

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

R.G., Appellant	)	
	)	
and	)	<b>Docket No. 18-1778</b>
	)	<b>Issued: April 9, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Surfside, FL, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Joanne Wright, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 25, 2018 appellant, through counsel, filed a timely appeal from a September 20, 2018 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 this case.

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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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder injury due to the accepted factors of his federal employment.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 29, 2015 appellant, then a 58-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a right shoulder condition in the form of a rotator cuff tear due to performing his work duties as a letter carrier.<sup>4</sup> He indicated that he had engaged in repetitive motions on a daily basis for the past 33<sup>3</sup>/<sub>4</sub> years while working as a letter carrier. Appellant advised that he first reported his right shoulder pain when he previously filed a separate claim for an alleged August 18, 2007 right shoulder injury under OWCP File No. xxxxxx964,<sup>5</sup> and indicated that he continued to experience right shoulder pain consistent with a right rotator cuff tear when casing mail, lifting, and otherwise reaching out with his arms.<sup>6</sup> He stopped work on May 5, 2015.

In an accompanying undated statement, appellant provided further details of the repetitive letter carrier duties which he felt caused a new occupational right shoulder injury.

In a development letter dated July 17, 2015, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how his work activities caused, contributed to, or aggravated his claimed medical condition.

Appellant submitted reports from several attending physicians detailing the treatment of his various medical conditions. In two reports dated July 29, 2013, Dr. Alex M. Lam, a Board-certified internist and rheumatologist, diagnosed diffuse arthralgia and primary localized osteoarthritis. In a September 9, 2013 report, Dr. Hugh Fonesca, a Board-certified internist and rheumatologist, diagnosed diffuse arthralgia, primary localized osteoarthritis, sarcoidosis, Crohn's disease, synovitis, and tenosynovitis.

Beginning in March 2015, appellant received treatment for his right shoulder condition from Dr. Marc Z. Hammerman, a Board-certified orthopedic surgeon. In a March 27, 2015 report,

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<sup>3</sup> Docket No. 17-1536 (issued December 5, 2017).

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx065.

<sup>5</sup> The Board notes that appellant's prior claim for an August 18, 2007 right shoulder injury in OWCP File No. xxxxxx964 is not the subject of the present appeal.

<sup>6</sup> Section 11 of the form asks the claimant to provide the date he first became aware of the claimed condition and appellant provided the dates August 18, 2007 and April 16, 2015. Section 12 asks the claimant to provide the date he realized when the claimed condition was caused or aggravated by the employment and appellant provided the dates August 18, 2007 and May 6, 2015.

Dr. Hammerman advised that appellant presented complaining of having right shoulder pain for an unspecified period. He diagnosed right rotator cuff tendinitis/bursitis in the shoulder region, scapular elastofibroma of the right shoulder (with possible tear) as seen on prior diagnostic testing, and degeneration of cervical intervertebral disc.

Appellant submitted an April 10, 2015 magnetic resonance imaging (MRI) scan of his right shoulder which contains an assessment of partial rotator cuff tear, degenerative joint disease of the shoulder region (unspecified whether generalized or localized), labral tear, superior glenoid labrum lesions, and bicipital tenosynovitis.<sup>7</sup> He also submitted a May 6, 2015 report showing that Dr. Hammerman performed an unauthorized right shoulder surgery on that date, including rotator cuff repair involving the supraspinatus muscle, acromioplasty, resection of the distal clavicle, subacromial bursectomy, and arthroscopic labral debridement.

In an August 14, 2015 report, Dr. Hammerman discussed the findings of the April 10, 2015 MRI scan and indicated that, considering appellant's 33 years of engaging in repetitive motion as a letter carrier, it was within all reasonable medical probability there was a causal relationship between his letter carrier duties and the clinical findings.

By decision dated January 26, 2016, OWCP denied appellant's claim for a work-related occupational right shoulder condition finding that he had not submitted medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted employment factors, *i.e.*, his letter carrier duties which included casing mail, carrying a mailbag, delivering mail, and pushing mail gurneys.<sup>8</sup>

On March 28, 2017 appellant, through counsel, requested reconsideration. He submitted a March 20, 2017 report from Dr. Martin E. Hale, an attending Board-certified orthopedic surgeon. Dr. Hale posited that, based on appellant's letter carrier duties, his continued work with overhead reaching for casing as well as repetitive reaching and twisting of his arm during the delivery portion of his route "are significantly contributing to his continuing shoulder problems."

By decision dated June 16, 2017, OWCP denied modification of its June 2, 2016 decision denying appellant's claim for a work-related occupational right shoulder condition. It found that he had not submitted sufficient medical evidence to establish causal relationship between his claimed right shoulder condition and the accepted employment factors.

Appellant appealed to the Board and, by decision dated December 5, 2017,<sup>9</sup> the Board affirmed OWCP's June 16, 2017 decision. The Board found that the medical reports submitted by

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<sup>7</sup> Appellant also submitted an August 20, 2007 MRI scan of his right shoulder which specifically indicated that no rotator cuff tear, retraction, or atrophy was seen. The scan did show a suspected muscle strain or partial tear involving the anterior head of the deltoid muscle.

<sup>8</sup> OWCP modified a prior decision, dated September 1, 2015, in which it found that appellant failed to file a timely claim. It now found that he did, in fact, file a timely claim. On August 2, 2016 appellant, through counsel, requested reconsideration and presented additional argument. By decision dated December 20, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

<sup>9</sup> *Supra* note 3.

appellant, including those of Dr. Hammerman, failed to contain adequate medical rationale to establish causal relationship between a diagnosed medical condition and the accepted employment factors.

On June 26, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.<sup>10</sup> In a March 1, 2018 report, Dr. Hammerman indicated that he had treated appellant since March 27, 2015 for his right shoulder conditions. He noted that, after reviewing the description of appellant's letter carrier position, it was apparent to him that appellant's physical findings were consistent with his 30 years of reaching above shoulder height for up to three hours per day, as well as lifting 25- to 30-pound tubs filled with flat mail "resulting in increased rotator cuff pathology." Dr. Hammerman found that the repetitive movement of casing the mail was also "consistent with potential overuse secondary to the repetitive motion." He noted that, despite many years of being on pain management secondary to back pain, multiple joint, and Crohn's, appellant had a right shoulder problem "without having a prior history of trauma to the shoulder" which was associated with an overuse syndrome. Dr. Hammerman opined that the findings of an April 10, 2015 MRI scan of the right shoulder were consistent with the history of the overuse syndrome. He asserted that the significant partial tearing of the rotator cuff with acromioclavicular joint degeneration and a type II acromion were typical findings with a chronic overuse syndrome.

Dr. Hammerman further indicated that the activities noted in the letter carrier job description were aggravating factors and indicated that, at the time of the May 6, 2015 surgery, appellant was observed to have a full-thickness tear of the right rotator cuff which was even more significant than what was noted on the April 10, 2015 MRI scan. He explained that the hypertrophic bursitis that was present at the time of the May 6, 2015 surgery was consistent with chronic irritation to the subacromial and rotator cuff area. Dr. Hammerman further explained that continuing to perform letter carrier duties, with the underlying findings noted at the time of the May 6, 2015 surgery, would result in the worsening of appellant's right rotator cuff pathology. He noted that he had reviewed the Board's December 5, 2017 decision and indicated, "In view of there not being any other history of trauma to the shoulder, and in view of the nature of his work activities resulting in the overuse of his right dominant upper extremity, I find the correlation of his work overuse activities, to the right shoulder pathology, as a causative factor, to be quite consistent."

By decision dated September 20, 2018, OWCP denied appellant's claim for a work-related right shoulder condition, finding that Dr. Hammerman failed to provide a rationalized medical opinion establishing causal relationship between a diagnosed medical condition and the accepted employment factors.

### **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

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<sup>10</sup> Appellant also submitted photographs, taken from an employing establishment publication of general application, showing various people performing such activities as lifting mail trays and pushing mail carts.

time limitation period of FECA,<sup>11</sup> 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 to the employment injury.<sup>12</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>13</sup> To determine whether a federal employee sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>14</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>15</sup> The opinion of the physician must be based on a complete and accurate 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.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder injury due to the accepted factors of his federal employment.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's June 16, 2017 decision because the Board considered that evidence in its December 5, 2017 decision and found it insufficient to establish causal relationship. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>17</sup> The Board notes that it has been accepted that appellant sustained employment factors, *i.e.*, his letter carrier duties which included casing mail, carrying a mailbag, delivering mail, and pushing mail gurneys. However, appellant has not met his burden of proof to submit medical evidence establishing causal relationship between a diagnosed medical condition and the accepted employment factors.

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<sup>11</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>12</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>13</sup> *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).

<sup>14</sup> *P.B.*, Docket No. 18-1322 (issued January 2, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>15</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>16</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>17</sup> *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

Appellant submitted a March 1, 2018 report from Dr. Hammerman who noted that, after reviewing the description of appellant's letter carrier position, it was apparent to him that appellant's physical findings were consistent with his 30 years of reaching above shoulder height for up to three hours per day, as well as lifting 25- to 30-pound tubs filled with flat mail "resulting in increased rotator cuff pathology." Dr. Hammerman found that the repetitive movement of casing the mail was also "consistent with potential overuse secondary to the repetitive motion." He opined that the findings of an April 10, 2015 MRI scan of the right shoulder were consistent with the history of the overuse syndrome. Dr. Hammerman indicated that the significant partial tearing of the rotator cuff with acromioclavicular joint degeneration and a type II acromion were typical findings with a chronic overuse syndrome. He further indicated that the activities noted in the letter carrier job description were aggravating factors and asserted that, at the time of the May 6, 2015 surgery, appellant was observed to have a full-thickness tear of the right rotator cuff which was even more significant than what was noted on the April 10, 2015 MRI scan. Dr. Hammerman concluded noted, "In view of there not being any other history of trauma to the shoulder, and in view of the nature of his work activities resulting in the overuse of his right dominant upper extremity, I find the correlation of his work overuse activities, to the right shoulder pathology, as a causative factor, to be quite consistent."

The Board finds that Dr. Hammerman's March 1, 2018 report is of limited probative value regarding appellant's claimed work-related injury because he did not provide adequate medical rationale in support of his opinion that a specific medical condition was caused or aggravated by the reported employment activities. Dr. Hammerman indicated that there was a causal relationship between appellant's employment activities and his right shoulder problems, but he provided vague references to what types of medical conditions were related to such activities. He alternatively suggested that appellant sustained some form of right shoulder overuse condition or right shoulder rotator cuff tear/degenerative condition, but he did not clearly identify the specific diagnosed conditions which he felt were related to the employment activities or describe the medical mechanism through which specific work activities could have caused or aggravated specific medical conditions. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>18</sup> Dr. Hammerman repeatedly indicated that certain of his findings were "consistent" with appellant's general work duties, but he did not adequately explain his reasoning for reaching such conclusions. His March 1, 2018 report contains conclusory opinions without the necessary rationale explaining how and why the employment incident/factors were sufficient to result in a diagnosed medical condition. The Board has held that such an opinion is insufficient to meet a claimant's burden of proof to establish a claim.<sup>19</sup>

As the evidence of record does not contain sufficient rationale explaining causal relationship between the claimed condition and the accepted employment factors, the Board finds that appellant has not met his burden of proof.

On appeal counsel contends that Dr. Hammerman's March 1, 2018 report establishes appellant's claim for a work-related right shoulder condition. However, the Board has explained

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<sup>18</sup> *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>19</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

why Dr. Hammerman failed to provide adequate medical rationale in support of his opinion on causal relationship.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 his burden of proof to establish a right shoulder injury due to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 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