

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 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.<sup>9</sup>

### ANALYSIS

Appellant filed an occupational disease claim alleging that she sustained a "flare-up" of a previously accepted injury to her right shoulder. She filed a claim for wage-loss compensation for the period July 9 through 17, 2014. Appellant testified that this aggravation occurred as a result of pulling the string to start a gas grass trimmer on May 6, 2014, and shoveling snow from December 2013 through February 2014. OWCP denied her claim, noting that she had not established causal relationship between the accepted factors of her federal employment and her diagnosed right shoulder conditions.

Initially, the Board finds that OWCP properly adjudicated the claim as a claim for a new injury, rather than a recurrence of her prior claim under OWCP File No. xxxxxx153. A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition resulting from a previous injury or illness without a new or intervening injury.<sup>10</sup> Appellant returned to work following her August 2011 employment injury, which was accepted for strain and sprain of her right shoulder and arm. She then alleged that new work activities, specifically shoveling snow and attempting to start a grass trimmer, caused an aggravation of her previously accepted right shoulder condition. Accordingly, as properly determined by OWCP, appellant's claim was not for a recurrence of

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<sup>7</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *See Irene St. John*, 50 ECAB 521 (1999).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004); *see also J.F.*, Docket No 12-1751 (issued February 5, 2013).

disability of a previously accepted employment injury. As appellant has alleged an injury over the course of more than one workday or shift, following her return to work, her claim is for a new occupational disease.<sup>11</sup>

The Board finds that appellant failed to establish causal relationship between the accepted factors of her federal employment and her diagnosed right shoulder conditions.

In a progress note dated July 9, 2014, Dr. Toglatti-Trickett noted that appellant had been performing custodial duties for the past week, and had an increase of pain in her shoulder. In an October 13, 2014 progress note, she noted that appellant reagggravated her prior right shoulder injury on July 8, 2014. Dr. Toglatti-Trickett further noted that appellant's right shoulder injury was aggravated by her new job as a custodian. However, she did not explain how the specific employment duties identified by appellant caused a diagnosed medical condition. Dr. Toglatti-Trickett failed to provide a well-rationalized opinion explaining the cause of appellant's right shoulder condition and she only generally repeated her allegations pertaining to appellant's employment factors. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how or why specific physical activity actually caused the diagnosed condition.<sup>12</sup> In her October 14, 2014 Form CA-20 report, Dr. Toglatti-Trickett checked a box marked "yes" indicating that appellant's diagnosed conditions were caused or aggravated by her employment activities. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>13</sup>

In a February 25, 2015 letter to OWCP, Dr. Togliatti-Trickett opined within a reasonable degree of medical certainty that appellant's aggravation of the right shoulder condition was due to work activity from May 8, 2014 when she pulled the string of a gas grass trimmer. The Board finds that Dr. Toglatti-Trickett's opinion on causal relationship in her February 25, 2015 letter lacks rationale. Dr. Toglatti-Trickett saw appellant on July 9, 2014, but simply attributed appellant's injury to generic custodial duties. The first mention that appellant's right shoulder conditions were caused while trying to start a gas grass trimmer on May 6, 2014 was not until February 25, 2015, nine months after the alleged occurrence. Furthermore, appellant did not seek any medical treatment until July 9, 2014, which was two months after the alleged injury. Dr. Toglatti-Trickett offered no explanation for these discrepancies. Furthermore, she did not explain how, physiologically, the accepted factors of appellant's employment, including shoveling snow and pulling the string to start a gas grass trimmer, caused the diagnosed conditions. Medical conclusions unsupported by rationale are of little probative value.<sup>14</sup>

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<sup>11</sup> A claim for an injury over more than one workday or shift is properly considered an occupational disease or illness rather than a traumatic injury. *See* 20 C.F.R. § 10.5(a) and (ee).

<sup>12</sup> *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

<sup>13</sup> *See S.F.*, Docket No. 17-0463 (issued September 8, 2017).

<sup>14</sup> *Id.*

Dr. Wolanin indicated that the May 8, 2014 incident caused the progression of an intrasubstance tear to become a full thickness tear of the supraspinatus and infraspinatus. However, he never described how, medically, any of appellant's accepted employment factors caused the progression of the shoulder tear. As such, Dr. Wolanin's conclusion is of limited probative value.<sup>15</sup>

The other medical evidence of record is also insufficient to establish causal relationship. Dr. McClung interpreted a right shoulder MRI scan, but he offered no opinion on causal relationship. The Board has found that diagnostic studies are of limited probative medical value as they do not specifically address whether the diagnosed conditions are attributable to accepted employment factors.<sup>16</sup> Accordingly, Dr. McClung's MRI scan study is of limited probative value.<sup>17</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>18</sup> Appellant's belief that the duties of her federal employment caused her injury, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship.<sup>19</sup>

The Board thus finds that appellant failed to meet her burden of proof.

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 establish right shoulder conditions causally related to the accepted factors of her federal employment.

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<sup>15</sup> *Supra* note 9.

<sup>16</sup> *See J.P.*, Docket No. 16-0510 (issued April 22, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>19</sup> *P.S.*, Docket No. 17-0598 (issued June 23, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 25, 2017 is affirmed.

Issued: January 19, 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