

ISSUE

The issue is whether appellant has met her burden of proof to establish back and right shoulder conditions causally related to the accepted September 28, 2017 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 1, 2017 appellant, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on September 28, 2017, she sustained a back contusion, upper back strain, and a right shoulder injury while in the performance of duty. She stopped work on September 29, 2017.

Appellant submitted an undated letter describing the alleged September 28, 2017 employment incident. She explained that management directed her to change out overloaded containers from a belt, but when she tried to pull a container forward weighing approximately 500 pounds, which was overloaded with parcels and magazines from the backside of the belt, it would not move.⁴

OWCP, by decision dated November 20, 2017, accepted that the September 28, 2017 employment incident occurred as alleged, but denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

By decision dated August 2, 2018, OWCP's hearing representative affirmed the November 20, 2017 decision finding that the medical evidence of record did not contain a rationalized opinion explaining causal relationship between appellant's medical condition and the accepted September 28, 2017 employment incident.

By decision dated April 18, 2019, the Board affirmed the August 2, 2018 decision finding that appellant had not met her burden of proof to establish back and right shoulder conditions causally related to the September 28, 2017 employment incident.⁵

On August 6, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

³ Docket No. 18-1814 (issued April 18, 2019).

⁴ On November 15, 2017 the employing establishment offered appellant a modified mail handler position, which she accepted on that date.

⁵ *Supra* note 3.

In orthopedic notes dated March 19, 2018 to June 5, 2019, Dr. Erik McGoldrick, an attending Board-certified orthopedic surgeon, noted a history that appellant had presented for evaluation of right shoulder pain since September 2017 when she pushed an overloaded crate. He reported findings on physical examination and provided diagnoses of partial tear of the rotator cuff and right shoulder subluxation. In a March 19, 2018 orthopedic note, Dr. McGoldrick indicated that appellant had a considerable degree of ligamentous laxity on examination and that he suspected that she may have subluxed her shoulder while pushing a crate last year as her left shoulder subluxed on examination with an O'Brien's test. In an August 8, 2018 orthopedic note, he reported that appellant had persistent instability which was consistent with the mechanism of injury reported at work. Dr. McGoldrick, in a June 5, 2019 orthopedic note, indicated that she may have had underlying ligamentous laxity, and the incident at work likely converted her normal (for her) ligamentous laxity to pathologic ligamentous laxity, which resulted in pain unchanged with physical therapy. He noted that appellant was very clear to him that her pain started after an incident at work. Dr. McGoldrick also noted that while a magnetic resonance imaging (MRI) scan report had not indicated a discrete tear, she had laxity clinically, which he deemed pathologic because it elicited pain for her. He indicated that this had been addressed with surgery through a capsular plication and noted that appellant had done reasonably well since surgery. In a September 27, 2018 operative report, Dr. McGoldrick indicated that he performed a right shoulder arthroscopic labral repair and posterior capsule plication. He provided a pre-procedure and post-procedure diagnosis of posterior labral tear and instability.

Dr. Stephen L. Viltrakis, a Board-certified diagnostic radiologist, reported that a June 1, 2018 MRI scan of the right shoulder revealed an impression of uncomplicated percutaneous right shoulder arthrocentesis for injection of gadolinium into the joint space noted.

Dr. James B. Moore, a Board-certified diagnostic radiologist, indicated that a right shoulder MRI arthrogram also performed on June 1, 2018 was normal. He noted that there were no signs of rotator cuff tear, partial or full thickness, and no labral abnormality.

OWCP, by decision dated November 4, 2019, denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁷ 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

⁶ *Supra* note 2.

⁷ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁸ 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.⁹

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.¹⁰

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish back and right shoulder conditions causally related to the accepted September 28, 2017 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in its April 18, 2019 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.¹³

Following the Board's April 18, 2019 decision, appellant requested reconsideration of her claim with OWCP and submitted additional medical evidence in support of her request. She submitted a series of orthopedic notes from Dr. McGoldrick who noted an accurate history of the September 27, 2018 employment incident and provided diagnoses of partial tear of the rotator cuff and subluxation of the right shoulder. In an August 8, 2018 orthopedic note, Dr. Goldrick opined

⁸ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

that appellant had persistent instability which was consistent with the mechanism of injury reported at work. The Board finds that Dr. McGoldrick's opinion is generally supportive of causal relationship, however, he has not provided adequate medical rationale explaining the basis of his opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁴ In a March 19, 2018 orthopedic note, Dr. McGoldrick found that appellant had a considerable degree of ligamentous laxity on examination and indicated that he was suspicious that she "may" have subluxed her shoulder while pushing a crate last year as her left shoulder subluxed on examination with an O'Brien's test. In a June 5, 2019 orthopedic note, he related that appellant may have had underlying ligamentous laxity and opined that the accepted work incident "likely" converted her normal (for her) ligamentous laxity to pathologic ligamentous laxity based on MRI scan findings. Dr. McGoldrick maintained that she made it very clear to him that her pain started after an incident at work. The Board finds, however, that these reports are speculative. It has long been held that medical opinions that are speculative or equivocal in character have little probative value.¹⁵ Dr. McGoldrick's remaining September 27, 2018 operative report did not contain an opinion on the cause of appellant's diagnosed 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.¹⁶ For these reasons, the medical evidence from Dr. McGoldrick is insufficient to satisfy appellant's burden of proof.

Appellant also submitted diagnostic test reports dated June 1, 2018 from Dr. Viltrakis and Dr. Moore. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ As such, these reports are insufficient to establish appellant's claim.

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that she has not met her burden of proof.¹⁸

On appeal counsel contends that Dr. McGoldrick's June 5, 2019 medical note clearly explained the pathophysiologic cause of appellant's injury. However, as explained above,

¹⁴ See *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹⁵ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁶ *T.J.*, *supra* note 14; *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *A.L.*, Docket No. 18-1756 (issued April 15, 2019); *K.E.*, Docket No. 18-1357 (issued March 26, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁷ See *T.J.*, *id.*; *F.D.*, *id.*; *B.C.*, Docket No. 18-1735 (issued April 23, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁸ *T.J.*, *id.*; *F.D.*, *id.*; *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

Dr. McGoldrick has not provided adequate medical rationale in support of his opinion on causal relationship.

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 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 back and right shoulder conditions causally related to the accepted September 28, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board