

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

A.J., Appellant	)	
	)	
and	)	<b>Docket No. 18-0727</b>
	)	<b>Issued: February 21, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Chicago, IL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

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

On February 20, 2018 appellant filed a timely appeal from a November 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 18-0727.

On December 27, 2016 appellant, then a 57-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2016 she sustained a right shoulder injury from repetitive movements of pushing and lifting for nearly 30 years of employment, shifting her weight and movement to the right side.

In a narrative statement dated December 23, 2016, appellant reported that she was filing a claim for an occupational, on-the-job injury resulting from repetitive, stressful, and continual movement to her right shoulder over 30 years as a clerk for the employing establishment.

By letter dated January 12, 2017, OWCP notified appellant that the evidence of record was insufficient to support her claim for a traumatic injury. Appellant was advised of the medical and factual evidence needed and asked to respond within 30 days.

In support of her claim, appellant submitted medical reports dated September 21, 2016 through January 6, 2017 from Dr. Adam F. Meisel, a Board-certified orthopedic surgeon. Dr. Meisel reported complaints of right shoulder pain which caused issues with lifting, reaching,

pushing, pulling, activities of daily living, and sleeping. He diagnosed right shoulder adhesive capsulitis, right shoulder glenoid chondromalacia, and right biceps tendinitis/tenosynovitis.

By decision dated February 6, 2017, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed condition was causally related to a September 21, 2016 employment incident.

On April 21, 2017 appellant requested reconsideration of OWCP's decision. She explained that she developed right shoulder capsulitis from her repetitive employment duties which entailed reaching upwards to place mail into boxes for approximately five hours per day. Appellant reported that she sustained the exact same injury to her left shoulder in July 2014 and had been placing more weight on her right side because she never regained full range of motion on the left, which was also her dominant hand. She further reported having to sort priority mail which came in large containers, continually bending to pull each piece out for scanning, placing mail in tubs, placing tubs in large upright containers, and pushing these containers to the floor. Appellant reported no prior injuries to her right shoulder. She continued to submit reports from Dr. Meisel documenting treatment for her right shoulder.

By decision dated July 10, 2017, OWCP denied modification of the February 6, 2017 decision, finding that the evidence of record failed to establish that her diagnosed condition was causally related to the September 21, 2016 employment incident.

By letter dated July 28, 2017 appellant requested reconsideration of OWCP's decision and described the repetitive employment duties which she alleged to have caused her injury. In support of her claim, she submitted medical reports dated June 9 through July 19, 2017 from Dr. Meisel documenting treatment for her right shoulder.

By decision dated November 13, 2017, OWCP affirmed the July 10, 2017 decision, finding that the medical evidence of record failed to establish that appellant's diagnosed right shoulder condition was causally related to the September 21, 2016 traumatic injury.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision. The record reflects that appellant filed a Form CA-1 alleging a September 21, 2016 injury from her repetitive employment duties of pushing and pulling. In narrative statements dated December 23, 2016, April 21, and July 28, 2017, appellant described her federal employment duties over the last 30 years which she alleged had caused her right shoulder capsulitis. She discussed her repetitive employment duties which entailed reaching upwards to place mail into boxes for approximately five hours per day, pushing and pulling containers, and sorting priority mail. The Board notes that appellant indicated a traumatic injury by filing a Form CA-1, but described an occupational disease.<sup>1</sup> The medical evidence of record further provides support for an occupational disease injury. Dr. Meisel's medical reports attributed appellant's right shoulder conditions to her repetitive activities. The Board also notes that the November 13, 2017 OWCP decision provided definitions for a traumatic injury and occupational

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<sup>1</sup> A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

disease claim. However, OWCP continued to adjudicate appellant's claim as a traumatic injury having occurred within a single workday or shift. Under the circumstances of the case, however, it appears that appellant is alleging an occupational disease injury resulting from her work environment over a period longer than a single workday or shift.<sup>2</sup>

Under FECA, although it is the employee's burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence.<sup>3</sup> OWCP's Procedure Manual provides that if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, OWCP should make a determination as to whether the correct claim was established and, if not, OWCP should convert the claim to the proper type of claim, and notify the claimant and employing establishment (and any representative, if applicable) of the conversion.<sup>4</sup> In this instance, OWCP failed to properly convert the claim to an occupational disease claim. As such, the Board will remand the case to OWCP for application of the standard for reviewing an occupational disease claim.<sup>5</sup> Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.<sup>6</sup>

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<sup>2</sup> *J.F.*, Docket No. 13-1082 (issued September 18, 2013).

<sup>3</sup> *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2)(b) (June 2011). *C.f. S.N.*, Docket No. 12-1814 (issued March 11, 2013).

<sup>5</sup> *See generally Dewayne C. Davis*, Docket No. 94-2346 (issued August 14, 1997).

<sup>6</sup> *G.S.*, Docket No. 16-0908 (issued October 26, 2017).

**IT IS HEREBY ORDERED THAT** the November 13, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this order.

Issued: February 21, 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