

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

_____)	
T.M., Appellant)	
)	
and)	Docket No. 19-1414
)	Issued: February 12, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Athens, GA, Employer)	
_____)	

Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 17, 2019 appellant, through counsel, filed a timely appeal from an April 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) 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 a right rotator cuff tear causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 19, 2017 appellant, then a 42-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that her repetitive motions of opening and closing the doors of her long-life vehicle (LLV) and setting her parking break hundreds of times per day caused a right rotator cuff tear and an injury to her right bicep due to factors of her federal employment. She did not indicate the exact time of when the injuries occurred, but indicated that they continued to get worse over time. Appellant noted that she first became aware of her conditions and related them to her federal employment in December 2014. She stopped work on September 9, 2017.

In an August 8, 2017 medical report, Dr. Bradley Register, a Board-certified orthopedic surgeon, recounted that appellant had been dealing with pain for a long time and that extensive conservative measures had failed to correct her condition. He recommended that she undergo a right shoulder arthroscopy, rotator cuff repair, and possible biceps tenodesis in order to treat her conditions.

In a September 22, 2017 medical report, Dr. Register noted that appellant underwent a right shoulder arthroscopic-assisted rotator cuff repair and arthroscopic biceps tenodesis on September 14, 2017.

In a December 19, 2017 statement, appellant indicated that she had been seeing Dr. Register over the past four years due to pain in her right shoulder. She explained that her pain was caused by opening the door on her LLV, reaching back to close the door and setting her parking break hundreds of times a day. Appellant noted that she underwent a magnetic resonance imaging (MRI) scan in October 2015 that revealed a rotator cuff tear. In the months prior to her September 14, 2017 surgery, she noted that she would experience swelling in her shoulder at night, as well as numbness and poor circulation in her right hand.

By letter dated January 3, 2018, the employing establishment controverted appellant's claim, contending that she had previously filed a June 2016 claim³ related to hitting her shoulder on a door. It further noted that her claim was denied and that, instead of appealing the decision, she elected to file a new occupational disease claim. The employing establishment requested that OWCP deny appellant's claim because she had not established causal relationship or fact of injury.

On January 4, 2018 appellant also provided a position description which detailed her responsibilities as a city carrier.

By development letter dated January 9, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion to establish the

³ Appellant has a prior claim, assigned OWCP File No. xxxxxx244, for a June 20, 2016 traumatic injury to her right shoulder sustained on June 20, 2016. This claim was denied by OWCP on August 8, 2016.

employment factors alleged to have caused or contributed to her medical condition and requested a medical report from her attending physician explaining how and why her federal work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the requested information.

In a February 13, 2018 narrative medical report, Dr. Register noted appellant's employment as a mail carrier and provided that he had been providing care to her relating to her right shoulder pain for several years. He opined that her injuries very well "could" be related to the repetitive lifting and stress on the rotator cuff which is required to be a mail carrier. Dr. Register also noted that, over the past two years, appellant's tear had gradually worsened, indicating that the rotator cuff tear was not a preexisting injury. Based on this information, he concluded that her condition was "likely" caused or exacerbated by her job as a mail carrier.

By decision dated March 26, 2018, OWCP denied appellant's claim. It found that she had not established the factual component of her claim as the evidence of record did not support that the injury and/or events occurred as alleged.

OWCP continued to receive evidence. In a December 8, 2014 medical report, Dr. Register provided that appellant had been experiencing pain in her right shoulder for the past seven to eight months. He noted that she denied a specific injury related to her pain. Appellant underwent a subacromial decompression in 2005 that alleviated similar symptoms of pain until recently. Based on an x-ray performed that day, Dr. Register observed minimal acromioclavicular (AC) degeneration and diagnosed right shoulder pain and subacromial shoulder impingement syndrome. In a January 19, 2015 medical report, he provided appellant a diagnostic/therapeutic injection in order to treat her conditions.

In an August 17, 2015 medical report, Dr. Register noted that the injection appellant received was effective for six months, but her right shoulder pain had returned. He ordered another MRI scan and scheduled a follow-up appointment with her.

In an August 25, 2015 medical report, Dr. Val Phillips, a Board-certified radiologist, interpreted an MRI scan of appellant's right shoulder. Based on the results of the MRI scan, he found a small partial undersurface tear of the distal anterior supraspinatus tendon in the right rotator cuff and mild hypertrophic AC joint arthropathy.

In a September 28, 2015 medical report, Dr. Register noted appellant's continuing pain in her right shoulder that occasionally radiated down her elbow and to her hand. Based on an MRI scan of her right shoulder, he diagnosed a high-grade partial-thickness rotator cuff tear, possible thoracic outlet versus cervical radiculopathy, and likely biceps tendinitis.

In a June 20, 2016 medical report, Dr. Register made note of appellant's right shoulder pain which she related to overuse at work. He noted that she experienced an injury at work in which she hit her right shoulder on a jammed door in her LLV. Appellant experienced immediate swelling and numbness throughout her right upper extremity. Based on x-rays of her cervical spine and right shoulder, Dr. Register assessed right shoulder pain, a history of a right rotator cuff tear, and concerns for thoracic outlet versus cervical radiculopathy.

In a July 20, 2017 medical report, Dr. Register noted that appellant continued to experience pain and numbness in her neck and the anterior and lateral shoulder. Appellant complained that the extensive conservative measures she underwent had failed to alleviate her problems. Dr. Register recommended that she undergo an MRI scan and electromyogram (EMG) before her next follow-up appointment.

In a July 27, 2017 report, Dr. Jon Siegel, a Board-certified radiologist, interpreted an MRI scan of appellant's cervical spine and found mild multilevel degenerative spondylosis and mild disc space narrowing at C5-6 and C6-7. In a medical report of even date, Dr. Christine Kang, a Board-certified radiologist interpreted an MRI scan of appellant's right shoulder. She identified a moderate-to-high-grade partial-thickness articular undersurface tear of the rotator cuff and mild degenerative arthropathy of the AC joint.

In an August 7, 2017 medical report, Dr. Register made note of appellant's MRI scan results and recommended that she undergo a right shoulder arthroscopy, rotator cuff repair, and possible biceps tenodesis in order to treat her condition.

In a September 14, 2017 medical report, Dr. Register detailed the right shoulder arthroscopic-assisted rotator cuff repair and arthroscopic biceps tenodesis performed to treat appellant's conditions.

In medical reports dated from October 30, 2017 to March 21, 2018, Dr. Register made note of appellant's progressing condition following her September 14, 2017 surgery. He noted that she was still experiencing pain and numbness in her bicep, arm, and hand, and recommended that she see a specialist in order to rule out nerve impingement as a possible cause of these issues.

In a March 28, 2018 medical report, Dr. William Tally, a Board-certified orthopedic surgeon, noted appellant's history of right upper extremity numbness and tingling. He indicated that he was concerned about a possible plexopathy and ordered a computerized tomography (CT) myelogram of her neck before making any other recommendations.

In an April 23, 2018 medical report, Dr. Steven Bramlet, a Board-certified radiologist, interpreted a CT scan of appellant's cervical spine. He found small disc protrusions, mild spondylosis, and mild right foraminal narrowing.

In a May 9, 2018 medical report, from a follow-up appointment, Dr. Tally discussed performing an anterior cervical discectomy and fusion (ACDF) surgery in order to relieve pain in appellant's neck and right upper extremity. In a June 4, 2018 medical report, he detailed the ACDF procedures performed at C4-5 and C5-6 of the cervical spine to treat her conditions.

In a July 9, 2018 medical report, Dr. Tally noted that appellant's right arm pain had greatly reduced five weeks after her ACDF surgery, but was still present.

On January 11, 2019 appellant, through counsel, requested reconsideration of OWCP's March 26, 2018 decision.

By decision dated April 17, 2019, OWCP affirmed the March 26, 2018 decision, as modified. It found that appellant had established fact of injury, however, the claim remained denied as she had not provided medical evidence establishing causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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.¹⁰ 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.¹¹

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *S.C.*, *supra* note 5; *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).

⁸ *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁹ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

¹⁰ *E.V.*, *id.*

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right rotator cuff tear causally related to the accepted factors of her federal employment.

In his February 13, 2018 narrative medical report, Dr. Register noted appellant's history related to her right rotator cuff tear and provided that, because it gradually worsened over the two years he saw her, her condition was not a preexisting injury. He opined that her condition very well "could" be related to the repetitive lifting and stress on the rotator cuff which is required to be a mail carrier. Dr. Register further concluded that appellant's condition was "likely" caused or exacerbated by the repetitive lifting and stress on the rotator cuff which is required of a mail carrier. His statement on causal relationship, opining that her rotator cuff tear "could" be related or is "likely" a result of her work activity as a mail carrier, are speculative and equivocal. The Board has held that medical opinions which are equivocal or speculative are of diminished probative value.¹² As such, the Board finds that Dr. Register's opinion lacks the specificity and detail needed to establish appellant's claim.¹³

Dr. Register's remaining medical reports dated from December 8, 2014 to March 21, 2018 provided a history of treatment related to right shoulder pain and appellant's right rotator cuff tear that she attributed to overuse at work, as well as a June 20, 2016 injury in which she hit her right shoulder on a jammed LLV door. Although these reports generally supported causal relationship between her right rotator cuff tear and the accepted factors of her federal employment, he did not provide sufficient rationale explaining these conclusions. Without explaining how the repetitive movements involved in appellant's employment duties pathophysiological caused or contributed to her injuries, Dr. Register's opinion is of limited probative value.¹⁴ Further, Dr. Register's conclusions are largely based her belief as to what caused her injuries, rather than by his independent analysis of the cause of her conditions.¹⁵ A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted employment factors resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.¹⁶ Accordingly, the Board finds that Dr. Register's remaining medical reports are of little probative value on the issue of causal relationship.

In a series of Dr. Tally's medical reports dated from March 28 to July 9, 2018, he noted appellant's history of right upper extremity pain and provided treatment notes related to her June 4,

¹² See *P.H.*, Docket No. 16-0654 (issued July 21, 2016); *S.R.*, Docket No. 16-0657 (issued July 13, 2016). See also *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

¹³ *C.H.*, Docket No. 19-0409 (issued August 5, 2019); *D.P.*, Docket No. 18-1647 (issued March 21, 2019); *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁴ See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

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

¹⁶ See *Y.T.*, Docket No. 17-1559 (issued March 20, 2018).

2018 ACDF surgery. However, he offered no opinion regarding the cause of her medical 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.¹⁷ For this reason, Dr. Tally's medical reports are insufficient to establish causal relationship.

Appellant also provided multiple diagnostic reports. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between her employment duties and the diagnosed conditions.¹⁸ Accordingly, these medical reports are of no probative value regarding causal relationship.¹⁹

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

¹⁷ *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

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

¹⁹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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