

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

V.G., Appellant	)	
	)	
and	)	<b>Docket No. 19-0908</b>
	)	<b>Issued: October 25, 2019</b>
U.S. POSTAL SERVICE, JAMES A. FARLEY	)	
POST OFFICE, New York, NY, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Thomas S. Harkins, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On March 26, 2019 appellant, through counsel, filed a timely appeal from a February 12, 2019 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 bilateral shoulder conditions causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On May 27, 2016 appellant, then a 45-year-old modified general clerk, filed an occupational disease claim (Form CA-2) alleging that she developed left shoulder derangement and impingement syndrome due to factors of her federal employment including reaching above her neck to answer the telephone.<sup>3</sup> She identified April 21, 2016 as the date she first became aware of her condition, and May 2, 2016 as the date she first realized her condition was caused or aggravated by her employment.

In an undated statement, appellant indicated that on April 21, 2016 she reached for the telephone with her left arm and placed it next to her right ear and felt a sharp shooting pain from her shoulder to her left arm.

Appellant was treated in the emergency room on April 21, 2016 by Dr. Rana Biary, an emergency medical specialist, for chronic left shoulder pain. Dr. Biary noted that appellant's history was significant for left shoulder rotator cuff tear and pinched nerve. She indicated that appellant's left shoulder pain was similar to pain experienced in her prior injury. Dr. Biary performed a trigger point injection.

In a report and corresponding letter dated May 23, 2016, Dr. Igor Cohen, a Board-certified neurologist, examined appellant and noted that on April 21, 2016 she was repeatedly answering the phone using her left arm, twisting her left shoulder. Dr. Cohen noted moderate tenderness in the left rotator cuff, restricted range of motion with pain, positive impingement sign, and intact muscle strength in upper and lower extremities except at 4/5 in the left deltoid, biceps, triceps. He noted intact sensation to light touch and pinprick in all dermatomes except hypoesthesia in the left from C5-C6 dermatomes. Dr. Cohen reported a history of work-related injuries and findings consistent with left shoulder derangement and advised that appellant was totally disabled. He opined that within a reasonable degree of medical certainty that these conditions were causally related to the work duties performed since February 23, 2015 which included repetitive reaching above her shoulder with the left arm to answer phones with an already "damaged left shoulder." Dr. Cohen indicated that such duties would have exacerbated her left shoulder injury resulting in left shoulder impingement and left shoulder derangement.

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<sup>3</sup> Appellant was working limited duty as a result of a previous employment-related left shoulder injury, accepted for a shoulder strain. That claim was assigned OWCP File No. xxxxxx113. Appellant underwent authorized left shoulder surgeries on April 22, 2005 and December 15, 2006. She returned to work in a part-time, limited-duty capacity, and OWCP paid her compensation for intermittent wage loss from April 17, 2015 through April 29, 2016. On May 25, 2017 OWCP administratively combined File No. xxxxxx113 with the present claim. File No. xxxxxx113 is designated as the master file.

On a corresponding form report dated June 13, 2016 Dr. Cohen checked a box marked “yes” indicating that the employment incident that appellant described was the “competent medical cause” of her diagnosed conditions.

In a development letter dated July 29, 2016, OWCP advised appellant that the evidence of record was insufficient to establish that her diagnosed left shoulder conditions were causally related to her employment activities. It notified her of the type of additional evidence needed, including a detailed factual statement describing the activities that she believed contributed to her condition and a report from her attending physician addressing causal relationship between any diagnosed condition and factors of her federal employment. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received a form report dated July 11, 2016, wherein Dr. Cohen diagnosed other specific joint derangements of the left shoulder and noted that appellant remained disabled from work.

A magnetic resonance imaging (MRI) scan of appellant’s left shoulder, dated August 17, 2016, revealed a mild partial thickness supraspinatus tendon tear affecting the articular greater than bursal surfaces, minor subacromial spur formation, and minimal spurring of glenoid rim anteriorly with mild diffuse labral degeneration.

By decision dated September 2, 2016, OWCP denied appellant’s claim, finding that the medical evidence submitted did not establish that the claimed medical condition was causally related to the established work-related events.

On September 13, 2016 appellant requested a telephonic hearing before an OWCP hearing representative. Additional evidence was subsequently received.

Appellant underwent physical therapy treatments from January 6, 2015 to July 8, 2016.

OWCP received a January 12, 2016 report from Dr. Danya E. Reich, a Board-certified family practitioner, noted in a handwritten report dated January 12, 2016 that she had treated appellant for severe neck pain likely due to her head and neck positioning while using the phone at work. Dr. Reich indicated that appellant needed a workplace evaluation for a new phone with headset or an alternative solution to correct her head positioning.

In reports dated March 21 and April 20, 2016, Dr. Cohen noted findings on examination of the left shoulder of moderate tenderness in the rotator cuff, restricted range of motion with pain, positive impingement test, and intact muscle strength in upper and lower extremities except 4/5 in the left deltoid, biceps, Dr. Cohen diagnosed history left shoulder derangement, left shoulder impingement syndrome, and status post left shoulder arthroscopies. He advised that appellant returned to a sedentary position on February 23, 2015 with occasional lifting up to five pounds, no reaching at the shoulder level or overhead, and no pushing or pulling heavy objects or operating heavy machinery. In a form report dated April 3, 2017, Dr. Cohen diagnosed other specific joint derangements of the shoulder and opined that appellant remained totally disabled from work.

In a statement dated April 17, 2016, appellant's coworker, B.C., indicated that on at least three occasions she relieved appellant from phone duties prior to the scheduled time due to her pain and stiffness in her shoulder.

A hearing was held on April 5, 2017. By decision dated May 18, 2017, OWCP's hearing representative affirmed the September 2, 2016 decision.

On September 1, 2017 appellant, through a representative, requested reconsideration and submitted additional evidence. A left shoulder MRI scan dated July 10, 2017 revealed mild diffuse rotator cuff tendinosis, low-to-moderate grade elongated articular-sided tear within the anterior supraspinatus tendon without significant change, no full thickness rotator cuff tear, mild acromioclavicular (AC) joint impingement, and a superior labrum from anterior to posterior position (SLAP) tear which appeared to be new from the prior study. A right shoulder MRI scan revealed mild diffuse rotator cuff tendinosis, low grade curvilinear articular sided tear within the anterior supraspinatus tendon, mild degenerative changes at the AC joint, and moderate AC joint impingement.

On July 14, 2017 appellant was treated by Dr. Marc Levinson, a Board-certified physiatrist, for bilateral shoulder pain. She provided a history of injury consistent with using her shoulder to answer telephones at work. Dr. Levinson opined that this activity resulted in a new SLAP tear to the left shoulder. He further opined that as a result of favoring the left shoulder she developed tendinosis and a low grade tear in the right shoulder rotator cuff from overuse. Findings on examination of the left shoulder revealed well-healed arthroscopic scars, limited range of motion, strength was 4/5, anterior joint line tenderness, and positive Neer, Hawkins, and O'Brien signs. Examination of the right shoulder revealed strength of 4/5, and positive Neer and Hawkins signs. Dr. Levinson diagnosed internal derangement of the left shoulder, right shoulder tendinitis, and rotator cuff tear arthropathy of the right shoulder.

By decision dated November 30, 2017, OWCP denied modification of the May 18, 2017 decision.

On November 23, 2018 appellant through counsel requested reconsideration and submitted additional evidence.

In a July 30, 2018 report, Dr. Cohen noted his treatment of appellant's shoulders. Appellant reported that her condition significantly worsened on April 21, 2016 when she accidentally twisted her left shoulder while repeatedly reaching for and answering phones at work. Dr. Cohen diagnosed left shoulder derangement, left shoulder SLAP tear, consequential right shoulder derangement, bilateral shoulder impingement, bilateral shoulder rotator cuff tendinitis, and status post left shoulder arthroscopy twice. He continued to note that she was totally disabled.

On November 2, 2018 Dr. Levinson saw appellant in follow up for pain and limitation in both shoulders. Appellant reported that on April 21, 2016 she was reaching for the telephone at work and developed significant pain in the left shoulder radiating down her left arm. Her history was significant for a prior injury to her left shoulder which required surgery. Dr. Levinson noted findings on examination of the left shoulder revealed well-healed arthroscopic surgery scars, limited range of motion, strength of 3/5, anterior joint line tenderness, positive Neer, Hawkins, and

O'Brien signs, and supraspinatus atrophy. He diagnosed internal derangement of the left shoulder and midline rotator cuff tear of the right shoulder. Dr. Levinson noted that the left shoulder injury was causally related to appellant's injury of April 21, 2016 and the right shoulder was consequential to the right shoulder injury. He opined that the continued overuse of the left shoulder resulted in damage to the cells of the tissues of the shoulder tendons.

By decision dated February 12, 2019, OWCP denied modification of the November 30, 2017 decision.

### **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>

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> The opinion of the physician must be based 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 employee.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

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

<sup>5</sup> *M.S.*, Docket No. 18-1280 (issued March 12, 2019).

<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>7</sup> *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

<sup>8</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

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

In support of her claim, appellant submitted an emergency room note by Dr. Biary, following treatment on April 21, 2016 for chronic left shoulder pain, who diagnosed rotator cuff tear and a pinched nerve. Dr. Biary explained that appellant had prior, similar shoulder pain due to a previous employment injury. She did not, however, provide an opinion as to the cause of the diagnosed conditions. The Board has held that 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>12</sup> The report of Dr. Biary, therefore, is insufficient to establish appellant's claim.

On May 23 and July 11, 2016 Dr. Cohen treated appellant for left shoulder pain.<sup>13</sup> He noted appellant's prior left shoulder surgeries as well the April 21, 2016 work incident in which she repeatedly used her left arm to reach and answer the phones. Dr. Cohen diagnosed history of work-related injuries and findings consistent with left shoulder derangement. Although he diagnosed left shoulder derangement, he did not specifically address the cause of the diagnosed condition. The Board has held that 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>14</sup>

On May 23, 2016 Dr. Cohen indicated that appellant was injured in 2004 and remained totally disabled until February 23, 2015 when she returned to a limited-duty position for six hours a day. He diagnosed left shoulder derangement and left shoulder impingement syndrome and opined within a reasonable degree of medical certainty that these conditions were caused by repetitive reaching above the shoulder with the left arm to answer phones from February 23, 2015 to April 21, 2016. Although Dr. Cohen opined that the incident appellant described was the competent cause of her injury he did not provide a well-reasoned medical explanation with supporting objective findings as to how the claimed work-related activities directly caused or aggravated a medical condition. The Board has held that a report is of limited probative value

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2-- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<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> In reports dated March 21 and April 20, 2016, Dr. Cohen diagnosed history left shoulder derangement, left shoulder impingement syndrome, and status post left shoulder arthroscopy twice. These reports have no relevance to the current issue of causal relationship as they predate the April 21, 2016 employment incident.

<sup>14</sup> *Supra* note 12.

regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.<sup>15</sup>

On July 30, 2018 Dr. Cohen treated appellant and noted her history of injury and preexisting left shoulder condition from her prior claim. He diagnosed left shoulder derangement, left shoulder SLAP tear, consequential right shoulder derangement, bilateral shoulder impingement, bilateral shoulder rotator cuff tendinitis, and status post left shoulder arthroscopy twice. Dr. Cohen did not provide an opinion as to the cause of the diagnosed conditions, thus this report is of no probative value and is insufficient to establish appellant's claim.<sup>16</sup>

Appellant also submitted a series of form reports dated May 23 and July 11, 2016 and April 3, 2017, in which Dr. Cohen noted a date of injury of April 21, 2016 and diagnosed other specific joint derangements of the shoulder. Dr. Cohen advised that appellant was totally disabled from work. He checked a box marked "yes" indicating that the diagnosed conditions were caused by her workplace duties. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>17</sup>

Appellant underwent MRI scans of the left and right shoulders. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.<sup>18</sup>

Appellant submitted various reports from a physical therapist<sup>19</sup> dated from January 6, 2015 to July 8, 2016. These reports are insufficient to satisfy appellant's burden of proof as physical therapists are not considered physicians as defined under FECA and their reports are of no probative value.<sup>20</sup>

In a handwritten note dated January 12, 2016, Dr. Reich opined that appellant's neck pain is "likely" due to her head/neck position of phone at work. However, this report is speculative. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>21</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

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<sup>15</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>16</sup> *Supra* note 12.

<sup>17</sup> See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

<sup>18</sup> See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>19</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

<sup>20</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

<sup>21</sup> *D.D.*, 57 ECAB 734 (2006).

In July 14, 2017 and November 2, 2018 reports, Dr. Levinson noted appellant's history of injuries to her left shoulder and her current complaints due to employment duties from reaching above her shoulder and twisting to answer a telephone. He initially diagnosed internal derangement of the left shoulder, right shoulder tendinitis, and rotator cuff tear arthropathy of the right shoulder and later diagnosed internal derangement of the left shoulder, midline rotator cuff tear of the right shoulder and opined that left shoulder injury was causally related to appellant's injury of April 21, 2016. Dr. Levinson concluded that the continued overuse of appellant's left shoulder resulted in damage to the cells of the tissues of the shoulder tendons. The Board finds that, although Dr. Levinson supported causal relationship, he did not provide medical rationale explaining his conclusory opinion regarding causal relationship between appellant's left shoulder tear, or a consequential right shoulder condition, and the accepted factors of employment.<sup>22</sup> Such rationale is particularly necessary as appellant had preexisting shoulder conditions and he failed to differentiate between the symptoms of the preexisting condition and the effects of the current conditions. Therefore, this report is also insufficient to meet appellant's burden of proof.

On appeal counsel asserts that appellant submitted sufficient evidence to establish that she developed a left shoulder condition causally related to repetitively reaching for a telephone at work. As discussed, however, the medical evidence of record is insufficient to establish causal relationship between her diagnosed conditions and the accepted employment factors. As appellant has not submitted rationalized medical evidence, the Board finds that she has not met her burden of proof to establish her occupational disease claim.<sup>23</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 bilateral shoulder conditions causally related to the accepted factors of her federal employment.

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<sup>22</sup> See *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>23</sup> *P.D.*, *supra* note 7.



**ORDER**

**IT IS HEREBY ORDERED THAT** the February 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board