

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

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**D.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bemidji, MN, Employer**

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**Docket No. 18-0352  
Issued: July 10, 2018**

*Appearances:*  
*Appellant, pro se*  
*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 11, 2017 appellant filed a timely appeal from a June 12, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e) – (f). One hundred and eighty days from June 12, 2017, the date of OWCP's last decision, was December 9, 2017, which is a Saturday. Pursuant to 20 C.F.R. § 501.3(f)(2), when the last day of the period so computed is a Saturday, Sunday, or Federal holiday, the period runs to the close of the next business day, which was Monday, December 11, 2017. The appeal was received on Monday, December 11, 2017, rendering it timely.

## ISSUE

The issue is whether appellant has met his burden of proof to establish that his diagnosed left shoulder condition is causally related to the accepted April 30, 2015 employment incident.

## FACTUAL HISTORY

On May 5, 2015 appellant, then a 69-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2015 he sustained a left shoulder rotator cuff tear when he opened a large mailbox and the door stuck. He did not stop work.

On the back of the claim form, appellant's supervisor indicated that appellant had a significant preexisting shoulder condition. He related that years ago appellant filed a claim for a shoulder injury as a result of opening a mailbox.<sup>3</sup>

OWCP received a September 14, 2007 report from Dr. James M. Beckley, a Board-certified orthopedic surgeon, for treatment of left shoulder pain. Dr. Beckley related that in May 2005 appellant reached across his body to open a frozen mailbox and injured his left shoulder. He noted that appellant underwent surgery in April 2006 for rotator cuff repair and left carpal tunnel release.

Appellant was treated by Katherine Friese, a nurse practitioner. In examination reports and work status notes dated May 4 to June 1, 2015, Ms. Friese noted an injury date of April 30, 2015 and related that appellant opened a mailbox when he felt a pull or pop in his left shoulder. She provided examination findings and diagnosed left shoulder sprain with a likely tear.

Appellant underwent physical therapy and submitted treatment notes dated from May 8 through June 2, 2015.

In progress notes dated June 2 and August 11, 2015, Dr. Terrance L. Johnson, a Board-certified orthopedic surgeon, indicated that about a month ago appellant sustained an injury to his left upper back and scapular area when he pulled out a mailbox. He noted that appellant had a history of adhesive capsulitis. Dr. Johnson conducted an examination and diagnosed left shoulder girdle pain and subscapular bursitis.

By letter dated June 25, 2015, the employing establishment controverted appellant's claim. It noted that he had a significant preexisting left shoulder condition from 2005 and referenced OWCP File No. xxxxxx158. The employing establishment pointed out that appellant allegedly injured his shoulder on April 30, 2015 when he opened a mailbox, which was the same mechanism of injury as the 2005 injury.

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<sup>3</sup> Under OWCP File No. xxxxxx158, appellant filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome and a left shoulder torn rotator cuff as a result of repetitively opening and shutting mailboxes and sorting mail for 17 years. OWCP accepted his claim for bilateral carpal tunnel syndrome, left shoulder impingement, and left rotator cuff tear. This case is currently closed and is not before the Board at this time.

In a letter dated September 14, 2015, OWCP requested that appellant respond to an attached development questionnaire in order to substantiate the factual elements of his claim. It also asked to provide additional medical evidence to establish that he sustained a diagnosed condition as a result of the alleged employment incident. Appellant was afforded 30 days to submit the necessary evidence.

Appellant responded to OWCP's development letter by October 1, 2015 letter. He indicated that he was enclosing documentation for his workers' compensation claim from Dr. Johnson and Ms. Friese. Appellant pointed out that Dr. Johnson noted that appellant's left shoulder condition was becoming a chronic situation that required continued light-duty work.

A June 2, 2015 left shoulder x-ray examination report showed chronic and postsurgical findings in the left shoulder, but no acute abnormalities.

OWCP denied appellant's claim by decision dated October 26, 2015. It accepted that the April 30, 2015 incident occurred as alleged and that a diagnosed left shoulder condition had been established, but denied his claim because the medical evidence submitted failed to establish a causal relationship between his diagnosed medical condition and the accepted incident.

On November 4, 2015 appellant requested a telephone hearing before a hearing representative from OWCP's Branch of Hearings and Review. He requested that OWCP delay a hearing and final decision until he had his appointment at the Mayo Clinic. Appellant also enclosed his October 1, 2015 letter.

Appellant stopped work on November 14, 2015 and filed claims for wage-loss compensation (Forms CA-7) for the period November 14 to December 11, 2015.

In a February 6, 2016 letter, appellant indicated that he was enclosing documents from Dr. Holly Duck, a Board-certified orthopedic surgeon, which clearly opined that his condition was the result of a partial tearing of the rotator cuff. He further noted that OWCP had not yet responded to his November 4, 2015 appeal request and alleged that as a result he was dismissed from employment.

By letter dated February 4, 2016, Dr. Duck reported that she treated appellant in December 2015 and indicated that her impressions and recommendations were in her enclosed notes. OWCP received examination notes by Dr. Duck dated December 8, 2015 to February 22, 2016. Dr. Duck described that on April 30, 2015 appellant was reaching over with his left arm to pull open a mailbox when he experienced a sharp pain along the posterior edge of his scapula. She reviewed appellant's history and noted that he had a left shoulder arthroscopy in May 2005. Upon initial examination of appellant's left shoulder, Dr. Duck observed tenderness over his acromioclavicular (AC) joint, sternoclavicular (SC) joint, anterior aspect of his acromion, posterior capsule of levator scapulae, and medial edge of the levator scapulae. She also reported mild discomfort with supraspinatus stress testing. Dr. Duck related that imaging studies showed a retained corkscrew from a prior rotator cuff repair and a goat's beard osteophyte. She diagnosed status post rotator cuff repair, left snapping scapula, and mild degenerative arthritis.

In work status form reports dated December 11, 2015 through September 26, 2016, Dr. Duck indicated that appellant could work with restrictions.

On November 3, 2016 a hearing was held. Following the hearing OWCP received a December 9, 2015 report by Dr. Jacob L. Sellon, Board-certified in physical medicine and rehabilitation and sports medicine. He noted that he treated appellant for complaints of left periscapular pain and crepitus suspicious for snapping scapula syndrome. Dr. Sellon provided cortisone injections and diagnosed left snapping scapula syndrome.

OWCP also received a December 9, 2015 diagnostic ultrasound report of appellant's left shoulder, which revealed postoperative changes of a rotator cuff repair, degenerative changes in the glenohumeral and AC joints, and diffuse thickening in appellant's subscapularis, infraspinatus, and supraspinatus tendon.

In a November 26, 2016 letter, appellant described that he was injured while working for the employing establishment and discussed the medical treatment he received.

By decision dated January 18, 2017, an OWCP hearing representative affirmed the October 26, 2015 decision. She found that the medical evidence submitted was insufficient to establish that appellant's left shoulder condition was causally related to the accepted April 30, 2015 employment incident.

On March 17, 2017 appellant requested reconsideration. In a letter dated March 8, 2017, he pointed out that he had a thorough physical in 2011 before he started work with the employing establishment and there was no indication of a preexisting shoulder injury. Appellant also related that he was attaching a letter from Dr. Duck that addressed his April 30, 2015 employment injury.

In a January 31, 2017 letter, Dr. Duck related that she initially treated appellant on December 8, 2015 and described the April 30, 2015 employment incident. She indicated that an ultrasound showed tendinopathy of the subscapularis, infraspinatus, and supraspinatus tendons that could not exclude partial-thickness tears. Dr. Duck reported her initial physical examination findings and diagnosis of left shoulder scapular bursitis.

By decision dated June 12, 2017, OWCP denied modification of its January 18, 2017 decision. It found that Dr. Duck's new medical report did not contain a rationalized medical opinion sufficient to establish that appellant's left shoulder condition was causally related to the accepted April 30, 2015 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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,<sup>5</sup> including that he or she sustained an injury in the performance of duty, and that any

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability from work for which compensation is claimed is causally related to that employment injury.<sup>6</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.<sup>7</sup> 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.<sup>8</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.<sup>10</sup>

Causal relationship is a medical question that generally requires rationalized medical evidence to resolve the issue.<sup>11</sup> 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.<sup>12</sup> The weight of the 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>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed left shoulder condition is causally related to the accepted April 30, 2015 employment incident.

Appellant submitted a series of medical reports by Dr. Johnson dated June 2 to August 11, 2015. He related that appellant sustained an upper back and left shoulder injury when he pulled on a mailbox at work. Dr. Johnson reviewed appellant's history, conducted an examination, and diagnosed left shoulder girdle pain and subscapular bursitis. Although he noted that appellant sustained an injury at work, such generalized statements do not establish causal

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<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>8</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>9</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>11</sup> *See D.S.*, Docket No. 18-0061 (issued May 29, 2018); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *James Mack*, 43 ECAB 321 (1991).

relationship.<sup>14</sup> The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>15</sup> The need for rationalized medical opinion evidence is particularly important in this case since appellant had a preexisting left shoulder injury in 2005.

Dr. Duck also treated appellant. In examination notes and work status form reports dated December 8, 2015 through September 26, 2016, she described the claimed April 30, 2015 employment injury and provided physical examination findings. Dr. Duck noted that appellant had a previous left shoulder injury which required surgery. She diagnosed status post rotator cuff repair, left snapping scapula, and mild degenerative arthritis. In a January 31, 2017 letter, Dr. Duck noted a diagnosis of left shoulder scapular bursitis after reviewing the ultrasound report. She did not, however, provide any opinion regarding the cause of appellant's left shoulder condition. The Board has held that 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.<sup>16</sup> Likewise, Dr. Sellon's December 9, 2015 report also contained no opinion on causal relationship, and therefore, also fails to establish causal relationship.

Similarly, the diagnostic reports, including the June 2, 2015 x-ray examination report and December 9, 2015 ultrasound report, fail to establish appellant's claim. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.<sup>17</sup>

The May 4 to June 1, 2015 examination notes by Ms. Friese, a nurse practitioner, also fail to establish appellant's traumatic injury claim because nurse practitioners are not considered physicians as defined under FECA.<sup>18</sup> Accordingly, their medical opinions regarding diagnosis and causal relationship are of no probative value.<sup>19</sup>

The remaining medical reports, including Dr. Beckley's September 14, 2007 report, are insufficient to establish appellant's claim as they predate the April 30, 2015 employment incident.

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<sup>14</sup> See *L.M.*, Docket No. 16-0188 (issued March 24, 2016).

<sup>15</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>16</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>17</sup> See *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>18</sup> 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 8102(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 State law. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

<sup>19</sup> *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (nurses); *Allen C. Hundley*, 53 ECAB 551, 554 (2002) (physician assistant).

In order to obtain benefits under FECA an employee 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.<sup>20</sup> Because appellant has failed to provide such evidence demonstrating that his left shoulder condition was causally related to the accepted April 30, 2015 employment incident, he has not met his burden of proof to establish his 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 his burden of proof to establish that his diagnosed left shoulder condition is causally related to the accepted April 30, 2015 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 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

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<sup>20</sup> *Supra* note 6.