

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

Y.D., Appellant)	
)	
and)	Docket No. 19-1200
)	Issued: April 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
New York, NY, Employer)	
)	

Appearances:

Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 9, 2019 appellant, through counsel, filed a timely appeal from a January 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish left shoulder and right wrist conditions causally related to the accepted April 8, 2015 employment incident.

FACTUAL HISTORY

On April 17, 2015 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2015 she sustained injuries to her left shoulder and right wrist as a result of lifting a relay bag out of a relay box while in the performance of duty. She stopped work on the date of injury.

In a development letter dated April 22, 2015, OWCP informed appellant that she had not submitted sufficient factual or medical evidence to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a report dated April 23, 2015, Dr. Richard S. Gilbert, a Board-certified orthopedic surgeon, noted that appellant had sprained her left shoulder and right wrist while she was lifting mail. He diagnosed rotator cuff (capsule) sprain and strain and sprain of an unspecified site of the wrist.

In a form report dated April 30, 2015, Dr. Gilbert noted that appellant's duties included delivering mail and packages, sorting mail, and lifting up to 70 pounds. He diagnosed rotator cuff (capsule) sprain and strain, and sprain and strain of an unspecified site of the wrist. Dr. Gilbert indicated that, based on appellant's history, the injury occurred when lifting a mailbag containing mail and packages. He checked a box marked "yes" indicating that this employment incident was a competent medical cause of her injury.

Appellant responded to OWCP's inquiries by letter dated May 2, 2015. She replied that on the date of injury she was taking a relay bag weighing 30 to 40 pounds out of a relay box when something cracked inside of her shoulder. As she lifted it, appellant's right wrist twisted backwards as well. She then picked up the bag and continued her route.

In a report dated May 12, 2015, Dr. Gilbert examined the results of magnetic resonance imaging (MRI) scans of appellant's left shoulder and right wrist. He observed that the MRI scan of the left shoulder demonstrated supraspinatus tendinosis, while the MRI scan of the right wrist demonstrated abductor pollicis longus tendinosis and tenosynovitis with superimposed longitudinal tears. Dr. Gilbert noted that the MRI scan of the right wrist also evinced patchy bone marrow edema throughout the proximal and distal carpal bones, possibly with a subcortical fracture of the lunate.

In an attending physician's report (Form CA-20) dated May 12, 2015, Dr. Gilbert diagnosed sprain and strain of the rotator cuff and unspecified site of the wrist. He checked a box marked "yes" indicating that the conditions were caused or aggravated by her federal employment activity.

On May 20, 2015 Dr. Mark J. Klion, a Board-certified orthopedic surgeon, noted that on April 8, 2015 appellant lifted a 50-pound box and heard a “pop” in her left shoulder. He diagnosed unspecified disorders of bursae and tendons of the shoulder region, superior glenoid labrum lesions, primary localized osteoarthritis of the shoulder region, bursitis, acromioclavicular (AC) joint sprain, and a superior labral tear from anterior to posterior (SLAP) tear.

By decision dated May 26, 2015, OWCP denied appellant’s claim finding that the medical evidence of record was insufficient to establish that the April 8, 2015 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 1, 2015 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. A telephonic hearing was held on October 6, 2015.

OWCP continued to receive progress reports from Dr. Gilbert. In reports dated June 4 and 30, July 2, and August 5, 2015, Dr. Gilbert treated appellant for her right wrist condition. He listed the same diagnoses as in his previous report and recommended physical therapy. In his August 5, 2015 report, Dr. Gilbert recommended a right de Quervain’s surgical release.

In reports dated June 24, August 4, September 1, and October 6, 2015, Dr. Klion treated appellant for left shoulder pain. He noted that an injury occurred on April 8, 2015 to her left shoulder when she lifted a 50-pound box and heard a “pop.” Dr. Klion listed the same diagnoses as in his previous report. On September 1 and October 6, 2015 he indicated that appellant would be able to return to work with restrictions of no overhead lifting and no lifting greater than five pounds.

In a letter dated November 3, 2015, Dr. Gilbert opined that, based on physical examination and appellant’s symptoms, there was a causal relationship between the April 8, 2015 employment incident and her right wrist de Quervain’s tendinitis.

By decision dated November 20, 2015, OWCP’s hearing representative found that appellant had established that the April 8, 2015 employment incident occurred as alleged, but affirmed the denial of her claim as the medical evidence of record was insufficient to establish causal relationship between the accepted April 8, 2015 employment incident and her diagnosed conditions.

OWCP subsequently received additional evidence. In a report dated November 10, 2015, Dr. Klion noted that appellant had begun to attend physical therapy, but had not yet returned to work. Examination of the left shoulder demonstrated no significant changes since her prior examination. Dr. Klion provided the same diagnoses as in his previous report.

On December 8, 2015 Dr. Klion opined that appellant’s diagnosis of AC arthritis/strain was caused by an injury sustained while lifting a 50-pound box of mail on April 8, 2015. He noted that it was documented previously that this mechanism of injury was causally related to her shoulder pain. Dr. Klion again provided the same diagnoses as in his previous report. He noted that appellant had improved remarkably with conservative management and indicated that she would be able to return to full-duty work in one month.

In a letter dated December 14, 2015, Dr. Gilbert noted that he had seen appellant for a diagnosis of radial styloid tenosynovitis and that this diagnosis was consistent with her occupation as a mail handler over the last 11 years. He explained that radial styloid tenosynovitis occurred when the tendons that move the thumb up or outward become painful and swollen. Dr. Gilbert noted that symptoms were most commonly reported with repetitive gripping and twisting motions, and that highly repetitive, forceful work and that awkward postures were also evidence of the condition.

In a report dated December 22, 2015, Dr. Gilbert noted that appellant's right wrist symptoms had improved considerably. He diagnosed radial styloid (de Quervain's) tenosynovitis.

On January 14, 2016 Dr. Klion opined that appellant's left shoulder AC arthritis/strain was caused by the incident of April 8, 2015 when she lifted a 50-pound box of mail. He noted that she had returned to work on light duty. Dr. Klion examined appellant's left shoulder, noting no significant changes, diagnosing primary localized osteoarthritis of the shoulder region, bursitis, AC joint sprain, and a SLAP tear. He recommended continued light-duty work for the next month with restrictions of no lifting over 10 pounds.

On February 1, 2016 appellant requested reconsideration.

In a report dated March 8, 2016, Dr. Klion noted that appellant was working light duty and still experienced difficulty in lifting her arms above her head. He provided the same diagnoses as in his previous report, noting continued improvement with persistent symptoms.

On April 12, 2016 Dr. Klion noted that appellant wanted to return to modified activity. Examination of the left shoulder demonstrated no significant changes since her prior examination, and her diagnoses remained the same as in the previous report. Dr. Klion recommended modified work with restrictions of no lifting, carrying, or pushing greater than 20 pounds.

By decision dated May 16, 2016, OWCP denied modification of the November 20, 2015 decision.

In reports dated May 24 and September 1, 2016, Dr. Klion noted that while appellant felt that her left shoulder condition had improved, she also felt that she could not return to her normal level of activity after the incident approximately one year prior. On examination of the left shoulder, he observed minimal pain with range of motion, tenderness, pain with a crossover maneuver, and reduced pain with O'Brien testing. Appellant's diagnoses remained the same as in the previous report.

In a letter dated February 10, 2017, Dr. Klion noted findings on MRI scan including supraspinatus tendinosis, AC joint degeneration, subacromion subdeltoid bursitis, and a SLAP tear of the labrum. He opined that, based on physical examination, x-ray examination, MRI scan findings that the injury appellant sustained to her left shoulder was causally related to the incident of April 8, 2015.

In a letter dated February 10, 2017, Dr. Gilbert noted findings on MRI scan including abductor pollicis longus tendinosis and tenosynovitis with superimposed interstitial tears, and patchy bone marrow edema throughout the proximal and distal carpal bones with possible subtle

subchondral fracture of the lunate. He again opined that appellant's right wrist injury was causally related to the incident of April 8, 2015.

On April 20, 2017 appellant requested reconsideration of OWCP's May 16, 2016 decision.

By decision dated July 18, 2017, OWCP denied modification of the prior decision.

In a report dated August 3, 2017, Dr. Klion noted that, over a month prior, appellant began to experience left shoulder pain with no discrete injury. An x-ray of the left shoulder revealed no discrete changes with a small lateral acromial spur. Dr. Klion diagnosed primary localized osteoarthritis of the shoulder region, bursitis, AC joint sprain, and a SLAP tear. He opined that, in review of her medical records and as per her medical history, her diagnoses were causally related to an acute injury of the left shoulder that occurred on April 8, 2015.

On August 16, 2017 Dr. Gilbert examined appellant for complaints of right wrist pain. He noted that she had injured her wrist on April 8, 2015. Dr. Gilbert diagnosed recurrent right wrist de Quervain's tendinitis. He recommended that appellant consider surgical intervention. Dr. Gilbert opined that the right wrist de Quervain's tendinitis occurred after an injury at work on April 8, 2015. He clarified that the condition was not a result of appellant's work-related activities, as she denied symptoms prior to that date of injury. Dr. Gilbert reiterated his opinions in an August 25, 2017 progress report.

On September 6, 2017 appellant requested reconsideration of OWCP's July 18, 2017 decision.

By decision dated October 27, 2017, OWCP denied modification of the prior decision.

On October 15, 2018 appellant, through counsel, requested reconsideration of OWCP's October 27, 2017 decision.

OWCP received a report dated August 15, 2018, Dr. Michael J. Katz, a Board-certified orthopedic surgeon. Dr. Katz noted that he interviewed and examined appellant on August 15, 2018. Appellant stated that on April 8, 2015 she was working her route, lifted a bag of mail and packages out of a relay box, and bent her right wrist backward. When she was retrieving the same bag of mail, she felt a crack in her left shoulder. Dr. Katz noted that appellant had a prior work-related injury on August 3, 2011 with injury to the right knee and left shoulder when she fell. He diagnosed right wrist internal derangement and a left shoulder labral tear. Dr. Katz explained, regarding causal relationship, that appellant experienced a labral tear upon lifting a relay bag out of a relay box, she also had a twisting of the wrist as she held on to the relay bag, and that this was the mechanism of injury. He concluded that her current left shoulder condition was related to the incident of April 8, 2015 as well as to the prior injury of August 3, 2011, while the right wrist condition was related solely to the April 8, 2015 injury.

In an addendum dated November 12, 2018, Dr. Katz opined that causal relationship existed for the left shoulder and right wrist. He noted that on April 8, 2015 appellant was lifting a relay bag out of a relay box and twisted her right wrist. Appellant then tried to lift the same bag onto a mail truck and heard a crack in her left shoulder. After reviewing diagnostic reports, Dr. Katz noted that she tore the abductor pollicis longus tendon in her wrist when lifting the heavy bag, and

then when she used her left arm to put the bag into the mail truck, it was too heavy for her nondominant arm, and she suffered a labral tear which was superimposed on a prior rotator cuff injury. He explained that the abductor pollicis longus tear was due to an awkward manner of grasping the heavy mailbag. Dr. Katz further explained that the labrum was a cuff of cartilage that formed a cup for the end of the humerus to sit in, and that some tears were the result of sudden traction on the shoulder or repetitive injury such as throwing or lifting. He explained that this combination caused appellant's left shoulder injury. Dr. Katz noted that her current left shoulder condition was related to the incident of April 8, 2015 as well as the prior injury of August 3, 2011 to the left shoulder, while the right wrist condition was related solely to the April 8, 2015 work injury.

By decision dated January 8, 2019, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA,⁴ 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.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁷ Generally, 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.⁸ The second component is whether employment incident caused a personal injury.⁹

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

³ *Supra* note 1.

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁶ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁹ *Id.*

certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.¹⁰

ANALYSIS

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

OWCP received multiple reports from appellant's treating physicians, Dr. Gilbert and Dr. Klion, wherein they opined in general terms that appellant right wrist and left shoulder conditions were causally related to the accepted April 8, 2015 employment incident.

In support of her claim, appellant also provided reports dated August 15 and November 12, 2018 from Dr. Katz, in which he opined that the left shoulder labral tear was related to the April 8, 2015 employment incident as well as a prior injury of August 3, 2011 to the left shoulder, while the right wrist condition was related solely to the April 8, 2015 work injury.

Dr. Katz provided a detailed physiological explanation of how the incident of April 8, 2015 resulted in appellant's diagnoses of right wrist internal derangement and left shoulder labral tear. He stated that she tore the abductor pollicis longus tendon in her wrist when lifting the heavy bag, and then when she used her left arm to put the bag into the mail truck, it was too heavy for her nondominant arm, and she suffered a labral tear which was superimposed on a prior rotator cuff injury. Dr. Katz explained that the abductor pollicis longus tear was due to an awkward manner of grasping the heavy mailbag. He further explained that the labrum was a cuff of cartilage that formed a cup for the end of the humerus to sit in, and that some tears were the result of sudden traction on the shoulder or repetitive injury such as throwing or lifting. Dr. Katz concluded that this combination caused appellant's left shoulder injury.

The Board finds that, although Dr. Katz' reports are insufficient to discharge appellant's burden of proof that her left shoulder and right wrist conditions were caused or aggravated by the claimed April 8, 2015 work injury, as he provided insufficient differentiation between the effects of the work-related injury to the left shoulder and preexisting left shoulder conditions, his reports constitute substantial, uncontradicted evidence in support of her claim, and provide sufficient rationale to require further development of the case record by OWCP.¹¹ Dr. Katz provided a detailed history of injury, referenced objective medical reports demonstrating injury, expressed his opinion on causal relationship within a reasonable degree of medical certainty, and provided a detailed pathophysiologic explanation as to the mechanism by which lifting the heavy bag on April 8, 2015 would result in appellant's diagnosed conditions.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement

¹⁰ See *S.S.*, *supra* note 7; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹¹ *K.P.*, Docket No. 18-0041 (issued May 24, 2019); *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *G.C.*, Docket No. 16-0666 (issued March 17, 2017); *Horace Langhorne*, 29 ECAB 280 (1978).

to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹²

On remand OWCP shall refer appellant, the case record, and a statement of facts to an appropriate specialist for an evaluation and a rationalized medical opinion on whether the accepted April 8, 2015 employment incident caused, contributed to, or aggravated her diagnosed left shoulder and right wrist conditions. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.¹³

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2019 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: April 6, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹² *K.P., id. D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹³ On remand OWCP should combine the current file with File No. xxxxx559 relative to her claim for an employment-related left shoulder injury.