

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

K.L., Appellant)	
)	
and)	Docket No. 18-1029
)	Issued: January 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Melville, NY, Employer)	
)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 23, 2018 appellant filed a timely appeal from a November 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that her left shoulder conditions were causally related to the accepted October 5, 2017 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On October 10, 2017 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on October 5, 2017, she sustained a left arm and shoulder injury when she was lifting heavy boxes out of the chute and into the sack at work. She notified her supervisor on the date of incident, and first sought medical treatment on October 8, 2017.

In an accompanying narrative statement, appellant reported that she strained her upper left arm and shoulder from lifting a box from the chute to the sack. She returned to work on October 7, 2017, but had continued discomfort in her left arm and shoulder causing her to seek emergency medical treatment. Appellant submitted an official job description detailing the duties of a mail handler.

An October 8, 2017 Plainview Hospital emergency department note documented appellant's treatment with Dr. Matthew Projansky, Board-certified in emergency medicine, for a left shoulder sprain. In an October 8, 2017 diagnostic report, Dr. Howard Heimowitz, a Board-certified diagnostic radiologist, reported that appellant's left shoulder x-ray revealed normal findings with no evidence of fracture, dislocation, or bone destruction.

By letter dated March 11, 2015, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of her claim had not been formally considered and her claim had been reopened for consideration of the merits because she had not returned to work in a full-time capacity. OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. It advised her of the medical and factual evidence necessary. OWCP afforded appellant 30 days to submit the additional evidence.

Appellant submitted an October 10, 2017 authorization for examination and/or treatment (Form CA-16), completed by the employing establishment authorizing medical treatment for the October 5, 2017 left upper arm and shoulder injury. The form was accompanied by an October 11, 2017 attending physician's report, Part B of the form, from Dr. Salvatore J. Corso, a Board-certified orthopedic surgeon. Dr. Corso noted appellant's history of lifting heavy boxes out of a shoot with injury to the left shoulder. He diagnosed left shoulder rotator cuff injury and checked a box marked "yes" in response to the question whether the condition was caused or aggravated by the employment activity.

Appellant also submitted Dr. Corso's medical and duty status reports (CA-17 forms) dated October 11 to November 20, 2017, documenting treatment for her left shoulder. Dr. Corso reported that appellant was evaluated on October 11, 2017 for a new injury. He discussed the October 5, 2017 employment incident, noting that she was working at the employing establishment and while taking heavy boxes out of the shoot, felt significant pain in her left shoulder. After returning to work a couple of days later, appellant experienced increasing pain with motion causing her to seek emergency medical treatment. Dr. Corso provided findings on physical examination, diagnosed left shoulder rotator cuff muscle/tendon strain, and recommended a magnetic resonance imaging (MRI) scan.

In an October 19, 2017 diagnostic report, Dr. Mark Decker, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the left shoulder revealed acromioclavicular joint (AC) hypertrophy, high grade articular tear at the anterior insertion of supraspinatus, tear of the superior labrum, and capsular thickening with joint effusion.

In an October 23, 2017 report, Dr. Corso reviewed the diagnostic findings and diagnosed left shoulder partial thickness rotator cuff tear and superior glenoid lesion/superior labrum anterior posterior (SLAP) lesion. In an October 23, 2017 attending physician's report (Form CA-20), he noted appellant's October 5, 2017 history of injury. Dr. Corso noted no history or evidence of a concurrent or preexisting injury. He diagnosed left shoulder rotator cuff tear and checked the box marked "yes" in response to the question whether the condition was caused or aggravated by the employment activity. Dr. Corso also noted appellant's work restrictions.

By decision dated November 29, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her left shoulder conditions were causally related to the accepted October 5, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 are causally related to the employment injury.⁴ 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.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 opinion evidence supporting such causal relationship.⁷ The opinion of the physician must be based

³ *Supra* note 1.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her left shoulder conditions were causally related to the accepted October 5, 2017 employment incident.⁹

The record reflects that appellant sought emergency medical treatment on October 8, 2017, a few days following the October 5, 2017 employment incident with Dr. Projansky. While the emergency department note documents treatment for a left shoulder sprain, this report did not provide findings and an opinion regarding the cause of her condition. As such, this report is of no probative value,¹⁰ and is insufficient to establish appellant's traumatic injury claim.¹¹

Appellant also submitted medical and form reports dated October 11 to November 20, 2017 from Dr. Corso, her attending physician. The Board finds that the opinion of Dr. Corso is not well rationalized. While Dr. Corso provided a sufficient diagnosis of left shoulder rotator cuff muscle/tendon strain, partial thickness rotator cuff tear, and superior glenoid lesion/SLAP lesion, he failed to provide an adequate opinion regarding the cause of appellant's injury. However, Dr. Corso only vaguely discussed appellant's medical history by noting new injury and simply repeated her assertions pertaining to the October 5, 2017 employment incident. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.¹²

In his October 23, 2017 Form CA-20, Dr. Corso diagnosed left shoulder rotator cuff tear as evidenced by the MRI scan findings. Though Dr. Corso checked a box "yes" to the question whether the diagnosis was a result of the employment incident, the Board has held that a report that addresses causal relationship with an affirmative checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *See Robert Broome*, 55 ECAB 339 (2004).

¹⁰ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship. *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

¹² *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

insufficient to establish causal relationship.¹³ Dr. Corso's reports lack a detailed understanding of the October 5, 2017 employment incident as he failed to discuss the weight of the box being lifted, the frequency of the task, and specific physical movements asserted which would cause a left rotator cuff injury. Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed left shoulder conditions, his opinion on causal relationship is equivocal in nature and of limited probative value.¹⁴

The remaining medical evidence of record is also insufficient to establish appellant's claim. The diagnostic reports of record dated October 8 and 17, 2017 simply interpreted imaging studies and provided no opinion on the cause of appellant's injury.¹⁵ The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions¹⁶ Accordingly, these reports are insufficient to meet appellant's burden of proof.¹⁷

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.¹⁸ Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.¹⁹ In the instant case, the record lacks rationalized medical evidence establishing causal relationship between the October 5, 2017 employment incident and her diagnosed left shoulder conditions.²⁰ Thus, appellant has not met her burden of proof.²¹

¹³ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁴ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁵ Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions. *E.R.*, Docket No. 18-0391 (issued August 24, 2018); see also *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁶ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁷ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁸ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁹ *D.D.*, 57 ECAB 734 (2006).

²⁰ See *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

²¹ The record contains a Form CA-16 signed by the employing establishment official on October 10, 2017 for treatment pertaining to the October 5, 2017 left shoulder and arm injury. When the 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, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

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 left shoulder conditions were causally related to the accepted October 5, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 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