

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

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**E.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Camden, NJ, Employer**

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**Docket No. 17-1909  
Issued: March 16, 2018**

*Appearances:*

*Aaron B. Aumiller, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 6, 2017<sup>2</sup> appellant, through counsel, filed a timely appeal from a March 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).

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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> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP 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 OWCP's March 10, 2017 decision was September 6, 2017. Because using September 11, 2017, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is September 6, 2017, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUE**

The issue is whether appellant met his burden of proof to establish a left shoulder condition causally related to the accepted factors of his federal employment.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 3, 2011 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he felt discomfort in his left shoulder and arm, noting that he used that shoulder for carrying his mailbag for more than 17 years. He indicated that he first became aware of his condition and its relationship to factors of his federal employment on January 12, 2011. Appellant did not stop work.

In a February 11, 2011 development letter, OWCP informed appellant of the type of evidence needed to support his claim and afforded him 30 days to provide the requested information. Appellant did not respond.

By decision dated April 12, 2011, OWCP denied appellant's claim, finding that he failed to establish fact of injury as he had not submitted any factual or medical evidence in support of his claim.

On March 26, 2012 appellant, through counsel, requested reconsideration and forwarded a March 20, 2012 report from Dr. Laura Ross, a Board-certified osteopath, specializing in orthopedic surgery. Dr. Ross indicated that she first treated appellant on September 9, 2011 for neck and left arm pain, and reexamined him on October 28 and December 9, 2011. She noted that he had been carrying a 35-pound mailbag on his left shoulder for the previous 19 years in his job as a mail carrier. Dr. Ross provided examination findings, and reviewed results of x-rays and magnetic resonance imaging (MRI) scans. She diagnosed disc protrusion at C6-7, with C6 and C7 radiculopathy and exacerbation of mild cervical spondylosis. Dr. Ross opined that, due to the type of work appellant performed, combined with his history and his clinical and objective findings, his diagnosed conditions were directly related to his described job duties.

By decision dated May 31, 2012, OWCP denied appellant's request for reconsideration of the merits of his claim. It found that Dr. Ross' March 20, 2012 report was of no relevance in determining the factual basis of his claim and was immaterial to the issue to be resolved.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Docket No. 13-0277 (issued March 15, 2013).

Appellant, through counsel, subsequently appealed to the Board. As noted, by its March 15, 2013 decision, the Board found Dr. Ross' report to be relevant and remanded the case to OWCP for merit review.<sup>5</sup>

In a merit decision dated July 17, 2013, OWCP denied modification of its prior merit decision. It found that appellant had not provided a detailed description of the claimed work-related activity he believed caused or contributed to the claimed medical condition.

Appellant, through counsel, again requested reconsideration on October 31, 2013. He forwarded an October 23, 2013 report in which Dr. Ross noted that she began treating appellant for a work-related injury that occurred on January 12, 2011. Dr. Ross described his symptoms and advised that appellant had an upper extremity electrograph and nerve conduction velocity study (EMG/NCV) on September 15, 2011 which demonstrated C6-7 radiculopathy and mild bilateral carpal tunnel syndrome. She again noted that a cervical spine MRI scan revealed a disc protrusion at C6-7 and reported that a repeat cervical spine MRI scan on May 31, 2013 revealed a new disc herniation at C5-6. Dr. Ross indicated that she evaluated appellant on June 21, 2013, at which time he was experiencing neck pain radiating down his left side and lower back pain. Examination demonstrated muscle spasms through his cervical, thoracic, and lumbar spine. Dr. Ross reviewed appellant's job description as a mail carrier. She noted that he would work 8 to 12 hours a day, with 6 to 7 hours spent walking, carrying a satchel that weighed up to 35 pounds, delivering mail. Dr. Ross concluded that the physical demands of appellant's job as a letter carrier was the direct cause of his cervical spine and left upper extremity injuries. She opined that his injuries were directly caused by cumulative trauma and not one single, identifiable event. Dr. Ross indicated that she based her opinion on objective medical evidence including cervical spine MRI scan studies, x-rays, and an upper extremity EMG/NCV study, and that all findings were correlated by her physical examinations of appellant.

In a nonmerit decision dated December 27, 2013, OWCP denied appellant's reconsideration request. It found that Dr. Ross' October 23, 2013 report was immaterial, noting that he had not provided a statement of the claimed work-related activity he believed contributed to his claimed medical condition.

Appellant, through counsel, again requested reconsideration on July 16, 2014. He asserted that the October 23, 2013 report from Dr. Ross and attached documentation were sufficient to establish appellant's claim. In an attached undated statement, appellant indicated that he had been employed by the employing establishment for approximately 20 years, 17 of which as a letter carrier. He indicated that his daily letter carrier job duties entailed walking a mail delivery route for approximately 8 to 10 miles for 6 to 7 hours, working 8 to 12-hour shifts, six days a week depending on overtime, and noted that almost the entire shift required standing on his feet. Appellant related that, as a city carrier, nearly all his walking was on concrete or asphalt, and that he carried mail in a satchel that would typically weigh up to 35 pounds, but could weigh up to 50 pounds. He indicated that he carried the satchel on his left side, with the strap along his neck and shoulder area. Appellant reported outside activities of fixing dinner and showering, and that on a typical day off he would do laundry and relax.

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<sup>5</sup> *Id.*

By merit decision dated January 11, 2016, OWCP denied modification of its prior merit decisions. It noted that, although appellant had provided a statement, it was not completely responsive to OWCP's development letter dated February 11, 2011. OWCP indicated that he did not describe the development of any work-related injury or condition, did not state when he noticed the condition, did not describe its duration, and did not list any treatments. Appellant also did not address outside factors or activities. OWCP concluded that, as he had not provided a sufficient factual statement of claim, the claim remained denied.

On January 10, 2017 appellant, through counsel, again requested reconsideration. In a January 9, 2017 statement, he related that on a typical workday he would case mail into trays and tubs for approximately 1 hour, then 10 to 15 minutes loading his vehicle, and driving for about 1 hour each day. Appellant reiterated daily duties of walking 8 to 10 miles for 6 to 7 hours in 8 to 12-hour shifts per day, six days a week, and standing on his feet almost the entire shift. He related that almost all his walking was on concrete or asphalt, and that his mail satchel, which he carried on the left, weighed up to 35 pounds, but could weigh up to 50 pounds. Appellant indicated that he began to feel sharp pain on the left side of his neck and shoulder area with tingling radiating down his left arm in January 2011, and was referred to an orthopedic surgeon who ordered x-rays and MRI scan studies and diagnosed degenerative changes at C6-7 and cervical radiculitis. He related that he had flare-ups through the year, and that physical therapy and pain medication helped manage these conditions. Appellant described nonwork activity including shopping, laundry, cooking, ironing, spending time with friends and family, and engaging in social activities.

By merit decision dated March 10, 2017, OWCP found that appellant established claimed employment factors, but denied the claim because the medical evidence of record was insufficient to establish that a medical condition was caused or aggravated by the accepted work factors. It reviewed Dr. Ross' opinion and found that she did not differentiate his claimed condition from preexisting cervical spondylosis. OWCP further found that appellant failed to submit reports of the diagnostic studies performed. It indicated that copies of all medical records to date should be submitted.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</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, and that the claim was timely filed within the applicable time limitation period of FECA.<sup>7</sup> When an employee claims that he or she sustained an injury in the performance of duty,<sup>8</sup> he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.<sup>9</sup> The employee must also establish that such event, incident, or exposure

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<sup>6</sup> *Supra* note 3.

<sup>7</sup> 5 U.S.C. § 8101(1); *L.M.*, Docket No. 16-0143 (issued February 19, 2016); *B.B.*, 59 ECAB 234 (2007).

<sup>8</sup> *Id.* at § 8102(a).

<sup>9</sup> *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

caused an injury.<sup>10</sup> 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>11</sup>

OWCP regulations define the term “occupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.”<sup>12</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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>13</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>14</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>15</sup>

### ANALYSIS

Appellant alleged that he developed left neck and left upper extremity pain in January 2011 due to carrying a mailbag weighing at least 35 pounds on a walking route for more than 17 years. OWCP accepted the claimed work factors of his letter carrier duties, but denied the claim, finding the medical evidence of record insufficient to establish causal relationship between the accepted work factors and any diagnosed conditions. The Board finds that this case is not in posture for decision.

The record contains medical reports from Dr. Ross dated March 20, 2012 and October 23, 2013. She indicated that she first treated appellant on September 9, 2011 for neck and left arm pain and saw him on additional occasions. Dr. Ross reviewed appellant’s position description and noted his description of his letter carrier duties. She provided examination findings including muscle spasms through his cervical, thoracic, and lumbar spine. Dr. Ross

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

<sup>11</sup> *R.H.*, 59 ECAB 382 (2008).

<sup>12</sup> 20 C.F.R. § 10.5(ee).

<sup>13</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>14</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

<sup>15</sup> *I.J.*, 59 ECAB 408 (2008).

noted that she had reviewed test results including a September 15, 2011 EMG/NCV study that demonstrated C6-7 radiculopathy and mild bilateral carpal tunnel syndrome, and a May 31, 2013 cervical spine MRI scan that revealed a disc herniation at C5-6. She also diagnosed C6 and C7 radiculopathy and exacerbation of mild cervical spondylosis. Dr. Ross opined that, due to the type of work appellant performed, combined with his history and his clinical and objective findings, his diagnosed cervical spine and left upper extremity conditions were directly caused by cumulative trauma and not one single, identifiable event. She indicated that she based her opinion on objective medical evidence including cervical spine MRI scan studies, x-rays, and an upper extremity EMG/NCV study, and that all findings were correlated by her physical examinations of appellant.

Dr. Ross provided an affirmative opinion on causal relationship. She accurately identified specific employment factors to which appellant claimed caused his condition, identified findings upon examination, and explained how the identified employment factors caused or aggravated his medical conditions. The Board finds that Dr. Ross' opinion, while not sufficiently rationalized to meet his burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.<sup>16</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>17</sup> OWCP has an obligation to see that justice is done.<sup>18</sup> It is not necessary for an employee to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship.<sup>19</sup> Rather, if the medical evidence reveals that factors of federal employment contributed in any way to the disabling condition, such condition is considered employment related for the purpose of compensation under FECA.<sup>20</sup>

The case shall therefore be remanded to OWCP. On remand, OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether he sustained an employment-related occupational disease. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>16</sup> See *A.F.*, Docket No. 15-1687 (issued June 9, 2016); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>17</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

<sup>18</sup> *Id.*

<sup>19</sup> *D.J.*, Docket No. 16-0288 (issued May 25, 2016).

<sup>20</sup> *C.B.*, Docket No. 16-1713 (issued April 21, 2017); *Beth P. Chaput*, 37 ECAB 158 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 10, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: March 16, 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