

ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to an accepted September 23, 2015 employment incident.

FACTUAL HISTORY

On December 9, 2015 appellant, then a 64-year-old vocational rehabilitation specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 23, 2015 she injured her right shoulder when she fell down stairs and landed on her right arm. She did not stop work.

By correspondence dated December 22, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised appellant of the type of evidence necessary to establish her claim, including a medical opinion from a physician explaining how the claimed incident caused or aggravated a diagnosed condition. OWCP afforded appellant 30 days to provide the additional evidence.

In response to OWCP's request, appellant submitted reports dated December 8 and 28, 2015, by Dr. Vincent Wing-Shun Chen, a Board-certified orthopedic surgeon. He provided examination findings and diagnosed right rotator cuff syndrome. In the December 8, 2015 report, he described appellant's injury as occurring on September 23, 2015 when she braced her right arm during a fall. On December 28, 2015 Dr. Chen reported that appellant developed right shoulder pain following a fall at work on September 23, 2015.

In December 29, 2015 reports, Dr. José Cervantes of Kaiser Permanente noted that appellant had been seen on November 18, 28, and December 18, 2015. He recommended physical therapy and an x-ray of the left shoulder.

In a December 29, 2015 statement, appellant described the September 23, 2015 injury. She noted that in 1999 she had right shoulder surgery and that the September 2015 fall had caused an aggravation. However, appellant did not seek medical treatment for her injury until she was sent to the emergency room on November 28, 2015.

By decision dated February 1, 2016, OWCP denied appellant's claim finding that, although she established that the September 23, 2015 incident occurred as alleged, she failed to establish fact of injury causally related to the accepted employment incident.

Subsequent to the decision, OWCP received additional medical evidence.

A November 28, 2015 x-ray interpretation of appellant's right shoulder revealed no significant abnormality. A December 9, 2015 magnetic resonance imaging (MRI) scan report noted an injury date of September 23, 2015 and referenced left shoulder radiographs for comparison. The report contained diagnoses of chronic severe supraspinatus tendinosis without a discrete tendon tear, supraspinatus calcific tendinitis, severe glenohumeral joint osteoarthritis, and mild-to-moderate acromioclavicular joint arthrosis.

In an April 4, 2016 report, Dr. Chen provided examination findings and diagnoses of right shoulder severe tendinosis, old calcific tendinitis, biceps tendinosis, and moderate

glenohumeral osteoarthritis. He noted an injury date of September 23, 2015 and reported that appellant was interested in surgery and was not pursuing workers' compensation benefits.

In an April 5, 2016 attending physician's report (Form CA-20), Dr. Donna J. Asimont, an examining Board-certified family medicine physician, noted an injury date of September 23, 2015. She noted that appellant had related injuring her right shoulder at work in September 2015. Dr. Asimont described the mechanism of injury as occurring when appellant fell down the stairs and injured her right shoulder. A physical examination revealed limited right shoulder range of motion due to pain and inability to raise the arm above her shoulder. Dr. Asimont diagnosed right shoulder injury and indicated that appellant was referred for right shoulder surgery.

On April 14, 2016 OWCP received an undated form requesting review of the written record by an OWCP hearing representative. By decision dated May 12, 2016, a hearing representative denied appellant's request for review of the written record as the request was untimely filed.

OWCP subsequently received an attending physician's supplemental report dated May 2, 2016 from Dr. Asimont which related an injury date of September 23, 2015. Dr. Asimont released appellant to modified work at home from May 2 to June 13, 2016 and limited-duty work from June 13 to 14, 2016. Physical examination findings were provided. Dr. Asimont diagnosed right rotator cuff syndrome.

In supplemental reports dated June 2, July 18, and August 29, 2016, Dr. Asimont released appellant to return to full-duty work and provided examination findings. She reported that appellant presented with a September 23, 2015 right shoulder injury and was diagnosed with right shoulder rotator cuff syndrome.

In a letter received on November 8, 2016, appellant, through counsel, requested reconsideration. In support of her request, she submitted an August 31, 2016 report from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, who noted appellant's work duties involved repetitive upper extremity motion. On September 23, 2015 Dr. Tauber reported that appellant tripped while walking up the stairs and used her extended right arm to break her fall. A review of the shoulder MRI scan revealed abnormalities. Appellant complained of constant right shoulder pain, which increased with activity. Dr. Tauber attributed appellant's right shoulder condition to the accepted September 23, 2016 work incident and to her repetitive work activities. He explained the mechanism whereby appellant's shoulder had been aggravated by the accepted September 23, 2015 incident. According to Dr. Tauber, falling on an outstretched arm is well known as the cause of shoulder impingement syndrome as well as the mechanism for other shoulder injuries. He explained that falling on a stretched arm caused the humeral head to jam into the glenoid, which aggravated or caused a shoulder condition.

By decision dated February 2, 2017, OWCP denied modification of its prior decision. It found that the evidence of record failed to establish causal relationship between the accepted September 23, 2015 employment incident and the diagnosed conditions.

LEGAL PRECEDENT

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 determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ 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.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹¹

³ 5 U.S.C. § 8101 *et seq.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

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

⁶ *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

Appellant alleged that she sustained a right shoulder injury as a result of the accepted September 23, 2015 work incident. OWCP denied appellant's claim as she had not established an injury causally related to the accepted September 23, 2015 work incident.

The Board finds that this case is not in posture for decision. Appellant submitted an August 25, 2016 report wherein Dr. Tauber provided a review of how the September 23, 2015 injury occurred and her medical treatment. Dr. Tauber diagnosed right shoulder impingement which he attributed to the fall on September 23, 2015. He explained that it is well known that falling on an outstretched arm is a known mechanism as a cause of injury to the shoulder and a known cause of shoulder impingement syndrome. Dr. Tauber explained that "the mechanism of injury also aggravates glenohumeral arthritis, as the humeral head essentially gets jammed into the glenoid." Thus, he opined that appellant permanently aggravated her shoulder condition due to extending her arm to break her fall. Dr. Tauber advised that appellant should avoid repetitive right upper extremity motion. He opined that appellant's right shoulder condition had been caused by both the accepted September 23, 2015 work incident and her repetitive work duties.

The Board finds that, although Dr. Tauber's opinion is not completely rationalized to meet appellant's burden of proof on causal relationship, it is of sufficient probative value to warrant additional development.¹² Dr. Tauber provided a detailed explanation of the mechanism whereby using an outstretched arm to break a fall caused an injury to her right shoulder. However, OWCP did not undertake further development of the medical record, such as referring appellant for a second opinion examination.¹³

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁴ This case must be remanded to OWCP for preparation of a statement of accepted facts and further development of the medical evidence. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision in the case.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978); *see also E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹³ *See R.N.*, Docket No. 17-0497 (issued May 19, 2017).

¹⁴ *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2017 is set aside, and the case is remanded for further development consistent with this opinion.

Issued: January 5, 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