

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

C.M., Appellant)	
)	
and)	Docket No. 19-1262
)	Issued: February 10, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Twin Falls, ID, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 13, 2019 appellant filed a timely appeal from a March 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following OWCP's March 13, 2019 decision, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 8, 2018 appellant, then a 45-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her left shoulder while in the performance of duty. She indicated that she first became aware of her condition and realized that it was caused or aggravated by factors of her federal employment on June 8, 2018. Appellant explained that she had been employed by the employing establishment for the past 20 years and that her shoulder had been in pain for over a month as a result of delivering the mail. She did not stop work.

In an accompanying statement, appellant provided that her job required repetitive lifting, pulling, carrying and casing of mail, as well as taking the mail down, driving and putting mail up five days a week. She explained that she is required to lift 70 pounds and that her route is 30 miles long with 1,033 customers. Appellant put up six to seven delivery point sequencing (DPS) trays of mail per day and up to 21 DPS trays every Wednesday when delivering newspapers. She was required to push and pull two carts of mail every day in order to load her long life vehicle (LLV), which requires lifting multiple trays from her carts and stacking them into the LLV.

In a July 10, 2018 medical report, Dr. R. Tyler McKee, a Board-certified orthopedic surgeon, examined appellant for her complaints of left shoulder pain. He reported that she indicated that she injured her shoulder at work in June when she picked up a heavy mail tub while reaching back in a twisting motion. Dr. McKee further reported pain radiating from her left shoulder to her neck, as well as numbness in her left arm. Upon evaluation, he diagnosed appellant with cervical radiculopathy, tendinitis of the left rotator cuff and biceps tendinitis of the left upper extremity.

In a development letter dated August 3, 2018, OWCP advised appellant that it required additional factual and medical evidence to establish her claim. It attached a questionnaire, requesting that she provide a detailed description of the employment factors she believed contributed to her left shoulder condition, including her required duties and the amount of time she spent performing these duties. OWCP also requested that appellant's attending physician provide a comprehensive narrative medical report. It afforded appellant 30 days to submit the necessary evidence.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of her statements, and a copy of her position description and physical requirements of her position. It afforded the employing establishment 30 days to submit the necessary evidence.

In response to OWCP's questionnaire, appellant's supervisor, A.P., agreed with her statements concerning the description of the events leading up to her claim. A.P. related that appellant was required to lift for six to eight hours per day, push and pull for two to four hours per day and bend and stoop for another two to four hours per day. The supervisor further noted that she was given safety stand ups on proper lifting techniques as precautions to minimize the effects of her work duties. A.P. also attached a copy of her job description to the questionnaire response.

On August 16, 2018 appellant submitted a signed copy of OWCP's questionnaire, but she did not answer any of the questions posed by it.

In an August 29, 2018 medical report, Dr. McKee noted appellant's continuing pain in her left shoulder and ordered a magnetic resonance imaging (MRI) scan for further evaluation.

By decision dated September 24, 2018, OWCP denied appellant's claim, finding that the evidence submitted was insufficient to establish that her conditions were causally related to the accepted factors of her federal employment.

Appellant submitted multiple physical therapy notes dated from July 10 to August 21, 2018 signed by various physical therapists and physical therapy assistants.

In an office visit note dated October 30, 2018, Dr. McKee indicated that appellant continued to experience pain in her left shoulder and related that the pain had increased since her last visit.

An x-ray of appellant's left shoulder of even date revealed no fractures or dislocations.

In an October 31, 2018 medical report, Dr. McKee again noted appellant's history of pain in her left shoulder related to repetitive use at work in June 2018. He noted that appellant had failed nonoperative management and stopped her physical therapy, activity modification and steroid injections. Dr. McKee ordered an MRI scan of appellant's left shoulder to confirm her diagnosis and to help with surgical planning.

On December 11, 2018 appellant requested reconsideration of OWCP's September 24, 2018 decision.

By decision dated March 13, 2019, OWCP denied modification of its 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 timely filed within the applicable time limitation period of FECA,⁴ 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

³ *Supra* note 1.

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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 claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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.⁹ 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.¹⁰

ANALYSIS

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

Appellant submitted Dr. McKee's July 10, August 29, and October 31, 2018 medical reports in which he diagnosed cervical radiculopathy, tendinitis of the left rotator cuff and biceps tendinitis of the left upper extremity as a result of the repetitive motions she engaged in at work. Although his opinion generally supported causal relationship between the accepted employment factors and appellant's diagnosed conditions, Dr. McKee did not provide sufficient rationale explaining this conclusion. Without explaining how the repetitive movements involved in appellant's employment duties caused or contributed to her injuries, his opinion is of limited probative value.¹¹ Further, Dr. McKee's conclusions are largely based on appellant's opinion as

⁵ *S.C., id.; J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.C., id.; 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).

⁷ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁹ *E.V., id.*

¹⁰ *B.J.*, Docket No. 19-0417 (issued July 11, 2019).

¹¹ *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

to what caused her injuries, rather than by his independent analysis of the cause of her conditions.¹² A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.¹³ Accordingly, the Board finds that these medical reports are of little probative value on the issue of causal relationship.

Appellant submitted multiple physical therapy notes dated from July 10 to August 21, 2018 providing updates on her progress through therapy sessions. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FEFA.¹⁴ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵

Additionally, appellant submitted the results of an October 30, 2018 x-ray, which revealed no positive findings. The Board has held that diagnostic studies lack probative value as they do not address whether an employment incident caused the diagnosed condition.¹⁶

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated her conditions, appellant has not met her burden of proof to establish that her conditions are causally related to the accepted factors of her federal employment.

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 causally related to the accepted factors of her federal employment.

¹² See *D.L.*, Docket No. 15-0866 (issued November 23, 2015); *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

¹³ See *Y.T.*, Docket No. 17-1559 (issued March 20, 2018).

¹⁴ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁵ See *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁶ *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *T.J.*, Docket No. 18-1500 (issued May 1, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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