

On appeal appellant contends that the diagnostic reports of record establish that she required left shoulder and elbow surgery due to her federal employment.

FACTUAL HISTORY

On May 10, 2016 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 4, 2016 she fractured her left elbow while loading heavy tri walls up ramps using a hand jack. She stopped work on May 7, 2016.

In a May 7, 2016 radiology report, Dr. Timothy G. DeZasiro, a Board-certified radiologist, noted that three views of appellant's left shoulder revealed no evidence of fracture, subluxation, or acute articular abnormality of the glenohumeral or acromioclavicular joint spaces. The three views of the left elbow suggested a subtle fracture of the coronoid process along its medial side. In a development letter dated May 20, 2016, OWCP informed appellant that further evidence, including medical evidence, was necessary to support her claim. It afforded appellant 30 days to submit additional evidence.

In a May 22, 2016 statement, appellant recounted the history of her injury indicating that her left shoulder and elbow began hurting a week before her claimed date of injury of May 4, 2016. She noted that the pallets were heavy and that due to her shoulder pain she had requested help days prior to push the pallets onto the trailer. Appellant stated that she did not want to continue to work in that capacity due to her increased pain.

In a June 13, 2016 report, Dr. Kenneth McCulloch, a Board-certified orthopedic surgeon, noted that appellant had a work-related injury on May 4, 2016 affecting her left elbow and left shoulder. He diagnosed left elbow traumatic lateral epicondylitis and left shoulder rotator cuff tendinopathy. Dr. McCulloch recommended obtaining a magnetic resonance imaging (MRI) scan of appellant's left elbow and left shoulder because appellant's symptoms had been persistent despite conservative measures. In a September 12, 2016 report, he summarized his treatment of appellant. Dr. McCulloch noted that he had evaluated appellant on a monthly basis from May 16 through September 12, 2016. He noted that treatment of appellant's symptoms has been conservative including physical therapy, anti-inflammatories, and activity modification, but that her symptoms had been persistent. Dr. McCulloch noted that appellant remained disabled from her job with the employing establishment. He requested MRI scan studies. Dr. McCulloch listed appellant's diagnoses as impingement and rotator cuff tendinopathy of the left shoulder and left elbow traumatic lateral epicondylitis. He further indicated that appellant was asymptomatic up until acute change in function occurred on May 4, 2016 when she was lifting a very heavy object and in the process of doing so injured her left shoulder and left elbow.

In a decision dated September 23, 2016, OWCP noted that appellant originally filed this a traumatic injury claim, but it converted the claim into an occupational disease claim. It determined that she established that employment factors occurred as alleged. However, OWCP denied appellant's claim because she had not established a causal relationship between the accepted employment factors and the medical diagnosis.

On November 11, 2016 appellant requested reconsideration.

In a notice of occupational disease (Form CA-2) dated November 21, 2016, appellant noted that she had originally filed her claim for traumatic injury; however, she sustained injury to her left arm and shoulder due to loading trailers for a period exceeding two years. She related that the weight of the pallets she was pushing on an incline ramp hurt her arm and shoulder.

On October 26, 2016 appellant had an MRI scan of her left shoulder, which was interpreted by Dr. Michael Brown, a Board-certified radiologist, as showing moderate insertional supraspinatus tendinosis and mild infraspinatus tendinosis.

On October 31, 2016 Dr. McCulloch released appellant to return to work on December 12, 2016.

In a January 20, 2017 decision, OWCP conducted a merit review of appellant's claim, but denied modification of the September 23, 2016 decision as it determined that she had not established a causal relationship between the diagnosed conditions and the accepted factors of her federal employment.

Following the January 20, 2017 decision, OWCP received a December 22, 2016 report from Dr. McCulloch which related that appellant was seen for injuries to her left shoulder and left elbow which developed over a period of time as a result of her duties working as a mail handler for employing establishment. Dr. McCulloch opined that her elbow injury was a repetitive stress injury which occurred as a result of repetitive use of the left arm and elbow as a mail handler. He further noted that appellant developed supraspinatus tendinosis and blunting of the supraspinatus tendon on the humeral head with moderate impingement and superior labral tearing as well. Dr. McCulloch noted that OWCP had denied the request for left shoulder arthroscopic intervention and had also denied his request for an MRI scan of the left elbow. He noted that appellant's complaints were unchanged from previous multiple visits with pain and weakness in her left shoulder, worse with overhead movement, which was adversely impacting her activities of daily living. Dr. McCulloch noted that she had no improvement with conservative measures and reported pain on a visual analog scale of 8/10. He noted that appellant continued to have pain and weakness in the left elbow and had indicated that the lateral aspect of the elbow was the epicenter of the pain. Dr. McCulloch noted that she had failed conservative therapy, and again requested authorization for arthroscopic surgical intervention for the left shoulder. He concluded that appellant's left elbow injury was a repetitive stress injury that was the result of repetitive twisting, pushing and pulling of the arm and required a high-field 3.0 Tesla MRI scan. Dr. McCulloch related that the history of injury provided by appellant, the physical examination, and diagnosis corresponded. Therefore, he opined that the conditions were causally related to appellant's work as a mail handler. Dr. McCulloch noted that she remained disabled from her job.

In a March 16, 2017 report, Dr. McCulloch added that the history of appellant's onset of symptoms and job requirements, which included repetitive use of her shoulder and arm for lifting, pushing, pulling, grasping, twisting of up to 70 pounds, were consistent with appellant's injuries. He also noted that she had no previous history of injury to her left shoulder or elbow. Dr. McCulloch responded to OWCP's opinion by stating that the mechanism of the injury was very clear and that appellant injured her left shoulder and left elbow with repetitive use of her left shoulder and arm lifting, pushing, pulling, twisting heavy items up to 70 pounds, including

pronating, supinating flexing, and extending, which led to rotator cuff and labral tears of the left shoulder and lateral epicondylitis of the left elbow.

In an April 27, 2017 report, Dr. McCulloch again noted that appellant developed pain in her left shoulder and elbow over a period of time due to repetitive flexing, extending, supinating and pronating the left elbow and with lifting, pushing and pulling involving abduction, forward flexion, external rotation and internal rotation of the left shoulder, and repetitive lifting up to 70 pounds. He opined that, as a result, she developed supraspinatus tendinitis with intrasubstance tearing of the rotator cuff and superior labral tearing injuries that are known to be produced by her work activities which have been carefully documented in each of his visits with appellant. Dr. McCulloch further noted that appellant was reporting deterioration in her left shoulder and left elbow function as a result of the delay in receiving medical treatment. He concluded that she remained disabled due to her injury.

On May 15, 2017 appellant requested reconsideration.

In a June 13, 2017 report, Dr. McCulloch noted that, on multiple occasions, he had carefully documented the history and mechanism of appellant's injury, including the findings on physical examination that were consistent with her history of injury. He argued that OWCP's denial of appellant's claim was erroneous.

By decision dated August 11, 2017, OWCP denied modification of its prior decisions. It found that appellant's treating physician had not provided a diagnosis supported by diagnostic testing.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.⁵ 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; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

occurrence of the disease or condition; 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.⁶

Whether an employee sustained an injury requires the submission of rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ The weight of the 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.⁹

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁰ OWCP shares the responsibility in the development of the evidence to see that justice is done.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

An employee who claims benefits under FECA has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or work factors. As part of this burden, the employee must present rationalized medical opinion evidence based on a complete and accurate factual and medical background. However, it is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While an employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.¹²

The issue is whether appellant sustained a left upper extremity injury causally related to the accepted factors of her federal employment as a mail handler.

The evidence establishes that appellant performed heavy work pushing pallets up ramps, using a hand jack. OWCP converted the claim to an occupational disease claim and accepted the

⁶ *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

⁷ *See J.Z.*, 58 ECAB 388 (2008); *see also M.H.*, Docket No. 15-0849 (issued July 22, 2016).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *J.D.*, Docket No. 17-1520 (issued February 20, 2018).

¹¹ *William J. Cantrell*, 34 ECAB 1233 (1983).

¹² *L.K.*, Docket No. 14-1072 (issued August 3, 2015).

alleged factors of employment, but initially denied the claim because the medical evidence was insufficient to establish that work factors caused or aggravated the diagnosed conditions. In the last decision dated August 11, 2017, OWCP denied the claim, finding that appellant's diagnosed conditions were not supported by objective medical findings.

Dr. Desario and Dr. Brown conducted diagnostic studies. In a May 7, 2016 report, Dr. Desario noted that x-rays of appellant's left elbow suggested a subtle fracture of the coronoid process long the medial side. Dr. Brown interpreted appellant's October 26, 2016 left shoulder MRI scan as showing moderate insertional supraspinatus tendinosis and mild infraspinatus tendinosis.

Appellant's treating orthopedic surgeon, Dr. McCulloch, diagnosed left elbow traumatic lateral epicondylitis and left shoulder rotator cuff tendinopathy. He opined that appellant's elbow and shoulder injuries occurred as a result of repetitive use of the left arm and elbow as a mail handler. Specifically, Dr. McCulloch noted that appellant's injuries were the result of repetitive twisting, pushing, and pulling of the arm which included abduction, forward flexion, external rotation, and internal rotation of the left shoulder. He also noted that her injuries were due to twisting heavy items weighing up to 70 pounds, which included pronating, supinating flexing, and extending, leading to rotator cuff and labral tears of the left shoulder and lateral epicondylitis of the left elbow. Dr. McCulloch stated that he had treated appellant on a monthly basis since her injury and carefully documented the history and mechanism of appellant's injury. He opined that the findings on physical examination were consistent with appellant's history and job description.

Despite Dr. McCulloch's insistence that appellant's diagnosed conditions were related to her employment as a mail handler, OWCP denied her claim, finding that his conclusions are not supported by diagnostic testing. However, Dr. McCulloch provided numerous medical reports, which contained accurate descriptions of appellant's job duties, the tasks she performed, a description of physical findings, and a discussion as to how appellant's job duties caused her diagnosed conditions of left elbow traumatic lateral epicondylitis and left shoulder rotator cuff tendinopathy. While his opinion may not be sufficient to discharge appellant's burden of proof, these reports sufficiently support his diagnoses and causal relationship to require further development of the case record by OWCP.¹³

Upon return of the case record, OWCP should forward the medical record and a statement of accepted facts for a second opinion as to the diagnoses of appellant's left upper extremity conditions and whether any such diagnosed conditions are causally related to the accepted factors of appellant's federal employment. After this and any other such further development of the case record as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision as further development of the medical evidence is necessary.

¹³ See *John J. Carlone*, 41 ECAB 153 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 22, 2019
Washington, DC

Christopher J. Godfrey, 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