

ISSUE

The issue is whether appellant has met her burden of proof to establish left elbow, right ankle, and right rotator cuff conditions causally related to the accepted October 22, 2015 employment incident.

FACTUAL HISTORY

On October 30, 2015 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty on October 22, 2015, she was stepping out of the back of her truck and fell, sustaining a cut elbow, sprained ankle, and pain in her shoulder. She indicated that the pain worsened as the days progressed. Appellant did not initially stop work. Appellant's supervisor controverted the claim and checked the box marked "no" indicating that her knowledge of the facts disagreed with statements of the employee and/or witnesses. She explained that appellant fell on her left elbow, but appellant claims the fall affected her right shoulder. Also, appellant had complained about her right shoulder earlier that day.

By development letter dated November 10, 2015, OWCP informed appellant and the employing establishment of the type of evidence needed to establish her claim and requested that she submit such evidence within 30 days. It noted that there was no diagnosis of any condition resulting from the injury. OWCP requested that appellant complete a questionnaire responding to the questions concerning the incident. It also requested detailed factual information concerning the accident, and where it occurred. Additionally, OWCP requested that appellant provide details regarding her right shoulder and any prior injuries and noted that the employing establishment controverted the claim because she complained about a right shoulder condition prior to the injury.

OWCP received nurses' notes dated October 23, 2015.

In an October 26, 2015 treatment note, Dr. Anthony A. Mascioli, a Board-certified orthopedic surgeon, related that appellant stated "[i]t is just getting worse. It is the right side." He examined appellant and diagnosed "status post repair of massive rotator cuff tear." Dr. Mascioli indicated that he was going to order a magnetic resonance imaging (MRI) scan. He completed a duty status report. Dr. Mascioli provided light-duty restrictions which included occasional lifting up to 20 pounds and restrictions on reaching for the right shoulder and no overhead work.

In a November 20, 2015 treatment note, Dr. Mascioli determined that the MRI scan revealed a massive retracted rotator cuff tear and subscapularis tear with glenohumeral osteoarthritis. In a separate note of even date, he diagnosed retear of the right rotator cuff and continued appellant's light-duty restrictions.

By decision dated December 14, 2015, OWCP denied appellant's claim, finding that she had not established that the October 22, 2015 injury occurred as alleged. It noted that appellant had not responded to the request for additional information and the factual component of

appellant's claim was, therefore, not accepted. As well, the medical evidence of record was also insufficient to establish the claim as there was no rationale to support causal relationship.

On April 13, 2016 appellant requested reconsideration and responded to OWCP's development questionnaire. She explained that she was originally injured on April 18, 2013 and underwent rotator cuff surgery for that injury on August 1, 2013. Appellant noted that she returned to work in March 2015. She advised that she was unable to timely perform any duties on her walking route due to her physician's restrictions, which included no overhead reaching. Appellant related that she received a cortisone shot on May 21, 2015 and continued working. She explained that, on October 22, 2015 she stopped in her vehicle to reload mail from the back to the front of her truck. Appellant related that, as she was stepping off the bumper, her right ankle buckled and she fell to the pavement "extremely hard." She noted that she cut her left elbow "pretty badly," but she thought she would be "o.k." Appellant explained that she finished her route, clocked out, and went home. However, when she removed her right high-top boot, she found her right ankle was swollen. Appellant recounted that she saw her physician and was diagnosed with an ankle sprain. She returned to work the next day with her ankle wrapped. With regard to her right shoulder, appellant noted that she informed her supervisor on the date of the injury that her right shoulder was bothering her while removing rubber bands from bundled mail. She explained that she worked three days with extreme pain before finally getting an MRI scan and filing the incident report. Appellant noted that she believed her rotator cuff tear actually occurred after the fall, due to the extreme pain she experienced the following Tuesday and Wednesday.

OWCP received a copy of Dr. Mascioli's October 26 and November 20, 2015 reports.

By May 12, 2016 decision, OWCP modified its December 14, 2015 decision. It found that appellant was performing her duties as a city carrier when the incident occurred on October 22, 2015, as alleged. However, the claim remained denied because the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted October 22, 2015 work incident.

On July 5, 2016 appellant requested reconsideration of the merits of her claim. No evidence or argument accompanied her request.

By decision dated July 19, 2016, OWCP denied appellant's request for reconsideration of the May 12, 2016 decision.

On October 13, 2016 appellant again requested reconsideration of the merits of her claim and submitted new evidence as well as copies of previously submitted evidence.

In an August 23, 2016 duty status report (Form CA-17), Dr. Mascioli noted that appellant fell from the back of a pickup truck and tore her right shoulder. He diagnosed a rotator cuff tear and recommended that appellant could resume her work with restrictions.

In a November 24, 2015 report, Dr. Thomas W. Throckmorton, a Board-certified orthopedic surgeon, noted that appellant's past surgical history included an arthroscopic repair of her right rotator cuff in 2013. He explained that she sustained a torn rotator cuff on the job in 2013. Dr. Throckmorton advised that she underwent an arthroscopic repair of a massive rotator

cuff tear on August 1, 2013. He related that appellant indicated that she initially did well; however, over the last several months, she progressively worsened, with regard to her shoulder function. Dr. Throckmorton noted that an MRI scan was obtained, which revealed a massive rotator cuff tear involving her subscap, supraspinatus, and anterior infraspinatus with retraction. He indicated that appellant's job was becoming more and more difficult as she had pain and weakness that was limiting her ability to carry or lift things. Dr. Throckmorton advised that appellant inquire about options for her rotator cuff arthropathy. He examined appellant, provided findings, and recommended a right cuff tear arthropathy. Dr. Throckmorton opined that "[r]egarding the genesis of [appellant's] massive rotator cuff tear, this occurred in a fall where she injured her right shoulder. This was at work on October 22, 2015."

In a January 11, 2016 addendum, Dr. Mascioli explained that appellant "did fall ... at work 10/22. From that fall, she reinjured her shoulder, which we have been treating her for under her Worker[s]' Compensation status. I think that it is relevant that she still gets covered for this since it was a reinjury of a prior Worker[s]' Compensation issue. This is why further treatment should be covered by Worker[s]' Compensation."

OWCP also received a copy of Dr. Mascioli's October 26 and November 20, 2015 reports.

By decision dated October 14, 2016, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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.⁴

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

³ *Id.*

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

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be 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 factor(s).¹⁰

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹²

ANALYSIS

Appellant alleged that, on October 22, 2015, she stepped out of the back of her truck and fell, sustaining a cut left elbow, sprained right ankle, and pain in her right shoulder while in the performance of duty. OWCP accepted that the October 22, 2015 employment incident occurred as alleged, but denied the claim, finding that appellant had not established that her diagnosed conditions were causally related to the accepted October 22, 2015 employment incident.

The Board finds that the medical evidence of record is insufficient to establish appellant's claim, as it does not contain a reasoned explanation explaining how the October 22, 2015 employment incident caused or aggravated an injury.¹³

OWCP received nurses' notes dated October 23, 2015. Nurses, however, are not considered physicians under FECA and thus, their reports are of no probative value.¹⁴

In an October 26, 2015 treatment note, Dr. Mascioli diagnosed status post repair of massive rotator cuff tear. He indicated that appellant was a number of years post-rotator cuff repair. In a November 20, 2015 treatment note, Dr. Mascioli determined that the MRI scan

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

⁹ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹² *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹³ 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).

¹⁴ *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (January 2013). Section 8101(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 the applicable state law.

revealed a massive retracted rotator cuff tear and subscapularis tear with glenohumeral osteoarthritis. In of even date, he diagnosed retear of the right rotator cuff and continued appellant's light-duty restrictions. The Board notes that Dr. Mascioli provided diagnoses, but did not offer an opinion relative to causal relationship. This is especially important, as the facts indicate that appellant fell on her left elbow. Furthermore, she had a preexisting right shoulder condition and rotator cuff repair that was "a number of years out," and there is no explanation as to how the fall on the left side caused the current diagnoses to the right shoulder. 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.¹⁵

In an August 23, 2016 duty status report, Dr. Mascioli noted that appellant fell from the back of a pickup truck and retear her right shoulder. He diagnosed a cuff tear and recommended that appellant could resume her work with restrictions. The Board notes that Dr. Mascioli did not offer any opinion on causal relationship. Dr. Mascioli did not specifically address the cause of the diagnosed condition(s) or relate the condition(s) to appellant's October 22, 2015 employment incident and thus his report is of little probative value.¹⁶

In a November 24, 2015 report, Dr. Throckmorton noted that appellant's past surgical history included a work-related arthroscopic repair of her right rotator cuff in 2013. He advised that she underwent an arthroscopic repair of a massive rotator cuff tear on August 1, 2013. Dr. Throckmorton opined that "[r]egarding the genesis of [appellant's] massive rotator cuff tear, this occurred in a fall where she injured her right shoulder. This was at work on October 22, 2015." To be of probative value, the physician must provide rationale for the opinion reached. In this case, Dr. Throckmorton did not explain how he arrived at his opinion. Where no such rationale is present, the medical opinion is of diminished probative value.¹⁷ The need for rationalized medical evidence is especially important in this case as appellant had a prior 2013 right shoulder injury.¹⁸

In a January 11, 2016 addendum, Dr. Mascioli explained that appellant "did fall ... at work 10/22. From that fall, she reinjured her shoulder, which we have been treating her for under her Worker[s]' Compensation status. I think that it is relevant that she still gets covered for this since it was a reinjury of a prior Worker[s]' Compensation issue. This is why further treatment should be covered by Worker[s]' Compensation." However as noted above, to be of probative value, the physician must provide rationale for the opinion reached. Dr. Mascioli merely concluded that appellant sustained a reinjury and did not provide any rationale explaining how the October 22, 2015 employment incident caused the reinjury. Where no such rationale is present, the medical opinion is of diminished probative value.¹⁹

¹⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁶ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹⁷ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁸ *See S.D.*, Docket No. 16-0999 (issued October 16, 2017).

¹⁹ *Id.*

Because the medical reports submitted by appellant do not address how the accepted October 22, 2015 employment incident caused or aggravated a right shoulder condition, these reports are of limited probative value²⁰ and are insufficient to establish the claim.

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 left elbow, right ankle, and right rotator cuff conditions causally related to the accepted October 22, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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

²⁰ See *supra* note 16 at 389-90 (1997).