

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

S.B., Appellant)	
)	
and)	Docket No. 18-1296
)	Issued: January 24, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Dayton, OH, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 19, 2018 appellant, through counsel, filed a timely appeal from a May 2, 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 over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish right shoulder and right wrist conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 12, 2016 appellant, then a 65-year-old clerk, filed an occupational disease claim (Form CA-2) assigned OWCP File No. xxxxxx890 for an injury resulting from the performance of her federal duties. She noted that she first became aware of her claimed condition and its relationship to her federal employment on May 1, 2015. Appellant stopped work on December 9, 2016 and did not return.

On the reverse side of the claim form, the employing establishment indicated that appellant was off work from December 9 through 23, 2016 due to nonwork-related surgery. It also indicated that, previously, on January 23, 2014 she had accepted a job offer for a position in the sales retention office, for eight hours a day. On September 16, 2016 appellant worked only one hour.

In an addendum to her claim dated December 12, 2015, appellant asserted that she had daily right shoulder, arm, wrist, and hand pain and achiness due to her increased workload. She maintained that telephone calls with accompanying computer data entries increased from one call every 20 minutes (20 calls a day) in 2014 to one call every 10 to 15 minutes (30 to 45 calls a day) in 2015. In 2016 the employing establishment requested one call every 2 to 4 minutes (120 calls a day). Appellant claimed that she constantly strained her shoulder, wrist, and fingers as she alternated between keyboard typing and moving a mouse cursor between numerous screen functions.

In a letter dated December 12, 2016, the employing establishment referenced appellant's prior claim for an August 28, 2010 injury³ and noted that instead of responding to OWCP's November 15, 2016 development letter regarding that claim, she filed the instant claim and a notice of recurrence (Form CA-2a).⁴ It controverted both recent claims, contending that the requirements of her light-duty position had not changed. The employing establishment further contended that appellant had not submitted any medical evidence from her treating physician to establish that her claimed right shoulder condition had worsened and prevented her from performing work within her permanent restrictions that were effective September 13, 2013 or the work duties in the sales retention office which she accepted on January 23, 2014 and May 19, 2015.

OWCP, by development letter dated December 20, 2016, advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion to establish the employment factors alleged to have caused or contributed to her medical condition and requested a medical report from her attending physician explaining how and why her federal work

³ Appellant filed a traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx374 for an injury sustained on August 28, 2010.

⁴ The Board notes that the instant case record does not contain a Form CA-2a claim for a recurrence of disability filed by appellant.

activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a January 17, 2017 letter, appellant responded to OWCP's development letter. She indicated that she was seen on January 4, 2017 by Dr. Paul Nitz, an attending orthopedic surgeon, and that he would forward documentation regarding her evaluation. Appellant provided a list of her work duties as a customer service representative in the sales retention office. She submitted narrative statements from her coworkers who related that a supervisor had increased their workload by instructing them to make additional telephone calls within a specific time period.

By decision dated February 9, 2017, OWCP denied appellant's occupational disease claim, finding that she had not submitted any medical evidence containing a medical diagnosis in connection with the accepted employment factors and, thus, she had not met the requirements to establish an injury under FECA.

In a medical report dated June 26, 2017, Dr. Nitz noted a history that appellant had progressive demise of a work-related left shoulder condition that initially required a rotator cuff repair and subsequently required additional surgical procedures to achieve range of motion and alleviate pain. He related that she had progressed to confirmed evidence of a large massive retracted tear of the rotator cuff with progressive arthritic demise of the glenohumeral joint. Dr. Nitz recommended reverse total left shoulder arthroplasty.

On February 1, 2018 appellant, through counsel, requested reconsideration of OWCP's February 9, 2017 decision. She submitted a January 30, 2018 letter from Dr. Nitz in which he recounted his treatment of her right shoulder condition commencing on December 1, 2009. Dr. Nitz related that appellant experienced recurring aggravating pain with lifting related to her work. He reported physical examination findings and diagnostic test results. Dr. Nitz indicated that appellant underwent arthroscopic right shoulder surgery on January 14 and September 17, 2010. He noted a current diagnosis of massive rotator cuff tears with glenohumeral joint arthropathy of the right and left shoulders. Dr. Nitz opined that appellant had a progressive demise of both shoulders. The right shoulder had undergone appropriate surgical care and appropriate rehabilitation, however, due to her diminutive size, she experienced recurrent stress and strain to her shoulders, which led to further breakdown of the soft tissue support with her rotator cuff and ultimately led to arthritic changes (rotator cuff arthropathy). Dr. Nitz further opined that appellant's work environment contributed to the accelerated demise of her shoulder with ultimate failure of her rotator cuff and current arthritic changes of the shoulder. He contended that, if she had been able to work in a more sedentary environment when she began having shoulder problems, then she would have been much more successful in maintaining the health of her rotator cuff and hopefully would have avoided arthritic changes of the shoulder. Dr. Nitz requested authorization to perform the recommended reverse total shoulder arthroplasty.

In an office visit note dated January 31, 2018, Dr. Nitz provided examination findings and diagnosed appellant with right complete rotator cuff tear or rupture of the right shoulder, not specified as traumatic. He also diagnosed right primary osteoarthritis of the right shoulder. Dr. Nitz again recommended reverse total shoulder arthroplasty.

By decision dated May 2, 2018, OWCP denied modification of its February 9, 2017 decision. It found that Dr. Nitz failed to identify any work factors or explain, based on medical rationale, how his objective examination findings demonstrated that her accepted employment factors caused or contributed to her diagnosed right shoulder conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁸ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁹ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹⁰

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.¹¹

⁵ *Supra* note 2.

⁶ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁹ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish right shoulder and right wrist conditions causally related to the accepted factors of her federal employment.

On January 30, 2018 Dr. Nitz examined appellant and diagnosed massive bilateral rotator cuff tears with glenohumeral joint arthropathy and arthritic changes. He opined generally that her work environment contributed to the diagnosed conditions. Further, Dr. Nitz recommended reverse total right shoulder arthroplasty, noting that appellant had previously undergone arthroscopic right shoulder surgery, but due to her diminutive size she experienced recurrent right shoulder symptoms which led to right rotator cuff arthropathy. Although he provided an opinion on causal relationship, the Board finds that he did not provide any medical rationale to support his opinion. The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹² Dr. Nitz generally referred to appellant's employment as the cause of her diagnosed bilateral shoulder conditions. Moreover, he did not explain how the accepted employment factors caused or aggravated her bilateral shoulder conditions and recommended right shoulder surgery. The Board finds that the lack of medical rationale diminishes the probative value of Dr. Nitz' opinion.¹³ Other reports from Dr. Nitz did not offer a medical opinion addressing whether the diagnosed bilateral shoulder conditions and recommended bilateral shoulder surgeries were caused or aggravated by the established employment factors. 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.¹⁴

As appellant has not submitted rationalized medical evidence to establish an injury causally related to the accepted employment factors, she has not met her burden of proof.

On appeal, counsel contends that Dr. Nitz' report provided a "good opinion" on causal relationship. For the reasons stated above, Dr. Nitz failed to explain with medical rationale how appellant's bilateral shoulder conditions were caused or aggravated by her accepted employment factors.

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.

¹² See *S.M.*, Docket No. 16-1312 (issued December 7, 2016); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0075 (issued February 6, 2009).

¹³ See *S.M.*, *id.*; *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish right shoulder and right wrist conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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