

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

R.C., Appellant	)	
	)	
and	)	<b>Docket No. 17-0372</b>
	)	<b>Issued: May 3, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Brick, NJ, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 8, 2016 appellant, through counsel, filed a timely appeal from an August 16, 2016 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 over the merits of the claim.<sup>3</sup>

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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.*

<sup>3</sup> The record includes evidence received after OWCP issued its August 16, 2016 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## ISSUE

The issue is whether appellant has established a right shoulder condition causally related to the accepted September 25, 2014 employment incident.

## FACTUAL HISTORY

On January 3, 2015 appellant, then a 56-year-old window clerk/dispatcher, filed a traumatic injury claim (Form CA-1) alleging that, on September 25, 2014, she injured her right shoulder while pulling and pushing an all-purpose container (APC) cage in the performance of duty. She did not stop work. In a January 14, 2015 development letter, OWCP advised appellant of the deficiencies in her claim. Appellant was provided a questionnaire for her completion regarding the circumstances of the injury. She was also asked to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how the claimed work incident caused or aggravated a medical condition. Appellant was afforded 30 days to submit the requested information.

In a January 3, 2015 statement, appellant provided a description of the September 25, 2014 incident.

The employing establishment controverted the claim in a January 12, 2015 letter. It also submitted a January 3, 2015 Authorization for Examination and/or Treatment (Form CA-16) for medical examination of appellant's rotator cuff tendinosis condition allegedly sustained on September 25, 2014.

In an October 13, 2014 prescription for physical therapy, Dr. Charles B. Peebles, a Board-certified internist, diagnosed internal shoulder derangement.

Medical evidence from Dr. Fotios P. Tjounakaris, a Board-certified orthopedic surgeon, was also received. In a November 10, 2014 report, he diagnosed right shoulder rotator cuff tendinosis. In a January 5, 2015 duty status report (Form CA-17), Dr. Tjounakaris noted that appellant's injury occurred while she was moving a cage with circular mail and marriage mail on September 25, 2014. He diagnosed a right shoulder impingement.

By decision dated February 17, 2015, OWCP denied the claim as fact of injury had not been established. It noted that appellant had not responded to its January 14, 2015 development questionnaire to support that the incident occurred in the manner alleged and, thus, the factual basis of her claim remained unsubstantiated.

On July 17, 2015 appellant requested reconsideration. In a supplemental statement dated November 23, 2015, she described her September 25, 2014 right shoulder injury, as well as her previous 2013 injuries.

In a July 29, 2013 report, Dr. Warren K. Churgin, an internist, reported that appellant had right shoulder pain for over one year with no trauma. An assessment of right shoulder sprain was provided.

In an October 13, 2014 referral form, Dr. Peeples diagnosed an internal right shoulder derangement and referred appellant to orthopedics.

By report dated November 10, 2014, Dr. Tjounakaris related that appellant had a three-week history of increasing severity of pain within her right shoulder and upper arm. He noted that she had pain in that area for several months or even up to a year. Appellant reported that this initially happened and was exacerbated while she was working as a postal worker. Dr. Tjounakaris noted examination findings and reported that the right shoulder x-rays were within normal limits. He noted an impression of right shoulder rotator cuff tendinitis. A magnetic resonance imaging (MRI) scan of the right shoulder was recommended to rule out underlying rotator cuff tear.

In a November 24, 2014 report, Dr. Tjounakaris noted MRI scan results and examination findings. An impression of right shoulder rotator cuff tendinopathy was provided. In his January 5, 2015 report, Dr. Tjounakaris provided an impression of right shoulder impingement syndrome and restricted appellant to light-duty work. A course of physical therapy was ordered. Additional progress notes dated from April 13, 2015 were received along with work restrictions, duty status and attending physician's reports, and requests for physical therapy. Appellant's diagnoses were stated as disorder of bursae and tendons in shoulder region, bursitis of right shoulder, and right shoulder rotator cuff tendinitis. In his July 13, 2015 progress note, Dr. Tjounakaris noted that appellant had again recently strained her right shoulder.

Medical evidence pertaining to conditions other than the right shoulder was also received. This included evidence from Dr. Peeples which referred appellant to physical therapy on March 30, 2015 for neck pain and on June 4, 2015 for a herniated intervertebral disc.

By decision dated April 27, 2016, OWCP modified the February 17, 2015 decision to reflect that the September 25, 2014 incident occurred as alleged. However, it affirmed the denial of the claim as the medical evidence of record was insufficient to support that the diagnosed right shoulder conditions were causally related to the accepted September 25, 2014 work incident. OWCP found that the medical evidence provided failed to contain a history of injury consistent with appellant's factual statement and was not rationalized to support that the diagnosed right shoulder conditions were causally related to the September 25, 2014 work incident.

On May 19, 2016 OWCP received a May 10, 2016 request for reconsideration from counsel.

In a February 3, 2016 report, Dr. Tjounakaris indicated that he treated appellant from November 10, 2014 until February 1, 2016 for a right shoulder condition. He noted that, when he initially saw her on November 10, 2014, she described an injury that occurred to her right shoulder on September 25, 2014 when she pulled a large cage filled with mail and felt a pulling sensation in her right shoulder with sudden onset of pain. Dr. Tjounakaris further noted that appellant had a past medical history of a prior shoulder condition that occurred on May 2, 2013 while separating pallets of mail weighing approximately 20 to 25 pounds. At that point, appellant's shoulder was painful every time she did any strenuous activity. A second injury of October 3, 2013 occurred when she put an over-size box in a cage. Dr. Tjounakaris indicated that the box slipped out of appellant's hand and slammed her arm against the cage. He indicated that these previous injuries

had resolved by the time she injured her right shoulder in September 2014. Dr. Tjounakaris noted appellant's examination findings and her medical course, including diagnostic testing results. He reported that she had positive impingement findings on her physical examination, but her rotator cuff currently maintained adequate strength. Dr. Tjounakaris concluded his report by opining that the diagnosed partial thickness rotator tear of appellant's right shoulder with acute rotator cuff tendinitis and impingement syndrome was causally related to the September 25, 2014 work-related incident. He explained that she was doing relatively well and that her previous rotator cuff symptoms had resolved and when her 2014 work injury exacerbated her underlying rotator cuff pathology. Additional duty status reports and progress notes from Dr. Tjounakaris were received.

By decision dated August 16, 2016, OWCP denied modification of its prior decision.

### **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, 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, that an injury was sustained while 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.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup>

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>8</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### ANALYSIS

OWCP accepted that the September 25, 2014 incident of pulling and pushing an APC cage occurred in the performance of duty, as alleged. The issue is whether appellant has established that the September 25, 2014 employment incident caused or aggravated a right shoulder condition. The Board finds that she failed to submit sufficient medical evidence to support a right shoulder condition causally related to the accepted employment incident.<sup>10</sup>

On October 13, 2014 Dr. Peeples diagnosed an internal shoulder derangement condition. In separate reports, he referred appellant to orthopedics and physical therapy. Dr. Peeples' reports, however, do not constitute probative medical evidence as he failed to provide a history of the incident or a rationalized opinion regarding the cause of appellant's condition. Medical opinion evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>11</sup> Medical opinion evidence which is not based on a proper history of injury and 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>12</sup> Therefore, Dr. Peeples' reports are of limited probative value.

Dr. Tjoumakaris submitted two narrative reports. In his November 10, 2014 report, he related that appellant had a three-week history of increasing severity of pain in her right shoulder and upper arm. Dr. Tjoumakaris noted that she experienced pain in that area for several months or even up to a year, which was exacerbated while she was working as a postal worker. He provided an impression of right shoulder rotator cuff tendinitis. This opinion of Dr. Tjoumakaris is not well rationalized. He seemingly referenced a preexisting condition. Dr. Tjoumakaris failed to provide any support that appellant's current condition was caused or aggravated by the September 25, 2014 employment incident and, did not address why her complaints were not caused by her preexisting conditions.<sup>13</sup> Medical evidence that does not offer an opinion regarding

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<sup>9</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>10</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>11</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>12</sup> *See D.E.*, Docket No. 17-1874 (issued February 9, 2018); *see also R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>13</sup> A well-rationalized opinion is particularly warranted when there is a history of preexisting condition. *R.E.*, Docket No. 14-0868 (issued September 24, 2014); *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>14</sup> Thus, Dr. Tjounakaris' opinion is of limited probative value.<sup>15</sup>

In a February 3, 2016 report, Dr. Tjounakaris indicated that, when he initially saw appellant on November 10, 2014, she described an injury that occurred to her right shoulder on September 25, 2014 when she pulled a large cage filled with mail and felt a pulling sensation in her right shoulder with sudden onset of pain. He noted that she had a past medical history of previous shoulder condition that occurred on May 2 and October 3, 2013 while at work. Dr. Tjounakaris indicated that these previous injuries had resolved by the time appellant injured her right shoulder in September 2014. He concluded his report by opining that the diagnosed partial thickness rotator tear of the right shoulder with acute rotator cuff tendinitis and impingement syndrome were causally related to the September 25, 2014 work-related incident. Dr. Tjounakaris explained that appellant's previous rotator cuff symptoms had resolved and she was doing relatively well when her 2014 work injury exacerbated her underlying rotator cuff pathology. However, the opinion of Dr. Tjounakaris is not well rationalized. Dr. Churgin's July 29, 2013 report, which predates the current injury, noted that appellant had right shoulder pain for over one year with no trauma. This evidence indicates that appellant had a documented shoulder condition in approximately 2012, prior to the two work-related incidents of May 2 and October 3, 2013. There is no objective evidence presented to support that her preexisting shoulder conditions had resolved prior to the September 25, 2014 work incident. While Dr. Tjounakaris noted new symptoms, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity on September 25, 2014 actually caused or aggravated the diagnosed conditions.<sup>16</sup> The Board has held that the mere fact that her symptoms arose during a period of employment or produced symptoms revelatory of an underlying condition does not establish causal relationship between her condition and her employment factors.<sup>17</sup> Thus, the Board finds that Dr. Tjounakaris' report is insufficiently rationalized to establish that appellant's condition was caused or aggravated by the accepted employment incident.

In a January 5, 2015 duty status report (Form CA-17), Dr. Tjounakaris related that appellant injured her right shoulder on September 25, 2014 while moving a cage full of circular mail and marriage mail. While he diagnosed a right shoulder impingement, he did not explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition. Thus, this report is of limited probative value.<sup>18</sup>

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<sup>14</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. *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>15</sup> *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

<sup>16</sup> *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

<sup>17</sup> *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>18</sup> *See 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).

Appellant also submitted copies of physical therapy notes. However, reports from physical therapists do not rise to the level of competent medical opinion evidence under FECA as physical therapists are not physicians under FECA.<sup>19</sup>

Accordingly, the medical evidence of record does not contain a well-rationalized medical opinion establishing that the diagnosed right shoulder conditions were causally related to the accepted September 25, 2014 employment incident. OWCP advised appellant of the type of medical evidence necessary to establish her claim. Appellant failed to submit appropriate medical documentation in response to OWCP's request.<sup>20</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.<sup>21</sup> An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his or her condition and his or her employment.<sup>22</sup> Causal relationship must be based on rationalized medical opinion evidence.<sup>23</sup> As appellant has not submitted a rationalized medical opinion supporting that her right shoulder conditions were causally related to the accepted September 25, 2014 employment incident, she has not met her burden of proof to establish an employment-related traumatic injury.

On appeal counsel contends that appellant had provided *prima facie* factual and medical evidence which established that she suffered a traumatic injury on September 25, 2014 while in the course of her employment. OWCP gave proper consideration to all evidence she submitted. As previously noted causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Appellant has not submitted sufficiently-rationalized medical evidence in this case and, therefore, has not met her burden of proof.

The record contains a Form CA-16 which lists the date of injury as September 25, 2014 and which indicates a rotator cuff tendinosis condition. The Board notes that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or

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<sup>19</sup> *V.W.*, Docket No. 16-1444 (issued March 14, 2017) (where the Board found that physical therapy reports do not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA). See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>20</sup> See *D.B.*, Docket No. 16-1219 (issued November 8, 2016); see also *T.H.*, Docket No. 15-0772 (issued May 12, 2016).

<sup>21</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>22</sup> *Patricia J. Glenn*, 53 ECAB 159-60 (2001).

<sup>23</sup> *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

treatment regardless of the action taken on the claim.<sup>24</sup> The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.<sup>25</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 established a right shoulder condition causally related to the accepted September 25, 2014 employment incident.<sup>26</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 16, 2016 is affirmed.

Issued: May 3, 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>24</sup> See *Tracy P. Spillane*, 54 ECAB 608 (2003).

<sup>25</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>26</sup> See 20 C.F.R. § 10.300(c).