

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

_____)	
A.M., Appellant)	
)	
and)	Docket No. 18-1748
)	Issued: April 24, 2019
U.S. POSTAL SERVICE, METROPLEX)	
MICHIGAN PROCESSING & DISTRIBUTION)	
CENTER, Pontiac, MI, Employer)	
_____)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 17, 2018 appellant filed a timely appeal from a June 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 11, 2017 appellant, then a 42-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder that day when prepping mail while in the performance of duty. She began modified duty that day.

Appellant treated with Dr. Agata Michalczak, an osteopath who practices family medicine, on July 11, 2017. Dr. Michalczak noted appellant's description of her job duties and her complaint of right anterior shoulder pain. She described tenderness on examination with painful full range of motion. Rotator cuff tests and an x-ray were negative. Dr. Michalczak diagnosed right shoulder strain, recommended physical therapy, and advised that appellant could return to work on restricted duty. In the physician's section (Part B) of a July 11, 2017 Authorization for Examination and/or Treatment (Form CA-16), she checked a box marked "yes," indicating that she believed the diagnosed condition was caused by the described employment activity. Dr. Michalczak submitted follow-up reports on July 13 and 19, 2017 in which she noted that appellant's shoulder pain was unchanged. She reiterated her diagnosis and recommendations.

Dr. Alexandros Samohin, Board-certified in family medicine, began treating appellant on July 27, 2017. He noted appellant's complaint of ongoing right shoulder pain, that she was attending physical therapy, and was working restricted duty without any problems. Dr. Samohin's right shoulder examination demonstrated no tenderness and painful full range of motion. He diagnosed right shoulder strain and recommended continued restricted duty. In reports dated August 9, 16, and 23, 2017, Dr. Samohin reported appellant's complaint of ongoing right shoulder pain. Appellant continued to have painful right shoulder range of motion and negative empty can tests. Dr. Samohin reiterated his diagnosis of right shoulder strain and recommended a right shoulder magnetic resonance imaging (MRI) scan. He advised that appellant could continue restricted duty.

In a development letter dated August 29, 2017, OWCP indicated that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment had not controverted the claim, payment of a limited amount of medical expenses was administratively approved, but the claim had not been formally adjudicated. It explained that it had reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP informed appellant that the evidence submitted was insufficient to establish the claim. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

OWCP received a number of duty status reports (Form CA-17) dated from July 11 through September 18, 2017, which noted appellant's physical restrictions. The signatures on these forms were illegible.

In reports dated August 30 and September 11 and 18 2017, Dr. Samohin reiterated his findings and conclusions.

By decision dated October 5, 2017, OWCP denied the claim.

In correspondence dated October 16, 2017, appellant explained that her job duties required her to push cages of mail that weighed between 300 and 400 pounds, lift tubs above her shoulder that weighed 50 pounds, and unload trucks. She indicated that, while performing those duties, she twisted her arms from side-to-side and this created pain and limitations.

On January 21, 2018 appellant requested reconsideration.

In an October 17, 2017 report, Dr. Samohin indicated that, according to appellant, on July 11, 2017 she noted significant right shoulder pain that had worsened over several months, due to repetitive lifting of 50- to 70-pound tubs filled with mail. He described current complaints of more constant pain, noting that she had 12 visits with physical therapy with minimal improvement, and no resolution with 2 courses of steroids. Dr. Samohin reported that appellant had returned to regular duty, which further aggravated her symptoms. He described tenderness to palpation over the right shoulder with painful range of motion. Hawkin's rotator cuff test was positive with a positive painful arc. Empty can test was negative. Dr. Samohin diagnosed right shoulder strain and internal derangement of the right shoulder. He advised that appellant could return to work with physical restrictions and continued to recommend right shoulder MRI scan.

By decision dated February 13, 2018, OWCP advised that appellant's claim would now be treated as an occupational disease claim and it found that she had established the alleged employment factors, as alleged. It, however, denied the claim because the medical evidence of record did not explain, with sufficient rationale, how appellant's diagnosed right shoulder condition was causally related to the accepted employment factors.

On April 4, 2018 appellant requested reconsideration. She submitted duplicate reports from Dr. Michalczak and Dr. Samohin that were previously of record.

In a March 19, 2018 report, Dr. Samohin noted appellant's job duties. He advised that her history of injury, current shoulder complaints, and examination findings all were suggestive of a shoulder sprain with possible impingement and/or a superior labrum anterior and posterior tear. Dr. Samohin concluded that appellant's description of her work activities of lifting heavy tubs filled with mail, repetitive overhead pulling of tubs, and repetitive pushing and pulling mail cages with her right arm, directly supported the correlation and cause of her injuries.

By decision dated June 29, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁴ 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.⁵ 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.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ 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 between the diagnosed condition and the specific employment factors identified by the employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

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

The initial treatment notes from Dr. Michalczak and Dr. Samohin did not contain an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ These reports, therefore, are insufficient to establish appellant's claim.

In the physicians section of a Form CA-16 dated July 11, 2017, Dr. Michalczak checked a box marked "yes" in response to a question as to whether the diagnosed condition was causally related to the employment activity described. The Board has held that a report addressing causal relationship with an affirmative checkmark, without medical rationale explaining how the work

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

⁷ *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁸ *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

⁹ *A.M.*, *supra* note 7; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹¹

The Board also finds that Dr. Samohin's October 17, 2017 and March 19, 2018 reports did not provide sufficient explanation regarding whether the conditions he diagnosed were caused or aggravated by appellant's work duties. Rather, they merely provided a conclusory statement as to causal relationship. The Board has held that such a mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition, is insufficient to meet a claimant's burden of proof to establish a claim.¹² Thus, Dr. Samohin's opinion is insufficient to meet appellant's burden of proof.¹³

As the record does not contain rationalized medical opinion evidence explaining how appellant's accepted employment duties either caused or contributed to her diagnosed right shoulder conditions, the Board finds that appellant has not met her burden of proof to establish her 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 her burden of proof to establish right shoulder conditions causally related to the accepted factors of her federal employment.

¹¹ *L.D.*, Docket No. 18-1428 (issued February 11, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

¹² *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

¹³ *See B.P.*, Docket No. 18-0899 (issued December 3, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board