

FACTUAL HISTORY

On November 13, 2017 appellant, then a 61-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a left shoulder strain due to factors of her federal employment, which included picking up packages off a moving belt and distributing them into containers. She indicated that she first became aware of her claimed condition on July 5, 2016 and of its relationship to her federal employment on October 1, 2016. On the reverse side of the claim form, appellant's supervisor noted that appellant stopped work on November 5, 2017.

In a supplemental statement dated November 4, 2017, appellant indicated that, while at work on July 5, 2016, a small box fell off of the moving belt. She noted that, although the box was a little heavy, she picked up the box and placed it in the correct container. Appellant related that, upon placing the box in the container, she heard a pop and felt pain in her left arm. She noted that she did not initially stop work. On July 8, 2016 appellant went to the emergency room and, after months of physical therapy, her pain did not subside so she saw another physician who diagnosed rotator cuff sprain and severe arthritis.

OWCP received a medical report dated September 15, 2017, from Dr. Eugene P. Lopez, Board-certified in orthopedic sports medicine and orthopedic surgery, which noted his diagnoses of left shoulder rotator cuff tear and osteoarthritis. Dr. Lopez concluded that both conditions were not specified as traumatic and that both conditions were work related.

In a development letter dated November 21, 2017, OWCP acknowledged receipt of appellant's claim and informed her that the evidence submitted was insufficient to support her claim. It provided a factual questionnaire for her completion and requested additional medical evidence in support of her claim. OWCP afforded appellant 30 days to submit the requested evidence.

In a November 20, 2017 statement, received by OWCP on December 21, 2017, appellant indicated that she felt pain in her left shoulder when she lifted packages and placed them into containers. She noted that her injury was caused by moving boxes and packages from a moving belt to containers for eight hours per day, five days per week. Appellant also related that this was the first time she had suffered from this type of condition.

In a December 9, 2017 response to OWCP's development questionnaire, appellant indicated that her employment duties of lifting boxes and packages off of a moving belt and placing them in containers for "years" contributed to her condition. She also related that the type of injury claimed was an occupational disease.

By decision dated January 10, 2018, OWCP denied appellant's claim. It found that she had established that the employment factors occurred as alleged. However, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted employment factors.

OWCP subsequently received a progress note dated January 23, 2017 from Dr. Kenneth Schiffman, Board-certified in hand surgery and orthopedic surgery. Dr. Schiffman noted that

appellant underwent a magnetic resonance imaging (MRI) scan of her left shoulder which revealed a large and retracted rotator cuff tear and significant glenohumeral osteoarthritis.

In a progress note dated March 9, 2017, and received by OWCP on February 21, 2018, Dr. Schiffman diagnosed left shoulder rotator cuff arthropathy and moderate-to-severe left carpal tunnel syndrome.

On March 5, 2018 appellant requested reconsideration.

By decision dated May 14, 2018, OWCP reviewed the merits of appellant's claim, but denied modification of the January 10, 2018 decision, finding that the evidence of record was insufficient to explain how her job duties caused or aggravated her diagnosed conditions.

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 evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.⁵

In an occupational disease claim, appellant's burden of proof 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.⁶

Causal relationship is a medical issue and the evidence required to establish causal relationship is rationalized medical opinion evidence.⁷ 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 specific employment factors identified by the employee.⁸

³ *Supra* note 1.

⁴ *D.L.*, Docket No. 18-1007 (issued November 28, 2018); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *D.L., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *D.L., id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

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

Appellant submitted two progress notes from Dr. Schiffman dated January 23 and March 9, 2017. Dr. Schiffman noted his review of MRI scan and nerve testing results and diagnosed a large and retracted rotator cuff tear, significant glenohumeral osteoarthritis, left shoulder rotator cuff arthropathy, and moderate-to-severe left carpal tunnel syndrome. He did not provide an opinion as to whether the diagnosed conditions were causally related to the accepted employment factors. Therefore, Dr. Schiffman's progress notes are of no probative value.⁹

Dr. Lopez, in his September 15, 2017 report, diagnosed a left shoulder rotator cuff tear and osteoarthritis and opined that appellant's conditions were work related. However, he did not explain how the accepted employment factors caused or aggravated the diagnosed conditions. The Board has held that a mere conclusion without the necessary rationale explaining how appellant's specific accepted work factors resulted in the diagnosed conditions is of limited probative value and insufficient for the employee to meet her burden of proof.¹⁰ Such rationale is especially important when the medical evidence indicates that appellant has a preexisting condition.¹¹ Thus, the Board finds that Dr. Lopez' report is insufficient to meet her burden of proof.

In support of her claim, appellant also submitted multiple narrative statements, dated November 4 and 20, and December 9, 2017, giving a factual recount of her alleged condition and conjecture as to the cause of her condition. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.¹² Causal relationship must be established by rationalized medical opinion evidence. As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met 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 and 20 C.F.R. §§ 10.605 through 10.607.

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *M.G.*, Docket No. 18-0654 (issued October 17, 2018); *L.J.*, Docket No. 17-1993 (issued March 13, 2018); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹¹ See *M.D.*, Docket No. 17-0478 (issued July 5, 2018).

¹² *E.M.*, Docket No. 17-1683 (issued January 4, 2019); see *Duane B. Harris*, 49 ECAB 170, 173 (1997).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board