

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Maricopa, AZ, Employer**

**Docket No. 18-0954
Issued: February 26, 2019**

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 April 9, 2018 appellant, through counsel, filed a timely appeal from a March 15, 2018 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 to consider the merits of this case.³

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.*

³ The Board notes that following the March 15, 2018 decision, OWCP received additional evidence. 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 evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability on January 27, 2017 causally related to her accepted December 1, 2011 left upper extremity employment injury; and (2) whether appellant has met her burden of proof to establish a left rotator cuff tear causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 18, 2011 appellant, then a 40-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that sometime before December 1, 2011, she suffered left elbow and shoulder pain due to repetitive upper extremity motions while casing and delivering mail.

Dr. Douglas E. Parkin, an attending internist Board-certified in pediatrics, treated appellant for left shoulder complaints beginning on December 20, 2011. He held her off work commencing March 1, 2012 due to a left rotator cuff tear with acromioclavicular impingement and pain.⁴ Appellant returned to full-time modified-duty work on March 1, 2012 with no use of the left upper extremity.

By letter dated February 27, 2012, OWCP accepted that appellant had sustained sprains of the left rotator cuff, shoulder, and upper arm and assigned the claim OWCP File No. xxxxxx173. It paid her wage-loss compensation for intermittent work absences from January 26 to May 4, 2012.

On May 16, 2012 Dr. Peter Seipel, an attending Board-certified orthopedic surgeon, performed an authorized arthroscopic debridement of a left rotator cuff tendon tear with arthroscopic subacromial decompression. OWCP paid appellant wage-loss compensation for intermittent work absences commencing May 17, 2012. Appellant returned to full-time, modified-duty work on June 2, 2012 and to full duty on July 5, 2012.

On February 3, 2017 appellant filed a notice of recurrence (Form CA-2a) claiming that sometime before January 27, 2017, repetitive upper extremity motions, while processing and delivering her mail route in the performance of her federal duties, caused left shoulder pain. She stopped work from January 20 to 22, 2017, returned to work, and then stopped work again on February 4, 2017. S.K., appellant's supervisor, noted that from March 5 to December 10, 2016, appellant had been detailed to a full-duty position as a postmaster. She resumed full duty as a letter carrier on January 5, 2017 and had carried mail for approximately three weeks. Appellant stopped work on February 6, 2017.

⁴ A March 7, 2012 magnetic resonance imaging (MRI) scan of the left shoulder showed a possible partial thickness supraspinatus tear, a possible oblique tear within the anterior labrum, a Type 1 acromion with negative anterior sloping, mild acromioclavicular degenerative disease, and minimal impingement.

In a report dated February 6, 2017, Dr. Michael P. Ridge, an attending Board-certified internist, diagnosed a complete left rotator cuff tear. He limited appellant to light duty with no use of the left shoulder.

In a letter dated February 15, 2017, L.L., an employing establishment official, controverted the claim. She noted that from December 10, 2016 to February 3, 2017, appellant had worked only 17 out of 40 days. L.L. controverted appellant's claims under File No. xxxxxx137 and xxxxxx805 in letters dated March 29, May 1, and 9, 2017. She alleged that appellant had provided an inconsistent history of injury.

By development letters dated March 2 and 17, 2017, OWCP advised appellant of the type of additional evidence needed to establish her claim for recurrence of disability, including a current medical report from her attending physician supporting a causal relationship between her accepted employment injury and her condition on and after January 27, 2017. It afforded her 30 days to submit the necessary evidence.

In response appellant provided a March 6, 2017 narrative statement. She described increasing left shoulder pain commencing in early January 2017. Appellant alleged that repetitive upper extremity motion and heavy lifting while casing and delivering mail had caused a left rotator cuff tear.

In a telephone memorandum (Form CA-110) dated March 20, 2017, OWCP noted that appellant requested to withdraw her claim for recurrence of disability and intended to claim a new occupational injury. Appellant explained in a letter dated March 20, 2017 that she had requested an occupational disease claim form (Form CA-2) on February 3, 2017, but an employing establishment official directed her to complete a claim for recurrence of disability (Form CA-2a).

By letter dated March 28, 2017, OWCP notified appellant that to withdraw her claim for recurrence of disability, she must submit a statement stating that she was "withdrawing the recurrence claim so it can be deleted."

On March 27, 2017 appellant filed an occupational disease claim (Form CA-2) alleging that, sometime prior to January 27, 2017, she sustained a left rotator cuff tear. OWCP assigned that claim OWCP File No. xxxxxx805.

In an accident report dated March 27, 2017, employing establishment official, S.K., contended that appellant's March 27, 2017 occupational disease claim was a duplicate of her February 3, 2017 claim for a recurrence of disability.

In reports dated April 10 and 14, 2017, Dr. Ridge diagnosed a complete left rotator cuff tear. He prescribed medication.

An April 11, 2017 MRI scan of the left shoulder demonstrated moderate distal supraspinatus and infraspinatus tendinosis without a rotator cuff tear, moderate hypertrophic acromioclavicular joint osteoarthritis with spur causing mild deformity of the supraspinatus muscle, and a hyperplastic superior labrum without tear.

In a statement dated April 13, 2017, appellant attributed her claimed recurrence of disability to repetitive left upper extremity motions while casing and delivering mail while in the performance of duty in January 2017.⁵

By development letter dated April 21, 2017, OWCP notified appellant of the type of additional factual and medical evidence needed to establish her occupational disease claim, including a detailed factual statement describing the mechanism of injury, and a narrative opinion from her attending physician explaining how and why the identified employment factors would cause the claimed left shoulder condition. It afforded her 30 days to submit additional evidence.

In response, appellant submitted a report dated April 28, 2017 from Dr. Ridge. Dr. Ridge noted that appellant worked as a letter carrier and had sustained an occupational shoulder injury “treated successfully years ago.” He opined that a left rotator cuff tear demonstrated by imaging studies was “a result of her work.”

In a statement dated April 30, 2017, appellant attributed her left shoulder condition to repetitive motion of the left upper extremity while casing and delivering mail while in the performance of her assigned federal job duties over a 15-year period. She remained off work. OWCP paid appellant wage-loss compensation for intermittent work absences through May 26, 2017.

Appellant also submitted a report dated June 16, 2017 by Scott McMillan, a physician assistant.

By decision dated June 28, 2017, issued under File No. xxxxxx805, OWCP accepted that appellant’s assigned federal work duties required repetitive upper extremity motions. It denied her occupational disease claim as the medical evidence of record did not establish causal relationship between the accepted employment factors and her diagnosed left shoulder condition commencing in January 2017.

By decision dated July 10, 2017, issued under File No. xxxxxx173, OWCP denied appellant’s claim for a recurrence of disability commencing January 24, 2017 as the medical evidence of record did not establish that her accepted left shoulder employment injury disabled her from work for the claimed period.

In a report dated July 12, 2017, Dr. Thomas L. Erickson, an attending Board-certified orthopedic surgeon, noted appellant’s difficulties with activities of daily living. Appellant developed left shoulder pain in January 2017 without a specific injury. On examination of the left upper extremity, Dr. Erickson found limited elevation of the arm, tenderness to palpation of the acromioclavicular joint and subacromial space, and positive impingement signs. He opined that a left shoulder MRI scan showed slight spurring of the anterior acromion without rotator cuff

⁵ In a letter dated June 14, 2017, appellant asserted that she did not wish to withdraw her recurrence claim as the employing establishment and a union official advised her to file “both ways” and allow OWCP to determine which form of claim was appropriate. Employing establishment supervisor S.K. responded by letter dated July 10, 2017 asserting that she had not advised appellant to file both a claim for occupational disease and a claim for recurrence of disability.

impingement, significant acromioclavicular joint arthritis, and no visible rotator cuff tears. Dr. Erickson opined that appellant's symptoms were "at least to some degree related to her previous rotator cuff tear" although he was "not sure exactly what caused the recent exacerbation. Certainly this could be related to her work as a mail carrier which requires repetitive use of the shoulder."

On July 24 and 31, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative regarding OWCP's June 28 and July 10, 2017 decisions.⁶

At the hearing, held on January 18, 2018, appellant noted that she had not sought treatment for her left shoulder from her return to full duty in July 2012 to January 2017. She attributed her left shoulder condition to casing and delivering mail beginning in January 2017. Appellant noted that she sometimes babysat her three grandchildren and was able to lift a child weighing 15 to 24 pounds with either arm.⁷ She provided additional medical evidence including an August 15, 2017 report from Mr. McMillan, a physician assistant.

In a letter dated August 30, 2017, Dr. Erickson advised counsel that he could not offer additional opinion regarding causal relationship.

In a report dated November 28, 2017, Dr. Ridge diagnosed a complete left rotator cuff tear. He prescribed medication.

By decision dated March 15, 2018, an OWCP hearing representative affirmed OWCP's June 28, 2017 decision under File No. xxxxxx805, which denied appellant's occupational disease claim, and its July 10, 2017 decision under File No. xxxxxx173, which denied her claim for a recurrence of disability commencing January 24, 2017. The hearing representative directed OWCP to double the two claims as they pertained to the same member of the body and cross-referencing of the evidence in both claims was necessary for a complete and accurate history.⁸

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of OWCP's regulation provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.

⁶ On August 30, 2017 appellant claimed a schedule award (Form CA-7) under File No. xxxxxx173 for permanent impairment of the left upper extremity. By decision dated December 21, 2017, OWCP denied her schedule award claim as the medical evidence of record did not establish that the accepted left shoulder conditions had attained maximum medical improvement (MMI). On January 3, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. Counsel provided a December 13, 2017 impairment rating by Dr. Mesfin Seyoum, a family practitioner. There is no subsequent decision of record before the Board on the present appeal regarding appellant's schedule award claim.

⁷ OWCP's hearing representative noted that the hearing would consider appellant's claims under both File No. xxxxxx805 and File No. xxxxxx173.

⁸ OWCP administratively doubled the claims, with File No. xxxxxx173 serving as the master file.

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.⁹ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.¹⁰ The physician's opinion must be based on a complete and accurate factual and medical history and must also be supported by sound medical reasoning.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on January 27, 2017 causally related to her accepted December 1, 2011 left upper extremity employment injury.

None of the physicians of record attributed appellant's diagnosed left shoulder conditions to a spontaneous change in medical condition which resulted from the previous injury, without an intervening injury or new exposure to the work environment.¹² Both Dr. Ridge and Dr. Erickson inferred that appellant's condition was generally related to her federal employment duties that she performed in January 2017.

Dr. Ridge opined in an April 28, 2017 report that a diagnosed left rotator cuff tear was "a result of her work." Dr. Erickson noted in a report dated July 12, 2017 that appellant's left shoulder symptoms were somewhat related to the accepted December 2011 left shoulder injury, but that her condition as of January 2017 "could be related" to repetitive shoulder motions while working as a mail carrier." These opinions were not sufficiently well rationalized to establish that appellant had a recurrence of disability causally related to her accepted left shoulder conditions sustained sometime before December 1, 2011.¹³ Neither Dr. Ridge nor Dr. Erickson indicated that appellant's left shoulder condition as diagnosed in January 2017 was a spontaneous recurrence of the left shoulder conditions sustained on or before January 21, 2012.

⁹ 20 C.F.R. § 10.104(b); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapters 2.1500.5 and 2.1500.6 (June 2013).

¹⁰ *L.C.*, Docket No. 17-1788 (issued September 19, 2018). See *S.S.*, 59 ECAB 315, 318-19 (2008).

¹¹ *L.C.*, *id.* *S.S.*, *id.* at 319.

¹² *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

¹³ *L.C.*, *supra* note 10.

In support of her claim appellant also included reports from a physician assistant. However, these reports have no probative value as a physician assistant is not considered a physician as defined under FECA.¹⁴

The medical evidence of record therefore does not include bridging evidence to show a spontaneous worsening of the accepted conditions, or that the newly diagnosed condition occurred over time as a result of the December 1, 2011 employment-related left shoulder condition.¹⁵ The Board therefore finds that appellant has not met her burden of proof.¹⁶

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰

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

¹⁴ 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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA). Appellant also provided medical literature on shoulder conditions.

¹⁵ *L.C.*, *supra* note 10. See *M.M.*, Docket No. 16-1851 (issued January 19, 2018).

¹⁶ *Id.*; *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹⁷ *Supra* note 2.

¹⁸ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

¹⁹ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

²⁰ *J.I.*, Docket No. 18-0286 (issued September 17, 2018); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

opinion evidence supporting such causal relationship.²¹ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.²² 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.²³ 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.²⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish a left rotator cuff tear causally related to the accepted factors of her federal employment.

OWCP accepted that appellant intermittently engaged in repetitive employment activities as a letter carrier. Appellant alleged that she developed a left rotator cuff tear due to casing and delivering mail in January 2017. However, OWCP denied her claim because it determined that she had not submitted a rationalized medical report sufficient to establish a causal relationship between her diagnosed left shoulder conditions and her federal employment duties.

It is appellant's burden of proof to establish that newly diagnosed conditions are employment related. The Board notes that she has explained that she did not seek medical treatment for her left shoulder condition between July 2012 and January 2017. Therefore, there was a four-and-a-half year gap in appellant's medical treatment.

Dr. Ridge, in an April 28, 2017 report, opined that a diagnosed left rotator cuff tear was "a result of her work." He did not offer medical reasoning in support of his conclusion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.²⁵ For the reasons set forth above, Dr. Ridge's report is insufficient to meet appellant's burden of proof.

Dr. Erickson, in a report dated July 12, 2017, noted that appellant's left shoulder symptoms were partially related to the accepted December 2011 left shoulder injury. He explained that her left shoulder condition as of January 2017 "could be related" to repetitive shoulder motions while working as a mail carrier." The Board finds that Dr. Erickson did not provide adequate medical rationale to establish causal relationship as his opinion was equivocal in nature. Dr. Erickson's

²¹ *J.I., id., I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

²² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

²³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

²⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

²⁵ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim as alleged by appellant, namely, discussing what letter carrier duties would cause or aggravate her left rotator cuff condition.²⁶ Without explaining how physiologically the movements involved in any specific employment duties caused or contributed to appellant's diagnosed condition and because he couched his opinion with the qualification that the condition "could be related" to repetitive shoulder motion, Dr. Erickson's opinion on causal relationship is equivocal in nature and of limited probative value.²⁷ Thus, Dr. Erickson's July 12, 2017 report is insufficient to meet appellant's burden of proof.

On appeal counsel asserts that OWCP adjudicated appellant's case in an inconsistent manner. As noted above, OWCP properly denied her claims as she submitted insufficient medical evidence to meet her burden of proof.

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 recurrence of disability on January 27, 2017 causally related to her December 1, 2011 left upper extremity employment injury. The Board further finds that she has not met her burden of proof to establish a left rotator cuff tear causally related to the accepted factors of her federal employment.

²⁶ *J.I.*, *supra* note 20; *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

²⁷ *J.I.*, *supra* note 20. *See L.M.*, Docket No. 14-0973 (issued August 25, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2018 is affirmed.

Issued: February 26, 2019
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