

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

G.M., Appellant	)	
	)	
and	)	Docket No. 18-0989
	)	Issued: January 3, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Buffalo, NY, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 April 16, 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 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 her burden of proof to establish that her diagnosed right shoulder conditions are causally related to the accepted employment incident.

## FACTUAL HISTORY

On August 29, 2016 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that a lifting incident while at work during her overnight shift from August 28 to 29, 2016 caused a right shoulder sprain. She stopped work at that time.

On August 29, 2016 the employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16) which indicated that she was authorized to seek medical treatment for her right shoulder condition. Appellant sought treatment later that day at a hospital emergency room with Dr. Heather Janik, a physician Board-certified in emergency medicine. Dr. Janik related appellant's account of an audible "pop" in appellant's right shoulder after "lifting or carrying, a heavy object" at work. X-rays of the right shoulder were negative for fracture or dislocation. She diagnosed rotator cuff tendinitis. Dr. Janik returned appellant to limited-duty work on August 30, 2016.

In a report dated September 2, 2016, Dr. Andrew L. O'Hara, an attending osteopathic physician specializing in orthopedic surgery, related appellant's account of lifting a heavy object while at work on August 29, 2016, with the immediate onset of right shoulder pain. In an addendum, he reviewed x-rays of the right shoulder obtained on September 3, 2016. Dr. O'Hara opined that these films demonstrated mild-to-moderate arthritic change in the glenohumeral and acromioclavicular joints. He diagnosed arthritis and a possible rotator cuff tear or labral pathology. Dr. O'Hara held appellant off from work.

A magnetic resonance imaging (MRI) scan of the right shoulder performed on September 10, 2016 demonstrated a large, full-thickness tear of the supraspinatus and infraspinatus tendons with retraction and mild muscle atrophy, a complete tear of the biceps tendon, a partial tear of the subscapularis tendon, mild acromioclavicular joint arthrosis, and moderate effusion.

In a report dated September 14, 2016, Dr. O'Hara diagnosed a right rotator cuff tear, biceps tendon tear, and partial subscapularis tendon tear. He held appellant off work pending surgery.

By development letter dated September 19, 2016, OWCP advised appellant of the type of additional factual and medical evidence needed to establish her claim, including a report from her physician explaining how her employment incident resulted in a diagnosed medical condition. It afforded her 30 days to provide the requested evidence.

In response, appellant submitted an October 12, 2016 attending physician's report (Form OWCP-20) from Dr. O'Hara. Dr. O'Hara related that when she lifted a heavy object while at work on August 29, 2016, "[appellant] felt a pull in her right shoulder." He diagnosed a right rotator cuff tear. Dr. O'Hara checked the box marked "yes" indicating that the diagnosed condition was caused or aggravated by the August 29, 2016 incident. He explained that the "lifting of a heavy

object is capable of causing the tear.” Dr. O’Hara held appellant off work pending a planned arthroscopic rotator cuff repair.

By decision dated October 31, 2016, OWCP denied appellant’s claim. It accepted that the identified incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish that the diagnosed right shoulder conditions were causally related to the accepted August 28, 2016 lifting incident.

On February 6, 2017 appellant requested reconsideration. She asserted that, on August 28, 2016, while lifting buckets of mail weighing up to 70 pounds into dispatch equipment, she felt a “pop” in her right arm just below the shoulder with the immediate onset of pain. Appellant reported the incident to Supervisor J.K., who helped appellant complete an incident report and directed a coworker to drive appellant to a hospital emergency room. She asserted that she had been unable to work since August 28, 2016 as she was unable to raise her right arm. Appellant requested that OWCP approve the arthroscopic right rotator cuff repair as requested by Dr. O’Hara.

In a report dated November 9, 2016, Dr. O’Hara noted appellant’s continued right shoulder pain with weakness and restricted motion. He again recommended arthroscopic rotator cuff repair, subacromial decompression, possible subscapularis tendon repair, biceps tenotomy, and distal clavicle resection. Dr. O’Hara opined that these procedures were necessary due to the accepted employment incident. He explained that although appellant had some arthritis in her right shoulder, this did “not explain her abrupt inability to fully range the shoulder and also does not explain her abrupt loss in strength.” Dr. O’Hara added that arthritis “usually leads to a more gradual decline in both these functions.” He continued to hold appellant off work.

By decision dated March 15, 2017, OWCP denied modification. It found that the additional medical evidence submitted failed to establish causal relationship between the accepted employment incident and the diagnosed right shoulder conditions. OWCP noted that Dr. O’Hara’s opinion was speculative and contained inadequate medical reasoning.

On December 20, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a report dated March 24, 2017, Dr. O’Hara recommended arthroscopic repair of a large, full-thickness rotator cuff tear of the right shoulder. He opined that appellant had “a causally[-] related injury to her shoulder from” the accepted lifting incident, when she felt a “pull in the shoulder with subsequent increased anterolateral shoulder pain.” Dr. O’Hara opined that arthritis would have produced a more gradual decline in function, whereas she had the abrupt onset of weakness and restricted motion.

On May 25, 2017 Dr. O’Hara performed arthroscopic repair of the right rotator cuff with subacromial decompression, distal clavicle resection, and synovectomy.

In a report dated June 9, 2017, Dr. O’Hara opined that the accepted occupational incident caused extreme anterolateral shoulder pain and weakness distinct from preexisting mild glenohumeral and acromioclavicular arthritis. He explained that “based on the mechanism of injury of lifting a heavy object and unfortunately experiencing a drastic sharp shoulder pain this

was in [his] opinion representative of a tear of the rotator cuff, acutely.” Dr. O’Hara provided chart notes dated September 20 and October 23, 2017. He observed that physical therapy had improved appellant’s range of right shoulder motion and strength. In a series of questions at the end of the chart notes, Dr. O’Hara indicated “yes,” that her complaints remained consistent with the stated history of injury, but “no,” that the described incident was not the competent medical cause of the diagnosed injury.

By decision dated March 15, 2018, OWCP denied modification of its prior decision. It found that the additional medical evidence submitted failed to establish causal relationship between the accepted employment incident and the diagnosed right shoulder conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>6</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>7</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> Physician’s opinion on whether there is a causal relationship between the diagnosed condition and the employment incident must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

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<sup>3</sup> *See id.*

<sup>4</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>5</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *K.B.*, Docket No. 17-1363 (issued February 14, 2018); *D.J.*, Docket No. 17-0364 (issued April 13, 2018); *Gary J. Watling*, *id.*

<sup>8</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment incident.<sup>10</sup>

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

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

Appellant initially sought medical treatment in an emergency room on August 29, 2016. In a report from that initial visit Dr. Janik noted that she had heard an audible "pop" in her right shoulder while lifting or carrying a heavy object at work. He diagnosed rotator cuff tendinitis, but did not provide an opinion on the issue of 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.<sup>12</sup> This report, therefore, is insufficient to establish appellant's claim.

In support of her claim, appellant submitted a series of medical reports documenting her treatment with Dr. O'Hara, an orthopedic surgeon. In reports dated September 2 and 14, 2016, Dr. O'Hara noted a history of injury of lifting a heavy object at work causing immediate onset of right shoulder pain. In the September 2, 2016 note, he diagnosed arthritis and a possible rotator cuff tear or labral pathology, but he did not provide an opinion on causal relationship. Following a September 10, 2014 MRI scan, in his September 14, 2016 note, Dr. O'Hara diagnosed a right rotator cuff tear, biceps tendon tear, and partial subscapularis tendon tear. He did not opinion as to the cause of these diagnosed conditions. As noted, medical reports that do not offer an opinion regarding the cause of an employee's condition are of no probative value on the issue of causal relationship.<sup>13</sup> These reports are therefore insufficient to establish appellant's claim. The MRI scan report is also insufficient to establish causal relationship as the Board has long held that diagnostic studies are of limited probative value as they do not address whether the employment incident caused the diagnosed conditions.<sup>14</sup>

In an attending physician's report (Form OWCP-20), Dr. O'Hara noted the history of appellant lifting a heavy object at work on August 29, 2016 and feeling a pull in her right shoulder. He provided a diagnosis of rotator cuff tear and checked a box marked "yes" that the diagnosed

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<sup>10</sup> *Id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>12</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

condition was caused or aggravated by the employment incident. Dr. O'Hara remarked that "lifting a heavy object is capable of causing a tear." The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>15</sup> Dr. O'Hara's remark that lifting a heavy object is capable of causing a tear is also of limited probative value as it is speculative in nature and provides no rationale as to the specific weight lifted or the mechanism of lifting. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.<sup>16</sup> These reports are therefore found to be insufficient to establish appellant's claim.

In reports dated November 9, 2016 and March 24, 2017, Dr. O'Hara reported that appellant continued to have right shoulder pain with weakness and restricted range of motion. In both notes he recommended that she undergo an arthroscopic rotator cuff repair. In these notes, Dr. O'Hara noted his belief that the rotator cuff conditions were unrelated to a personal arthritic condition as arthritis "usually leads to a more gradual decline" in shoulder function. He noted that she had an abrupt onset of weakness and restricted motion, which ruled out arthritis as a cause of the condition. The Board finds that while Dr. O'Hara rules out arthritis as the cause of appellant's shoulder condition, his opinion that an employment incident caused the condition is conclusory as it provides no medical rationale. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the employment incident was sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.<sup>17</sup>

In a report dated June 9, 2017, Dr. O'Hara opined that the condition was work related. He explained that "based on the mechanism of injury of lifting a heavy object and unfortunately experiencing a drastic sharp shoulder pain" this was representative of an acute tear of the rotator cuff. In chart notes dated September 20 and October 23, 2017, Dr. O'Hara noted that appellant's complaints remained consistent with the stated history of injury and therefore her diagnosed condition was causally related to the employment incident. The mere recitation of a patient's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>18</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.<sup>19</sup> The Board therefore finds these additional medical reports insufficient to establish appellant's claim.

For the reasons set forth above, appellant is found to have not submitted sufficiently rationalized medical evidence to establish her claim.

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<sup>15</sup> See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>16</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>17</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>18</sup> See *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>19</sup> See *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

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 that her diagnosed right shoulder conditions are causally related to the accepted employment incident.<sup>20</sup>

**ORDER**

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

Issued: January 3, 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

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<sup>20</sup> The Board notes that the employing establishment executed a Form CA-16 on August 29, 2016 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. *L.D.*, Docket No. 16-1289 (issued December 8, 2016).