

limited her ability to continue to perform her tasks. Appellant first became aware of her condition and realized it resulted from factors of her federal employment on April 5, 2014. She did not stop working. No additional information and/or medical evidence accompanied the claim form.

By development letter dated October 6, 2017, OWCP advised appellant of the need for both factual and medical evidence in support of her claimed left shoulder condition. It requested that she respond to an attached questionnaire in order to substantiate the factual element of her claim and submit medical evidence to establish a diagnosed condition causally related to her employment. OWCP afforded appellant 30 days to submit the necessary evidence.

In an October 26, 2017 letter, appellant reiterated that the daily work duties she performed aggravated her left shoulder, which weakened and limited her ability to perform her work duties. She related that she was diagnosed by a magnetic resonance imaging (MRI) scan with a rotator cuff tear.

OWCP also received treatment records from Dr. Steve G. Salyers, a Board-certified orthopedic surgeon. In an April 15, 2014 note, Dr. Salyers related appellant's complaints of left shoulder pain and reported an April 5, 2014 date of injury. He indicated that four months prior appellant had undergone right shoulder rotator cuff repair. Appellant reported that her left shoulder was injured "lifting trays of mail" in a similar way to her right shoulder. Upon physical examination of appellant's left shoulder, Dr. Salyers reported weakness to supraspinatus strength testing and some impinging signs. His impression was left shoulder pain similar to the right. Dr. Salyers commented that there was no reason not to assume that this also represented a rotator cuff tear. He recommended a left shoulder MRI scan.

In notes dated May 13 to October 14, 2014, Dr. Salyers reported no change in appellant's right or left shoulders. In the August 19, 2014 note, he related that the left shoulder MRI scan showed a small focal full-thickness supraspinatus tear. Dr. Salyers diagnosed left rotator cuff tear.

By decision dated November 7, 2017, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish fact of injury. It determined that appellant did not provide sufficient details regarding the employment factors which she believed caused her left shoulder condition. OWCP also found that the record failed to include a medical diagnosis in connection with the injury or event(s).

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴ In an occupational disease claim, appellant's burden requires

² *Supra* note 1.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁶

ANALYSIS

Appellant alleged that she sustained a left shoulder rotator cuff tear as a result of her daily work duties. OWCP denied appellant's claim finding that she failed to establish fact of injury. The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty, as alleged.

In the Form CA-2, appellant reported that her left shoulder rotator cuff tear resulted from the daily work duties she had to perform. She did not provide any further details describing her specific work activities, how often she performed these activities, or for how long she performed them.

The record does not contain any evidence to substantiate appellant's described employment factors as a clerk, which allegedly caused or contributed to her claimed left rotator cuff tear. To establish a claim for compensation, an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition.⁷ Appellant has not provided sufficient detail to establish that an occupational exposure occurred as alleged. She did not adequately describe the circumstances of her injury, how she injured her left shoulder, and the duties she was performing which caused her injury.⁸ The Board, therefore, finds that appellant has failed to substantiate the employment factors alleged.⁹

The Board also finds that the medical evidence of record failed to establish fact of injury. OWCP received various reports by Dr. Salyers dated April 15 to October 14, 2014. In his initial report, Dr. Salyers identified April 5, 2014 as the date of injury and indicated that appellant reported that her left shoulder injury resulted from lifting trays of mail. The Board notes, however, that there is no other factual evidence, such as witness statements, position descriptions, or a

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

⁷ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

⁸ *See T.C.*, Docket No. 17-1449 (issued November 17, 2017).

⁹ *See P.S.*, Docket No. 17-0194 (issued July 24, 2017); *see also B.J.*, Docket No. 14-1028 (issued September 17, 2014).

response to OWCP's questionnaire, which described in detail the work activities appellant believed caused or contributed to her left shoulder condition. The Board, therefore, concludes that appellant's description of her employment factors that allegedly caused an injury was vague.¹⁰ As appellant has not submitted probative evidence that her position as a clerk required lifting trays of mail, the Board finds that she has not met her burden of proof to establish fact of injury.

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. §§ 10.606 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2018
Washington, DC

Christopher J. Godfrey, 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

¹⁰ See *C.M.*, Docket No. 17-0627 (issued June 25, 2017).