



## **FACTUAL HISTORY**

On April 4, 2017 appellant, then a 52-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) for a torn right rotator cuff injury resulting from the repetitive nature of delivering mail and packages while in the performance of duty. She noted that she first became aware of her condition on November 21, 2016 and its relationship to her federal employment on March 8, 2017. Appellant stopped work on March 22, 2017 and has not returned.

In support of her claim, appellant submitted a medical report dated March 8, 2017 from Dr. David J. Hergan, an attending Board-certified orthopedic surgeon, who advised that she was restricted from lifting above the chest height with her right arm.

OWCP subsequently received additional reports by Dr. Hergan. In a report dated April 7, 2017, Dr. Hergan noted that appellant was currently out of work from March 8, 2017 until her next follow-up visit on April 12, 2017. In a duty status report (Form CA-17) dated April 12, 2017, he noted a date of injury as November 21, 2016. Dr. Hergan further noted a history that appellant's injury resulted from repeated use of her right arm while delivering mail and packages. He diagnosed rotator cuff tear due to injury. Dr. Hergan advised that appellant was unable to perform her regular work with her right arm. He also noted additional work restrictions.

OWCP also received reports dated March 8 and 29, 2017 indicating, "This documentation was done by Lauren Okamoto acting as a scribe for Dr. Hergan."<sup>3</sup> Ms. Okamoto initially diagnosed right shoulder impingement with rotator cuff tendinitis *versus* tearing and subsequently diagnosed right shoulder full thickness supraspinatus tear.

In a development letter dated May 11, 2017, OWCP notified appellant of the factual and medical deficiencies of her claim. It provided a development questionnaire for her completion and requested that she submit a response in order to substantiate the factual basis of her claim. OWCP asked appellant to provide detailed information concerning the employment-related activities she believed contributed to her medical condition and how often and long she performed such duties. It also asked her to provide a description of all activities outside her federal employment. OWCP instructed appellant to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. By separate letter of the same date, it requested that the employing establishment respond to her allegations and provide information regarding the tasks she performed and frequency and duration of these activities. OWCP instructed the employing establishment to submit a copy of appellant's position description. It afforded both parties 30 days to respond.

OWCP subsequently received a February 11, 2016 report by Dr. Joseph M. Sohn, a Board-certified orthopedic surgeon, who reviewed x-ray results of appellant's cervical and lumbar spines. In a letter dated February 11, 2016, Dr. Sohn provided an assessment of spondylosis and neck and low back pain.

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<sup>3</sup> The Board notes that Ms. Okamoto's professional qualifications are not contained in the case record and that Dr. Hergan has not indicated that she was his scribe.

An additional report dated April 12, 2017, contained a diagnosis of rotator cuff tear. The report also indicated, "This documentation was done by Lauren Okamoto acting as a scribe for Dr. Hergan."

Dr. Hergan, in an operative report dated May 23, 2017, indicated that he performed right shoulder arthroscopic rotator cuff repair and subacromial decompression. His preoperative and postoperative diagnoses were right shoulder rotator cuff tear and impingement.

By decision dated June 12, 2017, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the factual portion of her claim. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 12, 2017 appellant responded to OWCP's May 11, 2017 development questionnaire. She described the employment duties that she believed contributed to her condition. Appellant alleged that her job duties involved lifting heavy flats of mail and sorting and pulling some them down (which required reaching above her shoulder) for delivery, resulting in constant lifting, turning, and pushing mail to and from a facility. She further alleged that she delivered many packages weighing up to 70 pounds. Appellant also sorted and loaded these packages and delivered them to at least 400 to 600 mailboxes out of the right side of her truck using her right hand and arm. She implicated constant repetitive motion that she performed with her arm and shoulder at work as the cause of what started as an ache and sore shoulder/arm and developed into pain that interfered with her sleep and ability to perform her job. Appellant contended that ultimately an actual tear of her right rotator cuff was indicated on a magnetic resonance imaging (MRI) scan. She related that she worked part time, approximately 35 hours a week, but indicated that she worked at least four days a week for regular route delivery and always on Sunday for Amazon due to permanent employees taking time off work. Appellant worked an average of eight to nine hours a day on her route starting with the collection, lifting, and sorting of mail and packages for about three and one-half hours to four hours. She spent one-half hour loading her truck and approximately five hours delivering mail and packages. Appellant described her activities outside her federal employment, which included computer use approximately one to two hours a week and performing occasional hair services one hour every two weeks during the last year.

In daily notes dated June 6 through 29, 2017, appellant's physical therapists noted a diagnosis of unspecified rotator cuff tear or rupture of the right shoulder, not specified as traumatic.

On July 18, 2017 appellant requested reconsideration of OWCP's June 12, 2017 decision and submitted additional medical evidence.

Additional daily notes dated July 5, 6, and 10, 2017 from appellant's physical therapists reiterated the diagnosis of unspecified rotator cuff tear or rupture of the right shoulder, not specified as traumatic.

In a July 11, 2017 letter, Dr. Hergan indicated that he initially saw appellant on March 8, 2017 and that she had experienced approximately one year of worsening right shoulder pain. He further indicated that she was diagnosed with a full-thickness rotator cuff tear of the right shoulder on March 29, 2017 based on a March 16, 2017 MRI scan. After further questioning appellant,

Dr. Hergan opined: “I believe within a reasonable degree of medical certainty that [appellant’s] work, which involves casing mail overhead for approximately three hours a day, directly contributed to and/or aggravated her medical condition of her right shoulder.” He related that he was not aware of any injury or repetitive activity that she performed outside her federal employment that could have caused, aggravated, or contributed to her right shoulder condition.

By decision dated October 3, 2017, OWCP affirmed its June 12, 2017 decision, as modified. It found that appellant had established the factual portion of her claim. However, the claim remained denied as appellant had not provided a rationalized medical opinion explaining how her diagnosed right shoulder condition was causally related to the accepted employment factors.

OWCP received a report dated October 19, 2017 by Dr. Lucinda L. Hautaniemi, a Board-certified family practitioner, who described examination findings and diagnosed right rotator cuff disorder. Dr. Hautaniemi noted that appellant had a right shoulder overuse injury documented in 2015 with an acute tear in November 2016 which required surgery. She advised that appellant’s work duties were the only plausible cause for the injury. In an April 18, 2018 report, Dr. Hautaniemi noted laboratory test results.

On August 8, 2018 appellant, through counsel, requested reconsideration of OWCP’s October 3, 2017 decision and submitted an additional report dated May 29, 2018 from Dr. Hergan. Dr. Hergan noted a history of his own medical treatment of her, including the right shoulder rotator cuff repair he performed on May 23, 2017. He also noted that he treated appellant following a right arm injury she sustained at work in February 2017. Dr. Hergan indicated that she slipped on ice as she reached her right arm out to grab a side mirror of a mail truck. He further indicated that appellant reported that she had prior pain that she attributed to her work duties which involved lifting heavy boxes, casing mail over shoulder height with her right arm for hours, delivering mail outside of her truck, and lifting groups of mail and packages out and away from her body. Dr. Hergan advised that the job duties outlined above put direct stress on the rotator cuff complex, specifically the supraspinatus muscle and tendon, by lifting heavy objects away from the body which were known to cause stress at the supraspinatus tendon/greater tuberosity footprint insertion. He related that this could lead to gradual tearing of the rotator cuff tendon fibers at this area. Dr. Hergan maintained that the traction-type injury appellant sustained in February 2017 completely correlated with MRI scan findings, which showed a full-thickness insertional tear of the supraspinatus. He opined: “I believe that it is within a reasonable degree of medical certainty that [appellant] likely had progressive partial tearing of her rotator cuff due to the aggregate of trauma sustained at her job at the service [employing establishment] by lifting and filing, particularly above chest height and away from her body.” Dr. Hergan further opined: “I also believe within a reasonable degree of medical certainty that [appellant’s] fall most likely caused a full-thickness tear, which then led directly to her requiring surgical intervention in the right shoulder as well as [postoperative] physical therapy.” He noted that he just saw appellant for her one-year, follow-up visit and that she was doing excellent and no longer had significant pain or dysfunction. Dr. Hergan concluded that she was new again and able to perform her normal activities of daily living.

OWCP, by decision dated November 5, 2018, 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>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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;<sup>7</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

## ANALYSIS

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

Appellant submitted a series of reports from her physician, Dr. Hergan. In an April 12, 2017 Form CA-17 report, Dr. Hergan diagnosed rotator cuff tear due to her repetitive use of her right arm while delivering mail and packages at work. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's rotator cuff tear and factors of her

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>8</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>10</sup> *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

employment.<sup>11</sup> Dr. Hergan did not explain the process by which repetitive use of her right arm while delivering mail and packages would cause the diagnosed condition. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof. Dr. Hergan's April 12, 2017 report is thus insufficient to establish her burden of proof.<sup>12</sup>

In a July 11, 2017 report, Dr. Hergan opined that casing mail overhead for approximately three hours a day, directly contributed to and/or aggravated appellant's right shoulder full-thickness rotator cuff tear. He noted that he was not aware of any injury or repetitive activity that she performed outside her federal employment that could have caused, aggravated, or contributed to her right shoulder condition. However, the Board has found that the mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two,<sup>13</sup> and temporal relationship alone will not suffice for purposes of establishing causal relationship.<sup>14</sup> Thus, the Board finds that Dr. Hergan's July 11, 2017 report is insufficient to establish appellant's burden of proof.

Dr. Hergan, in a May 29, 2018 report, opined: "I believe that it is within a reasonable degree of medical certainty that [appellant] likely had progressive partial tearing of her rotator cuff due to the aggregate of trauma sustained at her job at the [employing establishment] by lifting and filing, particularly above chest height and away from her body." He further opined: "I also believe within a reasonable degree of medical certainty that [appellant's] fall most likely caused a full-thickness tear, which then led directly to her requiring surgical intervention in the right shoulder as well as posteruptive [sic] physical therapy." Dr. Hergan's reports were couched in speculative terms and were thus insufficient to establish appellant's claim. While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.<sup>15</sup> Because Dr. Hergan's opinions are speculative and equivocal in nature, they do not carry appellant's burden of proof as to causal relationship.

Dr. Hergan's remaining reports are of no probative value because they did not relate appellant's right shoulder diagnoses, May 23, 2017 surgery, work restrictions, and disability from

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<sup>11</sup> See *S.S.*, Docket No. 17-1256 (issued December 13, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

<sup>12</sup> *S.S.*, *id.*; *J.M.*, 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof).

<sup>13</sup> *M.S.*, Docket No. 19-0189 (issued May 14, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Birger Areskog*, 30 ECAB 571 (1979).

<sup>14</sup> *Id.*

<sup>15</sup> *M.S.*, *supra* note 13; *C.L.*, Docket No. 18-1379 (issued February 5, 2019).

work to the accepted employment factors.<sup>16</sup> For the reasons stated, the Board finds that his reports are insufficient to establish her burden of proof.

Dr. Hautaniemi, in an October 19, 2017 report, diagnosed right rotator cuff disorder and opined that appellant's work duties were the only plausible cause for the injury. However, she failed to offer medical rationale explaining how appellant's diagnosed right shoulder condition was caused or aggravated by the accepted employment factors.<sup>17</sup> 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.<sup>18</sup> The need for rationale is particularly important as Dr. Hautaniemi indicated that appellant had a prior history of a right shoulder condition.<sup>19</sup> Her remaining report did provide a history of injury, a firm diagnosis of a particular medical condition, nor a rationalized opinion regarding causal relationship.<sup>20</sup> For the reasons set forth above, the Board finds that Dr. Hautaniemi's reports are insufficient to establish appellant's burden of proof.

Dr. Sohn's February 11, 2016 reports provided an assessment of spondylosis and neck and low back pain. His reports, however, do not address whether appellant sustained a right shoulder condition causally related to the accepted employment factors. Dr. Sohn's reports predate the 2017 occupational disease claim, as well as, the date that she alleged that she was first aware of her right shoulder condition, November 21, 2016. The Board finds, therefore, that his reports provide no specific support for the claim that is at issue on the present appeal.<sup>21</sup>

The daily notes from appellant's physical therapists have no probative medical value in establishing appellant's claim as physical therapists are not considered "physicians" as defined under FECA.<sup>22</sup> Furthermore, Ms. Okamoto's reports have no probative medical value because she did not list her professional qualifications, it is unclear whether she is a physician under FECA.<sup>23</sup> As such, this evidence is also insufficient to meet appellant's burden of proof.

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<sup>16</sup> See *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (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>17</sup> *Supra* note 11.

<sup>18</sup> *Supra* note 16.

<sup>19</sup> See *S.G.*, *supra* note 16; *M.B.*, Docket No. 17-0688 (issued March 15, 2018).

<sup>20</sup> See *S.G.*, *id.*; *L.M.*, Docket No. 18-0473 (issued October 22, 2018).

<sup>21</sup> See *H.M.*, Docket No. 11-0781 (issued March 8, 2012).

<sup>22</sup> 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. See *id.* at § 8102(2); *S.A.*, Docket No. 16-1128 (issued November 24, 2017); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

<sup>23</sup> See *id.* at § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

On appeal, counsel contends that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and to give due deference to the findings of the attending physician. However, as discussed above, Dr. Hergan did not provide a rationalized opinion sufficient to establish that appellant's diagnosed right shoulder condition was caused or aggravated by the accepted factors of her federal employment.

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 right shoulder condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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