

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

S.F., Appellant	)	
	)	
and	)	<b>Docket No. 18-0296</b>
	)	<b>Issued: July 26, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bedford Park, IL, Employer	)	
	)	

*Appearances:*  
Stephanie N. Leet, 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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 27, 2017 appellant, through counsel, filed a timely appeal of a June 29, 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 has met her burden of proof to establish a rotator cuff tear and bicipital tenosynovitis causally related to the accepted February 4, 2015 employment incident.

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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**

On February 13, 2015 appellant, then a 51-year-old rural carrier filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder on February 4, 2015 while trying to open a large revolving mailbox. She stopped work on February 6, 2015.

In a report dated February 10, 2015, appellant's physician, Dr. Jeffrey Kazaglis, a Board-certified orthopedic surgeon, noted her history of injury as lifting something heavy at work on February 4, 2015 and experiencing a pop in her right shoulder. He performed right shoulder surgery on February 6, 2015 for a right rotator cuff tear and bicipital tenosynovitis.

In a March 5, 2015 developmental letter, OWCP requested additional factual and medical evidence in support of appellant's claim and provided a questionnaire for her completion. It afforded her 30 days for a response.

By decision dated April 10, 2015, OWCP denied appellant's traumatic injury claim finding that she had not provided medical evidence establishing causal relationship between her diagnosed right rotator cuff tear and bicipital tenosynovitis and her accepted employment incident of February 4, 2015.

Appellant responded to OWCP's request for factual information on April 16, 2015. She noted on February 4, 2015 that she carried a tub of mail to the mailroom of an office building on her route. Appellant described the mailroom as containing a large revolving vault-type mailbox which is the size of a refrigerator. She unlocked the mail vault and turned the opening to place the mail. Appellant found the mail vault difficult to turn and during her attempt to turn it by pushing, she felt a pop in her right shoulder along with extreme pain. She noted difficulty in moving her right arm, it seemed weaker, and she could not reach as far as well as noting the additional pain.

On April 1, 2016 appellant, through counsel requested reconsideration and provided additional medical evidence and argument. Counsel contended that Dr. Kazaglis established causal relationship between appellant's accepted work incident and her diagnosed conditions.

Appellant provided a February 6, 2015 operative report from Dr. Kazaglis. Dr. Kazaglis performed an arthroscopic right shoulder rotator cuff repair of "a massive rotator cuff tear," right shoulder subacromial decompression and an open subpectoral biceps tenodesis. He noted that appellant had three previous arthroscopic procedures on her right shoulder and that he had treated appellant for three years for chronic right shoulder pain that failed conservative measures. Dr. Kazaglis reported that appellant's biceps tendon was torn, her labrum was intact, and that there was a moderate-sized rotator cuff tear involving the entire supraspinatus with shredded tears through the infraspinatus, as well as a tear of the superior 20 percent of the subscapularis.

Dr. Kazaglis completed a note on March 31, 2015 and explained that appellant had a two- to three-year history of pain in her right shoulder prior to February 2015. He noted that lifting, pulling, grabbing, and twisting of her right arm and shoulder at work exacerbated her pain. Dr. Kazaglis reported that appellant's January 2015 shoulder magnetic resonance imaging (MRI) scan demonstrated a small to medium rotator cuff tear with minimal retraction. He noted that on February 4, 2015 while at work appellant was pulling open a heavy mail vault on her route, it became stuck, and when she pushed the vault to the next section, she felt a large "pop" and had

severe pain and significantly more weakness than she had previously experienced in her right shoulder. Appellant informed Dr. Kazaglis on February 6, 2015 prior to surgery of the February 4, 2015 work event. During surgery he found a massive rotator cuff tear with biceps tear which was much more significant than the prior MRI scan findings. Dr. Kazaglis opined, "Hence the injury at work [on] February 4, 2015 exacerbated and worsened her chronic right shoulder pain and weakness." He further noted, "I felt that her work-related injury on February 4, 2015 significantly worsened the size and depth of the rotator cuff tear that I had seen on her MRI scan from January 2015.... The specific injury she reported where she pushed and pulled on a heavy object and felt a pop and weakness in her shoulder was when more of her rotator cuff had torn."

Dr. Kazaglis completed a report on March 29, 2016 and described appellant's previous right shoulder conditions and treatment. He indicated that in late 2014 and early 2015 appellant had symptoms of bicipital tendinitis in her right shoulder and inflammation of her rotator cuff. Dr. Kazaglis again noted that the January 2015 MRI scan demonstrated fraying of the biceps tendon and a partial thickness rotator cuff tear on the right. He described appellant's February 4, 2015 employment incident of pushing the heavy revolving mailbox with the pop and shoulder weakness. Dr. Kazaglis noted that during appellant's February 6, 2015 surgery, he found a complete, massive two tendon rotator cuff tear with dislocation of her biceps tendon which was more significant than that seen on the January 2015 MRI scan. He opined that the diagnosis of complete massive rotator cuff tear was caused by her work incident on February 4, 2015. Dr. Kazaglis further found that appellant's bicipital tenosynovitis was aggravated by her injury at work on February 4, 2015.

By decision dated June 23, 2016, OWCP denied modification of the April 10, 2015 decision and found that Dr. Kazaglis' reports were not sufficiently well rationalized to establish causal relationship between appellant's February 4, 2015 employment incident and her right shoulder conditions.

Counsel requested reconsideration of the June 23, 2016 decision on November 4, 2016. She alleged that the medical evidence was sufficient to meet appellant's burden of proof. Appellant also provided a supplemental statement describing her February 4, 2015 employment incident and her previous right shoulder surgery in 2007 which included open subacromial decompression, distal clavicle excision, and rotator cuff debridement. Her diagnoses following this surgery were calcifying tendinitis of the shoulder and bicipital tenosynovitis.

In a notes dated December 19, 2013, July 22, and October 9, 2014 and January 22, 2015, Dr. Kazaglis indicated that appellant had a previous right shoulder surgery in 2007 and was experiencing right shoulder pain. He noted that appellant was an avid weightlifter. Dr. Kazaglis reviewed appellant's January 5, 2015 MRI scan on January 22, 2015 and found tenosynovitis of the biceps tendon, and tear of the anterior labrum, with a full-thickness small rotator cuff tear and multiple partial-thickness tears.

Appellant provided her January 5, 2015 MRI scan of the right shoulder which demonstrated tendinosis of the supraspinatus and infraspinatus tendons, partial thickness tear of the supraspinatus, possible partial thickness tearing of the infraspinatus, and small full thickness tear of the posterior fibers near the infraspinatus with retraction as well as a suspected tear of the anterior superior labrum.

By decision dated June 29, 2017, OWCP denied modification of its June 23, 2016 decision. It found appellant had not submitted well-rationalized medical evidence that her claimed work injury of February 4, 2015 resulted in an aggravation of her underlying right shoulder condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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 United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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. 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 and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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>6</sup> This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a right rotator cuff tear and bicipital tenosynovitis causally related to her February 4, 2015 employment incident.

It is undisputed that on February 4, 2015 appellant performed her work duties of opening a large revolving vault-type mailbox. However, the Board finds that she failed to submit sufficient

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</sup> *A.D.*, *id.*; *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *A.D.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

medical evidence to establish that this work incident caused or aggravated her shoulder conditions.<sup>8</sup>

In support of her claim, appellant submitted medical evidence from Dr. Kazaglis dated March 31, 2015 and March 29, 2016 in which he described appellant's employment activities on February 4, 2015 as feeling a pop in her shoulder while putting mail in large revolving vault-type mailbox. Dr. Kazaglis' treatment notes indicate that he first examined appellant on December 19, 2013 due to right shoulder pain and that she had previously undergone right shoulder surgery in 2007. He reviewed appellant's January 5, 2015 MRI scan which demonstrated tendinosis of the supraspinatus and infraspinatus tendons, partial thickness tear of the supraspinatus, possible partial thickness tearing of the infraspinatus, and small full thickness tear of the posterior fibers near the infraspinatus with retraction as well as a suspected tear of the anterior superior labrum. Dr. Kazaglis compared this scan with his findings during appellant's February 6, 2015 right shoulder surgery. On February 6, 2015 he diagnosed massive rotator cuff tear, biceps tendinitis, and right shoulder impingement. Dr. Kazaglis' findings in the operative report listed a torn biceps tendon, intact labrum, and a moderate-sized rotator cuff tear involving the entire supraspinatus with shredded tears through the infraspinatus, and a tear of the superior 20 percent of the subscapularis. He opined that the expansion of appellant's rotator cuff tears occurred on the date of injury, February 4, 2015. The Board finds that the opinions of Dr. Kazaglis are not well rationalized. While Dr. Kazaglis opined that appellant's diagnosed right shoulder conditions were caused by the February 4, 2015 employment incident, he failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely how pushing the vault-like mailbox would cause or aggravate appellant's shoulder condition resulting in the changes he reported in his operative report on February 6, 2015.<sup>9</sup> The Board finds his reports to be without sufficient detail to explain how appellant's employment incident caused her injury given her history of multiple prior right shoulder injuries.<sup>10</sup> Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>11</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup> Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Kazaglis' opinion on causal relationship is equivocal in nature and of limited probative value.<sup>13</sup>

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<sup>8</sup> *M.E.*, Docket No. 17-1857 (issued February 2, 2018).

<sup>9</sup> *S.H.*, *supra* note 7; *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> *S.H.*, *supra* note 7; *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>12</sup> *S.H.*, *id.*; *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>13</sup> *S.H.*, *id.*; *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).

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>14</sup> Appellant's honest belief that the February 4, 2015 employment incident caused her medical conditions is not in question, but that belief, however sincerely held, does not constitute the medical evidence to establish causal relationship.<sup>15</sup>

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 rotator cuff tear and bicipital tenosynovitis causally related to the accepted February 4, 2015 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2018  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *G.E.*, Docket No. 17-1719 (issued February 6, 2018); *D.D.*, 57 ECAB 734 (2006).

<sup>15</sup> *G.E.*, *id.*; *H.H.*, Docket No. 16-0897 (issued September 21, 2016).