

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

K.R., Appellant)	
)	
and)	Docket No. 19-0730
)	Issued: June 5, 2020
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Fernley, NV, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On February 20, 2019 appellant, through counsel, filed a timely appeal from a November 2, 2018 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 bilateral shoulder conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 30, 2018 appellant, then a 57-year-old rural mail carrier, filed an occupational disease claim (Form CA-2), alleging that she developed a right shoulder torn rotator cuff and an inflamed left shoulder causally related to factors of her federal employment including lifting large heavy boxes and delivering mail out of the vehicle window. She indicated that she first became aware of the condition on March 1, 2015 and its relationship to her federal employment on December 1, 2017. Appellant explained that she did not file the claim within 30 days of realizing that her condition was caused or aggravated by her employment because she had filed a previous claim which was denied, but her shoulder continued to worsen. She noted that she received the results of magnetic resonance imaging (MRI) scans, which displayed damage to her shoulders.³ On the reverse side of the claim form, the employing establishment indicated that appellant first received medical treatment on January 5, 2018 and stopped work on March 20, 2018.

In a March 30, 2018 statement, appellant related that she began experiencing shoulder pain in March 2015 and was treated by a chiropractor and orthopedic surgeon, but that her shoulder pain returned after a year, and she filed a claim. She indicated that in January 2018 she again saw an orthopedist and received a cortisone injection in her right shoulder, returned on February 26, 2018 when her shoulders again started hurting, and the doctor scheduled the MRI scans. The orthopedist then told her that she had a torn rotator cuff in her right shoulder and that her left shoulder was inflamed. Appellant indicated that on March 21, 2018 she became unable to perform her job tasks.

On a March 30, 2018 work status form, Dr. Michael Edmunds, a Board-certified orthopedic surgeon, advised that appellant could return to light duty with upper extremity restrictions.

By development letter dated April 4, 2018, OWCP advised appellant that additional evidence was required to support her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP also requested a narrative medical report from appellant's physician that provided a firm diagnosis of a condition and a rationalized opinion on how appellant's employment duties caused or aggravated her condition. It afforded her 30 days to provide the necessary information.

In an undated statement, A.P., the officer-in-charge at the employing establishment, noted that on March 20, 2018 appellant advised him that her condition was worsening, and that the doctor requested an MRI scan, which showed that appellant had a torn rotator cuff. He indicated that appellant then contacted him to file a claim. A.P. noted that she had filed a claim the previous year which was denied. He reported that appellant had submitted medical documentation and requested a CA-2 form.

³ The MRI scan reports are not found in the case record.

In response to the April 5, 2018 development letter, appellant submitted a timeline from March 2015 to May 2018 concerning her shoulder problems. She indicated that in March 2015 she first noticed problems in her arms and shoulder, noting that they were fine in the morning, but ached, burned, and were uncomfortable on her drive home from work. Appellant related that she had several months of treatment with a chiropractor, and the pain subsided. She indicated that she had purchased a lightweight hand truck to aid with heavy and awkward packages at work, but that in July 2016 severe pain returned and she again sought medical care with Dr. Edmunds who administered an injection her shoulder which relieved her pain until October/November 2017 when the pain returned. Appellant indicated that she again sought medical treatment and had another injection in her right shoulder, but returned to see Dr. Edmunds in February 2018 who scheduled an MRI scan of both shoulders. She noted the MRI scan results and stated that she could no longer tolerate the pain, so that on March 20, 2018 she stopped work and filed her claim. Appellant noted that, at the present time, her left shoulder had improved, but her right shoulder interrupted her sleep. She indicated that, even with the hand truck, she still had to get packages into and out of the back of the postal vehicle and that swinging heavy trays of mail into the front also contributed to her pain. Appellant maintained that the volume of packages had increased, and that even with packages that were not heavy, the repeated stretching and reaching needed for mail handling were contributing factors to her shoulder pain. She reiterated her belief that the pain was work related because it had lessened in the morning, but was worse after work. Appellant noted that right shoulder surgery was tentatively scheduled for May 16, 2018.

Appellant indicated that she worked from 7:00 a.m. to 4:00 p.m. five days a week, plus or minus 30 minutes, and spent approximately 2.5 hours casing mail, 30 minutes sorting up to 200 packages per day and loading them and trays of mail into her vehicle. She related that loading the mail trays, which could weight up to 45 pounds, required picking them up and swinging them into the front tray of her vehicle with the majority of the weight on her right side and shoulder height. Appellant reported that packages could weigh up to 75 pounds plus, and could be large and bulky. She indicated that she spent 4.5 to 6 hours daily delivering mail out of the vehicle, which required reaching out the window, pulling on mailboxes that could stick. Appellant maintained that thick mail put a strain on her right wrist, thumb, and arm when delivering out the window. She also indicated that she owned horses and livestock, but that since having shoulder issues, she had to hire someone to care for her livestock.

An April 24, 2018 state workers' compensation form report by Dr. Alan Taylor, an osteopath Board-certified in occupational medicine, noted appellant's complaint of bilateral shoulder pain and a history of injury while delivering mail due to repetitious heavy lifting, which caused a strain in both shoulders. In response to the question "from the information given by the employee, together with the medical evidence, can you directly connect this injury or occupational disease as job incurred," he wrote "No." Dr. Taylor advised that appellant could return to work with a 10-pound lifting restriction.

In additional reports dated April 24, 2018, Dr. Taylor reported appellant's complaint of a chronic shoulder condition that started in September 2015 and was not precipitated by a particular incident. He noted appellant's history of treatment including MRI scans that demonstrated a right shoulder rotator cuff tear and left shoulder rotator cuff tendinitis. Appellant described the pain in her right shoulder as sharp and moderate-to-severe and indicated that it limited her range of motion, but that the pain in her left shoulder was not as bad. Dr. Taylor noted examination findings of no

gross deformities on the right, with diffuse tenderness to palpitation over the entire shoulder, decreased abduction, and intact strength and sensation. The left shoulder demonstrated a gross deformity, with diffuse tenderness to palpation minimal over the anterior shoulder, full range of motion, and intact strength and sensation. Dr. Taylor advised that she could return to restricted duty from April 24, 2018 to May 29, 2018. He recommended over-the-counter medication.

By decision dated May 11, 2018, OWCP accepted that appellant's employment factors occurred as alleged, but denied the claim because the evidence of record was insufficient to establish that appellant's bilateral shoulder conditions were causally related to the accepted factors of federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.⁴

In a June 1, 2018 work status form, Dr. Edmunds diagnosed right rotator cuff tendinitis and advised that appellant should remain off work until her next appointment in four weeks. On a treatment note signed by Dr. Edmunds on June 12, 2018, he indicated that appellant was seen for a follow-up appointment two weeks after a non-authorized right shoulder supraspinatus tendon repair, which took place on June 1, 2018. Dr. Edmunds indicated that the small incisions healed. He referred appellant for physical therapy, recommended that she continue to wear a sling until her next visit, and advised that she avoid active use of her shoulder. Dr. Edmunds noted that he had discussed the history of appellant's rotator cuff injury with her, and that she reported that she did far more lifting at work than she did at home. He opined that it was more likely than not that the repetitious lifting that appellant had done at work for the last 11 years was the primary contributor to her injury.

On August 6, 2018 appellant requested reconsideration.

By decision dated November 2, 2018, OWCP denied modification of the May 11, 2018 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 of FECA,⁶ 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

⁴ The record includes a second May 11, 2018 decision that is incomplete.

⁵ *Supra* note 2.

⁶ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁷ 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.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.¹¹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral shoulder conditions causally related to her accepted federal employment factors.

In form reports dated April 24, 2018, Dr. Taylor did not address whether appellant's shoulder condition was employment related. In response to a question on an April 24, 2018 state workers' compensation form report inquiring: "from the information given by the employee, together with the medical evidence, can you directly connect this injury or occupational disease as job incurred," he responded "No." The Board has held that medical evidence that negates causal relationship is of no probative value.¹³ As Dr. Taylor negated causal relationship between the

⁷ *N.M.*, Docket No. 19-0258 (issued May 8, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *N.M.*, *supra* note 7; *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *L.M.*, Docket No. 19-1981 (issued May 11, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *T.H.*, *id.*

¹² *L.M.*, *id.*; *Victor Woodhams*, *supra* note 9.

¹³ *B.W.*, Docket No. 18-1674 (issued May 7, 2020, *T.W.*, Docket No. 19-0677 (issued August 16, 2019); *Solomon Polen*, 51 ECAB 341 (issued March 1, 2000).

accepted employment factors and appellant's diagnosed shoulder conditions, his reports are insufficient to meet her burden of proof.¹⁴

On June 12, 2018 Dr. Edmund reported a history that appellant did far more lifting at work than she did at home. He opined that it was more likely than not that the repetitious lifting appellant had done at work for 11 years was the primary contributor to her injury. The Board has held that a medical opinion is of limited value if it is conclusory in nature.¹⁵ A medical opinion must provide an explanation of how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁶ Dr. Edmunds did not provide an explanation of the physiological mechanism by which appellant's accepted factors of federal employment caused her shoulder conditions. As noted, a physician's opinion must be based on a complete factual and medical background, must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.¹⁷ For this reason, Dr. Edmund's opinion is insufficient to establish causal relationship.

Appellant has not submitted any rationalized medical evidence establishing that her claimed bilateral shoulder conditions are causally related to the accepted factors of her federal employment. As such, she has not met her burden of proof.

On appeal counsel maintained that the November 2, 2018 decision was contrary to law and fact. As explained above, the medical evidence of record is insufficient to meet appellant's burden of proof.¹⁸

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 bilateral shoulder conditions casually related to her accepted federal employment factors.

¹⁴ See *J.L.*, Docket No. 17-0177 (issued April 24, 2017).

¹⁵ *M.S.*, Docket No. 19-0189 (issued May 14, 2019).

¹⁶ *Id.*

¹⁷ *Supra* notes 11 and 12.

¹⁸ *L.J.*, Docket No. 19-1343 (issued February 26, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2018 decision of the Office of the Workers' Compensation Program is affirmed.

Issued: June 5, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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