

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

M.A., Appellant	)	
	)	
and	)	Docket No. 19-1085
	)	Issued: October 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,	)	
Layton, UT, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 15, 2019 appellant filed a timely appeal from an October 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from October 16, 2018, the date of OWCP's last decision, was Sunday, April 14, 2019. As the last day of the filing period fell on a weekend, appellant had until Monday, April 15, 2019 to file an appeal. *See* 20 C.F.R. § 501.3(f)(2). The Clerk of the Appellate Boards received the current appeal on April 15, 2019, rendering the appeal timely filed. *Id.*

<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 left shoulder condition in the performance of duty.

## **FACTUAL HISTORY**

On August 29, 2018 appellant, then a 48-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a partial left rotator cuff tear causally related to factors of her federal employment. She related that she experienced pain and weakness performing her daily work duties, noting that her pain improved when she was off work. Appellant did not stop work.

In a development letter dated September 12, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish her claim, including a detailed description of the employment activities that she believed caused or contributed to her condition. It provided a questionnaire for her to complete and return. OWCP afforded appellant 30 days to submit the required evidence.

Thereafter, OWCP received a July 30, 2018 report from Dr. Michael S. Dee, a Board-certified orthopedic surgeon. Dr. Dee evaluated appellant for increasing left shoulder pain that had begun around eight months earlier. He noted that she had a history of bulging cervical discs. Dr. Dee obtained a history of appellant experiencing “increasing left shoulder pain over the years as she works as a mail carrier.” He recommended diagnostic testing.

In a progress report dated August 8, 2018, Dr. Dee diagnosed tendinitis of the left rotator cuff after reviewing a magnetic resonance imaging (MRI) scan.<sup>3</sup>

In a September 26, 2018 e-mail, a supervisor with the employing establishment described appellant’s work duties.

By decision dated October 16, 2018, OWCP denied appellant’s claim finding that she had failed to factually establish the basis for her claim. It found that she had not provided a detailed description of the work factors that she believed caused or contributed to her condition, noting that she had not responded to its request for additional factual information. OWCP additionally determined that the medical evidence was insufficient to support that appellant had sustained a diagnosed condition causally related to her employment.

## **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

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<sup>3</sup> An August 2, 2018 MRI scan revealed mild subscapularis tendinopathy, a partial thickness bursal surface tearing of the distal subscapularis tendon, and mild acromioclavicular joint arthropathy.

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

United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,<sup>5</sup> 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>6</sup> 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>7</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>8</sup>

Causal relationship is a medical issue and 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 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 claimant.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition in the performance of duty.

Appellant filed an occupational disease claim on September 5, 2018 alleging that she sustained left shoulder pain and weakness while performing her federal employment duties. She did not submit additional factual evidence in support of her occupational disease claim or respond to OWCP's development letter requesting a further description of the employment factors to which she attributed her condition.

As noted, appellant has the burden of proof to submit a detailed description of the employment factors or conditions that she believes caused or adversely affected the condition or conditions for which she claims compensation.<sup>10</sup> She failed to respond to OWCP's request that

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<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *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).

<sup>8</sup> *R.M.*, Docket No. 18-0976 (issued January 3, 2019); *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

<sup>9</sup> *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

<sup>10</sup> *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *B.J.*, Docket No. 16-1614 (issued September 21, 2017).

she describe in greater detail the employment factors alleged to have caused or contributed to her left shoulder condition. Consequently, the Board finds that appellant has failed to establish the employment factors or exposures alleged to have caused her injury.<sup>11</sup> As she has not established an employment factor or exposure alleged to have caused an injury, it is unnecessary to consider the medical evidence with respect to causal relationship.<sup>12</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 left shoulder condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

<sup>12</sup> *J.C.*, Docket No. 16-1663 (issued January 18, 2017).