

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

_____)	
E.P., Appellant)	
)	
and)	Docket No. 18-0194
)	Issued: September 14, 2018
U.S. POSTAL SERVICE, POSTAL & DISTRIBUTION CENTER, Hamilton, NJ,)	
Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 6, 2017 appellant, through counsel, filed a timely appeal from an August 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On September 25, 2016 appellant, then a 65-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that her right shoulder rotator cuff tear was causally related to her federal employment. She stated that she “worked manual letters and pitched mail above her shoulders, reached and lifted trays of mail, and reached forward at chest level 40 hours a day 5 days a week.” Appellant first became aware of her condition and that it was caused or aggravated by her federal employment on September 23, 2016. No evidence was submitted with the claim.

By development letter dated September 30, 2016, OWCP advised appellant of the type of medical and factual evidence necessary to establish her claim. It also provided appellant a development questionnaire for her completion. OWCP afforded her 30 days to submit the requested evidence.

In a September 23, 2016 report, Dr. Munir Ahmed, a Board-certified orthopedic surgeon, noted that appellant, a postal worker who sorted and pitched mail with her right arm, presented with right shoulder and neck pain complaints which started about two months ago. He presented examination findings and indicated that the cervical spine x-rays showed degenerative changes in the cervical spine with associated anterior-posterior spurring and three millimeters of anterolisthesis of C3 or C4. Dr. Ahmed diagnosed impingement syndrome of the right shoulder, cervicgia, incomplete rotator cuff tear or rupture of the right shoulder, not specified as traumatic. He noted that appellant lifted with, and used the right arm repetitively. Dr. Ahmed indicated that, in the process of working these duties for many years, she sustained pain in her right shoulder and neck. He opined that “this appears to be a cumulative preoperative disorder from repeated trauma. May have to contact workmen’s compensation.” Dr. Ahmed recommended a computerized tomography (CT) scan of the cervical spine and an electromyogram (EMG) for the right upper extremity.

In an October 7, 2016 report, Dr. Ahmed reported that appellant’s pain was mostly in her right bicep and that she was experiencing numbness down to the fingers and dropping things with her right arm. Appellant also complained of neck pain which radiated into her right upper extremity. Dr. Ahmed indicated that the mechanism of injury included pitching mail for the employing establishment. He provided diagnoses of cervicgia, impingement syndrome of the right shoulder, incomplete rotator cuff tear or rupture of the right shoulder, and incomplete rotator cuff tear or rupture of the left shoulder. In an undated Form CA-17 duty status report, with a facsimile (fax) date of October 11, 2016, Dr. Ahmed diagnosed right shoulder pain and assigned work restrictions.

In an October 11, 2016 statement, appellant responded to OWCP’s development letter. She indicated that she began working for the employing establishment in June 1993 and outlined the duties and positions she had held. Appellant noted that she had a work-related back injury in 2008 and was placed on limited duty in the manual aisle. Her duties, which were performed for six and

a half hours per day, involved pitching the mail overhead, picking up trays which weighed about 20 pounds each, separating mail, unloading cages of boxes, and pulling cages out onto the dock for mail distribution. Appellant noted that she had briefly returned to work the flat sorting machine (FSM) until she felt a burning sensation in her back when she picked up a tub while working on the FSM. After that, the employing establishment provided her with a limited-duty position in the manual aisle, which she has been working ever since. Appellant explained that she picked up trays at a six-pound weight limit, pitched the mail repetitively for six and a half hours a day, and swept the mail and put it on a skid for distribution. She was placed on modified duty where she pitched mail repetitively overhead for six and a half hours per day, five days a week. Appellant also swept mail, picked up trays and placed the swept mail on skids for mail distribution. She also replaced the empty trays on the racks and would resume pitching mail. Appellant claimed that the pain in her arm and shoulder along the right side of her neck and jaw was a new problem.

In an October 11, 2016 statement, G.E., a supervisor, indicated that pitching letters in the manual aisle required minimum effort. He advised that the employee was required to sit in a chair or stand (braced up on stool) and pitch/sort manual letters. G.E. noted that appellant sat in an armed chair and that she did not perform any tasks which required physical exertion. He also noted that there were sweep times during the night to alleviate the monotony of pitching manual letters.

On October 13, 2016 appellant underwent a CT scan of her right shoulder and a right shoulder arthrogram.

In a November 1, 2016 report, Dr. Ahmed indicated that the diagnostic test results showed high-grade partial tear subscapularis tendon of the rotator cuff interval, a mild arthritis in the shoulder joints and biceps tendinitis. He also reported that an EMG study revealed right-sided carpal tunnel syndrome. Dr. Ahmed recommended arthroscopic surgery with subacromial decompression and possible repair of the rotator cuff tear in the right shoulder. He also recommended a CT scan with contrast for the cervical spine.

In his November 1, 2016 CA-17 duty status report, Dr. Ahmed diagnosed right shoulder pain and provided work restrictions. In a November 1, 2016 attending physician's report, Form CA-20, he diagnosed rotator cuff tear and cervicalgia. Dr. Ahmed opined, with a checkmark in a box marked "yes," that the diagnosed conditions were caused or aggravated by the employment activity of pitching letters into manual cases. He also wrote "work related" on the report.

By decision dated November 18, 2016, OWCP accepted the alleged employment factors and that appellant had been diagnosed with a medical condition. However, it denied her claim because the medical evidence of record failed to establish that the diagnosed right shoulder conditions were causally related to the accepted factors of her federal employment.

On November 28, 2016 OWCP received a November 10, 2016 report from Dr. Ahmed. Dr. Ahmed indicated that the CT scan of the right shoulder showed evidence of a high-grade partial tear of the subscapularis tendon near the rotator cuff with mild arthritic changes in the acromioclavicular (AC) joint. The CT scan of the cervical spine showed multilevel degenerative changes without evidence of acute osseous injury of the cervical spine and neuro foramina narrowing on the right at C4-5 and C5-6. The EMG showed a right carpal tunnel syndrome of moderate intensity. Dr. Ahmed provided a diagnosis of bursitis of the right shoulder, right carpal

tunnel syndrome, cervicalgia, impingement syndrome of the right shoulder, incomplete rotator cuff tear or rupture of the right shoulder, incomplete rotator cuff tear or rupture of the left shoulder, pain in the right shoulder, and sprain of the right rotator cuff capsule. He indicated that appellant required right shoulder surgery and eventually would need carpal tunnel surgery. Dr. Ahmed opined that she was unable to work.

On December 1, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on June 14, 2017.

Prior to the hearing, OWCP received additional medical evidence from Dr. Ahmed. In a March 23, 2017 report, Dr. Ahmed noted that the CT arthrogram showed a tear of the subscapularis muscle at the rotator cuff interval. He opined that appellant was a candidate for arthroscopy joint evaluation of right shoulder and provided medical rationale for the suggested surgery. Dr. Ahmed opined that she had accumulative trauma disorder secondary to work which involved constant packing and lifting boxes of heavy equipment which had led to rotator cuff pathology with subscapularis tear of the right shoulder.

In a May 19, 2017 report, Dr. Ahmed summarized appellant's visits and test results. He provided an assessment of rotator cuff tear of the right shoulder, impingement syndrome of the right shoulder, and right biceps tendonesis. Dr. Ahmed noted that appellant worked for the employing establishment for many years with repetitive motions of the right arm and that she denied any previous history of neck pain, right shoulder pain, or right upper extremity pain. He indicated that the CT scan of the right shoulder revealed a partial tear of the subscapular tendon of the rotator cuff with a glenohumeral and biceps tendonesis and that surgery was recommended. Dr. Ahmed provided text book definitions of occupational shoulder disorders or repetitive stress injury. He then opined that the "facts of injury are the direct and proximate cause" of appellant's diagnosed conditions.

At the telephonic hearing held on June 14, 2017, appellant testified that she had worked in the clerk craft since 1993. She stated that this was a labor intensive job which included lifting, twisting, and bending. Appellant testified to prior work injuries.

In a July 13, 2017 statement, V.H., an employing establishment official, indicated that the physical exertion associated with appellant's job in the manual letter aisle was minimal at best. She explained that appellant did not lift trays of letters to pitch; rather, she took small handfuls at a time. When a holdout in the case is full, appellant empties it by taking a handful of letters out. V.H. noted that appellant was not required to lift more than five pounds, was not required to reach above her shoulder, and was not required to sweep during the manual aisle dispatch. She reiterated that there was no part of appellant's duties that required physical exertion. V.H. further noted that appellant worked 40 hours a week, 8 hours a day and persistently requested to be allowed to work overtime in the form of 2 extra hours a day or a full 8 hours on one of her nonscheduled days off. She noted that appellant recently worked overtime on July 13, 2017 for a full eight hours. V.H. related that appellant had other health issues which were not work related. She also indicated that appellant had signed up for the overtime desired list, which would require her to work in other areas outside of her restrictions.

Appellant responded to V.H.'s letter on July 29, 2017. She explained that she was working a modified job and had been supplied with an adjustable chair for her work-related back injury.

Appellant stated that she pitched mail, which involved carrying a half tray to her workstation for about seven hours a day. Toward the end of the day, she performed dispatch work which involved sweeping five cases filled with mail. Appellant would take half a tray and proceed to sweep the cases. She would then place a half tray on a skid for mail dispatch. This was done until all the cases were empty. The trays were then placed on a skid and sent out for dispatch. Appellant indicated that she had told V.H. numerous times that her neck, shoulder and arm were very painful.

Appellant also related that she followed her physical restrictions of no lifting more than five pounds and no pitching mail over the shoulder. She noted that she was also permitted to sweep mail, if she was not in pain and therefore she normally swept the mail as they were short-staffed. With regard to overtime, appellant indicated that everyone asked for overtime; however, she usually did not get it because the mail flow was low on her workdays.

In a July 29, 2017 statement, T.P., a coworker, who worked modified assignments with appellant, verified appellant's statement.

By decision dated August 21, 2017, an OWCP hearing representative found that the evidence of record established that appellant performed the repetitive manual letter duties outlined in her July 29, 2017 statement and that she had been diagnosed with a medical condition. The hearing representative affirmed the November 18, 2016 decision, finding that the evidence of record failed to establish causal relationship between appellant's diagnosed shoulder conditions and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which compensation is claimed is causally related to that employment injury.⁴ In an occupational disease claim, appellant's burden requires 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

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁶ 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 the nature of the relationship

³ *Supra* note 2.

⁴ *J.P.*, 59 ECAB 178 (2007), *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, *id.*

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

between the diagnosed condition and the specific employment factors identified by the claimant. 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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted factors of her federal employment.

OWCP has accepted that appellant performed the repetitive manual duties of pitching mail and performing dispatch work as described in her July 29, 2017 statement. The medical evidence of record, however, is insufficient to establish that the diagnosed right shoulder conditions are caused or aggravated by the accepted work factors.

In support of her claim, appellant submitted reports from Dr. Ahmed. On September 23, 2016 Dr. Ahmed reported that appellant had sorted and pitched mail repetitively with her right arm for many years and developed pain in her right shoulder and neck. He diagnosed impingement syndrome of right shoulder, cervicgia, and incomplete tear or rupture of right shoulder which he opined "appeared to be a cumulative preoperative disorder from repeated trauma." The Board finds that Dr. Ahmed did not provide adequate medical rationale regarding causal relationship. Dr. Ahmed's statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim, namely, how the repetitive manual duties of pitching mail and performing dispatch work would cause or aggravate her diagnosed right shoulder conditions.⁸ Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to her diagnosed condition, Dr. Ahmed's opinion on causal relationship is equivocal in nature and of limited probative value.⁹ Thus, Dr. Ahmed's September 23, 2016 report is insufficient to meet appellant's burden of proof.

In his October 7, 2016 report, Dr. Ahmed provided right shoulder and bicep diagnoses and indicated that the mechanism of injury included pitching mail. He reported that appellant's pain was mostly in her right bicep and that she was experiencing numbness down to the fingers and dropping things with her right arm. However, Dr. Ahmed again did not explain how physiologically pitching mail would have caused appellant's diagnosed conditions.¹⁰ In his November 1, 2016 Form CA-20, attending physician's report, he diagnosed a rotator cuff tear and cervicgia and reported that appellant pitched letters into manual cases and he also check a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the employment activity described and wrote "work related" on the report. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

⁹ *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).

¹⁰ *Id.*

how the employment incident caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹¹ Merely noting that the diagnosed conditions are work related without providing adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹²

In his March 23, 2017 report, Dr. Ahmed advised that appellant was a surgical candidate for her right shoulder due to the rotator cuff pathology with subscapularis tear of the right shoulder. While he opined that appellant had a cumulative trauma disorder secondary to work, his opinion on causal relationship is of limited probative value as it lacks medical rationale based on an accurate description of appellant's work factors. Specifically, Dr. Ahmed indicated that the constant packing and lifting boxes of heavy equipment led to rotator cuff pathology with subscapularis tear of the right shoulder which were not accepted employment factors. To establish causal relationship, 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 established employment factors.¹³ Thus, this report is insufficient to establish appellant's claim.

In his May 17, 2017 report, Dr. Ahmed summarized appellant's visits and test results and indicated that surgery was recommended. He also cited medical literature for definitions of occupational shoulder disorders or repetitive stress injury. Dr. Ahmed then opined that the "facts of injury were the direct and proximate cause" of appellant's diagnosed conditions. While he expressed his agreement that appellant had an occupational shoulder disorder or repetitive stress injury as defined by medical literature, as previously noted, Dr. Ahmed did not provide a biomechanical explanation of how appellant's specific federal employment duties caused or contributed to the diagnosed conditions. His reports therefore fail to provide the necessary medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴ The Board has previously held that conclusory statements not fortified by medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹⁵ The remaining medical evidence of record is also insufficient to establish appellant's claim. In CA-17 forms, duty status reports, dated October 11 and November 1, 2016, Dr. Ahmed diagnosed right shoulder pain. The Board notes that pain is a symptom, not a medical diagnosis.¹⁶ Dr. Ahmed's November 1 and 10, 2016 reports and the diagnostic testing of record simply interpret diagnostic studies pertaining to the shoulder and cervical spine without an opinion regarding causal relationship. The Board has held that

¹¹ See *R.A.*, Docket No. 17-1472 (issued December 6, 2017).

¹² *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹³ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁴ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

¹⁵ *N.M.*, Docket No. 10-0283 (issued August 19, 2010).

¹⁶ Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012). It is not possible to establish the cause of a medical condition, if the physician has not stated a firm medical diagnosis. *T.G.*, Docket No. 13-0076 (issued March 22, 2013).

diagnostic test reports 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 insufficient to meet his burden of proof.¹⁷

On appeal counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons set forth above, the Board finds counsel's arguments are not substantiated.

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 a right shoulder condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2017 is affirmed.

Issued: September 14, 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

¹⁷ *S.G.*, Docket No. 17-1054 (issued September 14, 2017).