

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder injury causally related to the accepted October 26, 2017 employment incident.

FACTUAL HISTORY

On October 26, 2017 appellant, then a 52-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she felt a sharp pulling sensation and pain in her right shoulder and armpit while turning a heavy package on its end in order to scan it while in the performance of duty. Appellant stopped work on October 26, 2017.³

Appellant submitted an authorization for examination and/or treatment form (Form CA-16) completed on October 26, 2017 by Stephen Burton, a physician assistant, who listed the history of injury on that date as a “reinjury” following a February 2017 right shoulder surgery. Mr. Burton checked a box marked “Yes” to indicate that appellant’s right shoulder condition was caused or aggravated by the “employment activity described.”⁴ He indicated that appellant was unable to work. In an October 26, 2017 disability note, Mr. Burton advised that appellant was unable to work for two weeks. Appellant also submitted medical evidence from a time prior to the October 26, 2017 employment incident. In an August 17, 2017 work status note, Dr. Bradley C. Register, a Board-certified orthopedic surgeon, indicated that appellant could return to her regular full-time work on September 5, 2017.

In a November 6, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a physician’s opinion supported by a medical explanation as to how the alleged October 26, 2017 employment incident had caused or aggravated a medical condition. It afforded appellant 30 days to respond.

In response, appellant submitted a November 15, 2017 statement in which she provided further details of the alleged October 26, 2017 employment incident. She advised that in February 2017 she underwent right shoulder surgery and that she subsequently returned to her regular work. Appellant also submitted a November 9, 2017 work status note in which Dr. Register advised that appellant could return to work on that date with restrictions including no lifting more than five pounds.

By decision dated December 11, 2017, OWCP denied appellant’s claim finding that she had not submitted evidence sufficient to establish the medical component of fact of injury. It also found that the medical evidence of record did not contain a diagnosis of appellant’s condition.

³ On the reverse of the Form CA-1 appellant’s immediate supervisor challenged the claim asserting that the case record did not contain a medical opinion explaining how the claimed injury was caused or aggravated by employment factors. In an October 27, 2017 letter, a health and resource management official also advised that the employing establishment was challenging the claim.

⁴ Mr. Burton provided a diagnosis code, which he identified as being derived from the tenth revision of the International Classification of Diseases (ICD-10), but the diagnosis code does not correspond to any established ICD-10 code. The Form CA-16 makes reference to Dr. Charles L. Ogburn, III, a Board-certified orthopedic surgeon, but it is not counter-signed by him.

OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 14, 2018 appellant requested reconsideration of the December 11, 2017 decision. In an accompanying letter, she asserted that the package she turned on its end on October 26, 2017 weighed between 50 and 70 pounds.⁵

Appellant submitted a February 23, 2017 report in which Dr. Register described the right shoulder surgery he performed on that date, including right shoulder arthroscopic rotator cuff repair with bovine and Achilles tendon augmentations, arthroscopic biceps tenodesis, subacromial compression, and distal clavicle excision.⁶

In a January 29, 2018 report, Dr. Register noted that appellant reported feeling a strain in her right shoulder while lifting a package (weighing 50 to 70 pounds) at work on October 26, 2017. He advised that appellant reported that she was recovering well from her February 23, 2017 surgery until her most recent injury on October 26, 2017. Dr. Register discussed his physical examinations of appellant between November 9, 2017 and January 12, 2018, noting that she had excellent range of motion in her right shoulder (with 4/5 strength upon external rotation), but also exhibited moderate tenderness in the right posterior shoulder/right paraspinal musculature. He noted that October 26, 2017 right shoulder x-rays showed evidence of prior surgery without evidence of complication or new bony injury. Dr. Register indicated, “It is my opinion that her work injury on [October 26, 2017] did cause a recurrence of these symptoms.” He maintained that appellant was doing very well following her February 23, 2017 surgery until she felt a right shoulder strain on October 26, 2017. Dr. Register indicated that she had been “having problems” ever since that time.⁷

In an April 27, 2018 report, Dr. Register indicated that appellant had been performing full-duty work for approximately a month prior to her October 26, 2017 injury and was not experiencing any problems during this period. He indicated, “Therefore, I do believe that this new injury on October 26, 2017 lead [sic] to her new symptoms.”

By decision dated July 25, 2018, OWCP denied modification of its December 11, 2017 decision, noting that appellant had not submitted evidence sufficient to establish the medical component of fact of injury.

On October 31, 2018 appellant, through counsel, requested reconsideration of the July 25, 2018 decision.

Appellant submitted a September 21, 2018 report from Dr. Register who noted that a February 12, 2018 magnetic resonance imaging scan of the right shoulder showed a large articular

⁵ The record contains a report of termination of disability and/or payment (Form CA-3) showing that appellant returned to work for the employing establishment on December 11, 2017.

⁶ There is no indication in the case record that this surgery was authorized by OWCP.

⁷ In a February 2, 2018 report, Dr. Register indicated that the injury appellant sustained on October 26, 2017 caused her “new right posterior shoulder symptoms.”

surface partial tear of the posterior supraspinatus/infraspinatus which was located more posterior to the repair location of the February 23, 2017 surgery. Dr. Register diagnosed unspecific rotator cuff tear or rupture of the right shoulder and noted that this condition “looks to be a new injury.” He advised that on July 12, 2018 he performed arthroscopic revision rotator cuff repair of the right shoulder with arthroscopic lysis of adhesions of the glenohumeral joint.⁸ Dr. Register indicated, “It is my opinion that this most recent surgery was necessitated by a tear to the posterior supraspinatus and the anterior infraspinatus, which she most likely sustained on [October 26, 2017] with a work injury.”

By decision dated January 24, 2019, OWCP affirmed its July 25, 2018 decision as modified to reflect that appellant’s claim was now denied because she had not submitted medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the October 26, 2017 employment incident.

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,⁹ 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.¹⁰ 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.¹¹

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹² The second component is whether the employment incident caused a personal injury.¹³

⁸ The case record does not contain a report of the July 12, 2018 surgery and there is no indication that the surgery was authorized by OWCP.

⁹ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁰ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹¹ *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).

¹² *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹³ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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.¹⁴ 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.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder injury causally related to the accepted October 26, 2017 employment incident.

Appellant submitted a January 29, 2018 report in which Dr. Register provided a brief description of the October 26, 2017 employment incident and advised that appellant was recovering well from her February 23, 2017 surgery until her most recent injury on October 26, 2017. Dr. Register noted that, in late-2017 and early-2018, appellant exhibited various right shoulder symptoms upon examination, including 4/5 strength upon external rotation and moderate tenderness in the right posterior shoulder/right paraspinal musculature. He noted, “It is my opinion that her work injury on [October 26, 2017] did cause a recurrence of these symptoms.” In a February 2, 2018 report, Dr. Register indicated that the injury appellant sustained on October 26, 2017 caused her “new right posterior shoulder symptoms.” On April 27, 2018 he advised that she had been performing full-duty work for approximately a month prior to her October 26, 2017 injury and was not experiencing any problems during this period. Dr. Register posited that, therefore, appellant’s “new injury” on October 26, 2017 led to her “new symptoms.”

The Board finds that these reports have limited probative value with respect to appellant’s claim that she sustained a right shoulder injury due to the October 26, 2017 employment incident.¹⁶ Dr. Register did not describe the October 26, 2017 employment incident in any notable detail or explain the mechanism through which the incident could have caused or aggravated a diagnosed medical condition. In these reports, he described various right shoulder symptoms that appellant reported after October 26, 2017, but he did not diagnose a specific medical condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁷ As noted, Dr. Register indicated that appellant was recovering well from her February 23, 2017 surgery and only developed multiple right shoulder symptoms after the October 26, 2017 incident. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed

¹⁴ S.S., Docket No. 18-1488 (issued March 11, 2019).

¹⁵ J.L., Docket No. 18-1804 (issued April 12, 2019).

¹⁶ The Board notes that OWCP accepted that on October 26, 2017 appellant felt pain in her right shoulder region while turning a package (weighing 50 to 70 pounds) on its end.

¹⁷ See Y.D., Docket No. 16-1896 (issued February 10, 2017).

condition and employment factors.¹⁸ For these reasons, Dr. Register's January 29, February 2, and April 27, 2018 reports are insufficient to establish appellant's claim.

In a September 21, 2018 report, Dr. Register did, in fact, provide a diagnosis which he related to the October 26, 2017 employment incident, *i.e.*, unspecified rotator cuff tear or rupture of the right shoulder as demonstrated by diagnostic testing.¹⁹ He advised that on July 12, 2018 he performed a revision rotator cuff repair of the right shoulder and indicated that this surgery was necessitated by the tear/rupture which appellant "most likely sustained" at work on October 26, 2017. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.²⁰ Moreover, Dr. Register did not provide further explanation of how the October 26, 2017 employment incident caused or contributed to such a condition. His September 21, 2018 report contains a conclusory opinion without the necessary rationale explaining how and why the employment incident was sufficient to result in the diagnosed right shoulder tear/rupture. The Board has held that such an opinion is insufficient to meet a claimant's burden of proof to establish a claim.²¹

As the record does not contain a well-rationalized opinion establishing causal relationship between appellant's claimed medical condition and her accepted October 26, 2017 employment incident, the Board finds that she has not met her burden of proof.²²

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 that she sustained a right shoulder injury causally related to the accepted October 26, 2017 employment incident.

¹⁸ *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

¹⁹ Dr. Register noted that this tear/rupture was located more posterior to the repair location of the February 23, 2017 surgery and indicated that the condition "looks to be a new injury."

²⁰ *Z.B.*, Docket No. 17-1336 (issued January 10, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

²¹ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

²² The case record contains an October 26, 2017 authorization for examination and/or treatment form (Form CA-16) and an October 26, 2017 disability note completed by Mr. Burton, a physician assistant. However, under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence. *R.S.*, Docket No. 16-1303 (issued December 2, 2016). The Board further notes that, where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 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