

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

S.S., Appellant	)	
	)	
and	)	<b>Docket No. 18-1488</b>
	)	<b>Issued: March 11, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
HARTFORD PROCESSING & DISTRIBUTION	)	
CENTER, Hartford, CT, 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:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 31, 2018 appellant, through counsel, filed a timely appeal from a May 30, 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 a right shoulder condition causally related to the accepted June 30, 2017 employment incident.

## FACTUAL HISTORY

On July 19, 2017 appellant, then a 49-year-old motor vehicle operator, filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx717, alleging that on June 30, 2017 she felt a sharp stabbing pain in her right shoulder as she was exiting her postal vehicle to load for a second run.<sup>3</sup> That same day she sought care in an emergency department. A report was completed by Joan L. Rishel, a physician assistant, who noted a diagnosis of shoulder pain. Appellant stopped work on July 8, 2017.

In June 7, 2017 reports, Dr. Daniel M. Veltri, a Board-certified orthopedic surgeon, noted that appellant had an employment injury in July 2014 and diagnosed impingement syndrome and acromioclavicular (AC) joint strain. He described physical examination findings and indicated that, despite conservative measures, she had progressed to chronic impingement and AC joint arthritis. Dr. Veltri recommended arthroscopic acromioplasty and distal clavicle resection.

In a form report dated July 5, 2017, Dr. Veltri noted appellant's diagnoses and recommended restricted duty with no overhead lifting and no repetitive use of the right arm, with a weight restriction of 15 pounds. On August 3, 2017 he performed arthroscopic acromioplasty and distal clavicle resection. In a follow-up treatment note dated August 4, 2017, Lance Morgan, a physician assistant in Dr. Veltri's office, indicated that it was too early to assess results of the surgery.

By development letter dated September 18, 2017, OWCP informed appellant that, since she was alleging an injury when she went to load her truck on June 30, 2017, it administratively converted her recurrence claim to one for a new traumatic injury, assigned OWCP File No. xxxxxx600. It informed her of the medical and factual evidence needed to support her traumatic injury claim and requested that she provide a report from her physician which differentiated the claimed injury from her preexisting shoulder injury, which was found to have resolved on August 6, 2014.<sup>4</sup> OWCP attached a questionnaire for appellant's completion, which sought clarification as to whether she was claiming a traumatic injury or an occupational disease. It afforded her 30 days to submit the necessary evidence.

OWCP subsequently received a form report dated September 13, 2017, wherein Dr. Veltri noted that appellant was status post surgery and was unable to work.

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<sup>3</sup> Under OWCP File No. xxxxxx717, OWCP accepted that on July 16, 2014 appellant sustained a right trapezius strain and a right acromioclavicular joint sprain when she pulled on a truck door. OWCP File No. xxxxxx717 has been administratively with the present claim, OWCP File No. xxxxxx600, with the latter serving as the master file.

<sup>4</sup> The record includes a work status report in which Dr. Evangeline Specht, an internist, advised that appellant could return to regular duty on August 6, 2014.

By decision dated October 19, 2017, OWCP accepted that the June 30, 2017 incident occurred as alleged, but denied appellant's traumatic injury claim, finding the medical evidence of record was insufficient to establish that the diagnosed right shoulder conditions were causally related to the accepted June 30, 2017 employment incident.

On an October 13, 2017 workers' status form report, Dr. Veltri indicated that appellant could work restricted duty beginning October 16, 2017 with no overhead lifting, no repetitive use of the right arm, no truck driving, and a 15-pound weight restriction.

Appellant, through counsel, on October 25, 2017 requested a telephonic hearing before an OWCP hearing representative.

In a duty status report (Form CA-17) dated February 14, 2018, Dr. Veltri noted a date of injury of November 2, 2016 and that appellant described pain in the right shoulder. He provided restrictions regarding appellant's physical activity.

During the hearing, held on March 16, 2018, appellant testified that her job duties required loading and unloading heavy pallets of mail, and that her right shoulder started hurting in 2014. She also related that in November 2016 her entire shoulder popped but she continued working until July 2017. Appellant indicated that she had returned to light-duty work.

In a March 30, 2018 report, Dr. Veltri noted that appellant's original injury occurred in July 2014 when she was lifting the back door of a truck and heard a pop in her right shoulder. He indicated that she was seen by an occupational physician who diagnosed AC joint sprain and trapezial strain caused by the lifting injury. Dr. Veltri reported that appellant did not seek evaluation in his office until November 2016 when she indicated she had ongoing chronic right shoulder pain following the July 2014 injury. He diagnosed delayed sequelae of AC sprain with impingement and AC hypertrophy and arthritis from her acute AC joint sprain on July 14, 2014 which, he opined, was employment related. Dr. Veltri indicated that appellant's right shoulder condition had not improved with conservative treatment such that surgery was required. He concluded that the onset of pain and its location were directly related to the original AC joint sprain.

By decision dated May 30, 2018, an OWCP hearing representative affirmed the October 19, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of establishing 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 timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

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<sup>5</sup> *Supra* note 2.

employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.<sup>8</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 June 30, 2017 employment incident.

In support of her claim, appellant submitted a June 30, 2017 emergency department note, signed by a physician assistant. She also submitted an August 4, 2017 report from physician assistant Mr. Morgan. Certain healthcare providers, including physician assistants, are not considered “physician[s]” as defined under FECA.<sup>9</sup> Consequently, their medical findings and/or opinions are insufficient to establish entitlement to FECA benefits.<sup>10</sup> As such, these reports are of no probative value.<sup>11</sup>

Appellant also submitted medical and form reports dated June 7, 2017 to March 30, 2018 from Dr. Veltri, her attending orthopedic surgeon. Dr. Veltri’s June 7, 2017 report predates the claimed June 30, 2017 injury and therefore is irrelevant to this claim. In his March 30, 2018 report, he related that he began treating appellant in November 2016 for ongoing chronic right shoulder pain following a July 2014 employment injury and diagnosed delayed sequelae of the July 2014 AC sprain with impingement and AC hypertrophy and arthritis. Dr. Veltri opined that appellant’s right shoulder condition had not improved with conservative treatment such that surgery was

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<sup>6</sup> *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

<sup>7</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

<sup>8</sup> *See S.D.*, Docket No. 17-1266 (issued December 14, 2018).

<sup>9</sup> 5 U.S.C. 8101(2) (this subsection defines a physician as surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); 20 C.F.R. § 10.5(f); *see also K.P.*, Docket No. 18-1090 (issued December 6, 2018).

<sup>10</sup> *See H.B.*, Docket No. 16-1753 (issued March 14, 2018).

<sup>11</sup> *Id.*

required. He concluded that the onset of pain and its location were directly related to the original 2014 AC joint sprain, he also mentioned an injury date of November 2, 2016. Dr. Veltri did not mention a June 30, 2017 incident in any of his reports. As Dr. Veltri did not provide a medical opinion that the accepted June 30, 2017 employment incident caused or aggravated appellant's right shoulder conditions, his reports are of no probative value regarding causal relationship.<sup>12</sup>

As the record lacks rationalized medical evidence establishing causal relationship between the June 30, 2017 employment incident and appellant's diagnosed right shoulder conditions, she has not met her burden of proof.<sup>13</sup>

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 June 30, 2017 employment incident.

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<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.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 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