

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

C.K., Appellant	)	
	)	
and	)	<b>Docket No. 19-1549</b>
	)	<b>Issued: June 30, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Springfield, MA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 15, 2019 appellant, through counsel, filed a timely appeal from a May 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## 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.

## FACTUAL HISTORY

On June 9, 2018 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she injured her left shoulder causally related to factors of her federal employment, including continuously lifting heavy trays overhead while working with a flats sequencing system (FSS). She indicated that she first became aware of her condition and of its relationship to her federal employment on January 6, 2016.

By development letter dated June 21, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries.

Appellant certified the questionnaire on June 26, 2018. She explained that in addition to working the FSS, her work activities of moving boxes of magazines manually while using a manual pallet jack, continuously lifting magazines in tubs to be placed in a postal container, and cutting plastic from bundles of magazines to place into dolly makers also caused or contributed to her injury. Appellant reported that she had performed these activities as eight-hour assignments, that she was usually assigned to lifting street trays, and that she had worked in her position for over eight years.

Medical evidence submitted included a March 14, 2016 chest x-ray that demonstrated no lung disease, but an incompletely-visualized radiolucent lesion proximal to the humeral shaft with adjacent matrix calcification/sclerosis of the proximal humeral metaphysis.

Based on the chest x-ray findings, a March 25, 2016 x-ray of the left shoulder demonstrated a benign-appearing bone lesion of the proximal left humerus, degenerative changes, and possible calcific tendinitis/bursitis.

A January 8, 2018 left shoulder x-ray demonstrated osteoarthritis of the left acromioclavicular (AC) joint and a focal sclerotic bone lesion proximal to the left humeral metaphysis which was considered benign and most likely represented bone infarct or enchondroma.

A May 12, 2018 magnetic resonance imaging (MRI) scan of the left shoulder demonstrated findings suggestive of enchondroma of the proximal humerus, degenerative changes in the AC joint and labrum, and a significant partial tear of the supraspinatus tendon.

In a report dated August 3, 2018, Melissa Mol-Pelton, a physician assistant, noted complaints of left shoulder pain. She indicated that appellant reported a history that she had hurt her left shoulder at work two years previously. Ms. Mol-Pelton described left shoulder examination findings and reviewed the May 12, 2018 MRI scan. She diagnosed a small left shoulder high-grade partial rotator cuff tear, administered an injection, and recommended work

restrictions. Ms. Mol-Pelton also provided a physical therapy referral. Appellant submitted physical therapy treatment notes dated August 27 and 30, 2018.

By decision dated September 11, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her left shoulder condition was causally related to the accepted factors of her federal employment.

On September 19, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a record of her attendance at physical therapy appointments from August 27 through October 16, 2018, physical therapy exercise diagrams dated August 27, 2018, and physical therapy notes dated September 11 through October 9, 2018.

In a treatment note dated September 14, 2018, Dr. Jennie Garver, a Board-certified orthopedic surgeon, advised that she was treating appellant for a left shoulder partial-thickness rotator cuff tear and AC arthrosis. She reported a history that appellant had injured her shoulder on January 6, 2016 when lifting trays of magazines overhead and felt soreness in her shoulder at the end of the day, without a specific episode setting off the pain. On examination of the left upper extremity, Dr. Garver noted tenderness to palpation at the AC joint and subacromial space, forward elevation to 165 degrees, positive Neer's and Hawkins tests, passive external rotation to 65 degrees, internal rotation to T12, mild discomfort superiorly with the extremes of internal and external rotation, a positive cross-body adduction test, and a positive Speed's test. She reviewed an August 3, 2018 x-ray done at her office and the May 12, 2018 MRI scan. Dr. Garver diagnosed a medium grade partial thickness interstitial cuff tear as well as severe AC arthrosis, noting less pain with cuff testing than with provocation of the AC joint. She administered an AC joint injection and recommended continued physical therapy and work restrictions.

At the hearing, held telephonically on February 15, 2019, appellant described her work activities from January 2016 which, she maintained, caused her rotator cuff tear. The hearing representative informed appellant and counsel of the specific evidence needed and held the record open for 30 days for the submission of additional evidence. Nothing further was submitted.

By decision dated May 7, 2019, an OWCP hearing representative affirmed the September 11, 2018 decision. He found that the medical evidence of record was insufficient to establish causal relationship between appellant's left shoulder condition and the accepted factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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, 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

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<sup>3</sup> *Supra* note 2.

the employment injury.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background, 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 incident.<sup>8</sup>

### 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.

In her September 14, 2018 report, Dr. Garver provided the diagnoses of medium grade partial thickness interstitial cuff tear and severe AC arthrosis. She noted a history that on January 6, 2016, appellant lifted trays of magazines overhead and felt soreness in her shoulder at the end of the day, without a specific episode setting off the pain. Dr. Garver, however, did not offer an opinion regarding the cause of appellant's diagnosed conditions. The Board has held that reports that do not provide an opinion on causal relationship are of no probative value. Therefore this report is insufficient to establish the claim.<sup>9</sup>

Appellant submitted reports from a Ms. Mol-Pelton, a physician assistant, dated August 3, 2018 and treatment notes from physical therapists. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered

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<sup>4</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>9</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

“physician[s]” as defined under FECA.<sup>10</sup> Consequently, these reports and/or opinions will not suffice for purposes of establishing appellant’s claim.<sup>11</sup>

As to the diagnostic reports dated March 14 and 25, 2016, and January 8 and May 12, 2018, the Board has held that diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between accepted employment factors and a claimant’s diagnosed condition.<sup>12</sup> These reports are, therefore, insufficient to establish appellant’s claim.

As the medical evidence of record is insufficient to establish a left shoulder condition causally related to the accepted employment factors, the Board finds that she has not met her burden of proof to establish her claim.

On appeal counsel argues that OWCP failed to apply the proper causation standard and failed to give due deference to the attending physician. As explained above, the Board finds that the medical evidence of record is insufficient to meet appellant’s burden of proof.

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.

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<sup>10</sup> Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

<sup>11</sup> *Id.*

<sup>12</sup> *See P.L.*, Docket No. 19-1750 (issued March 26, 2020); *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 30, 2020  
Washington, DC

Alec J. Koromilas, 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