

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

M.C., Appellant	)	
	)	
and	)	<b>Docket No. 19-1192</b>
	)	<b>Issued: January 6, 2020</b>
U.S. POSTAL SERVICE, NETWORK	)	
DISTRIBUTION CENTER, Allen Park, MI,	)	
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:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 7, 2019 appellant, through counsel, filed a timely appeal from a January 14, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that, following the January 14, 2019 decision, OWCP received 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.*

## **ISSUE**

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

## **FACTUAL HISTORY**

On February 12, 2018 appellant, then a 21-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder bursitis due to factors of her federal employment. She noted that she was working in a light-duty capacity and was only able to use her right arm/shoulder.<sup>4</sup> Appellant further indicated that she first became aware of her condition and its relation to factors of her federal employment on November 17, 2015. She stopped work on January 18, 2017.

In reports dated November 17 and December 30, 2015 and February 2, 2016, Dr. Faiz Rahman, a Board-certified family medicine and emergency medicine physician, diagnosed rotator cuff strain, neck strain, Ganglion cyst, left shoulder pain, upper back pain on left side, strain of left rotator cuff capsule, and bursitis of right shoulder. He indicated that physical therapy had worsened appellant's symptoms and she had been compensating with her right arm/shoulder and upper back, but it was not as bad as compared to the left.

In a development letter dated April 11, 2018, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish her claim. It advised her regarding the evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a narrative statement dated April 11, 2018, indicating that when she first returned to work following her injuries, her supervisor had a limited amount of employees and she ordered her to assist her in pulling empty all-purpose containers (APC's). Her duties changed and she had to push a dumpster button with her right side and then assist with sorting loose mail. Appellant indicated that she was ordered to pull with her right side for approximately an hour, she would push the dumpster button for approximately 2.5 hours, and she would sort loose mail for approximately 2 hours.

By decision dated May 22, 2018, OWCP denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition(s) and the accepted factors of her federal employment.

Appellant subsequently submitted an undated report from Dr. Rahman who indicated that appellant was first seen in his office on August 14, 2015 and last seen on July 5, 2016. Dr. Rahman noted that, when she was injured on August 13, 2015, she weighed 133 pounds and was injured while pushing, pulling, and heavy lifting in excess of 50 pounds and suffered a muscle strain in her left neck, shoulder, and upper back. He indicated that appellant failed physical therapy and then continued with a pain management, muscle relaxers, and anti-inflammatory medication regimen prescribed by him. Dr. Rahman indicated that, although there was no diagnosis code

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<sup>4</sup> Appellant has a prior claim for an August 13, 2015 traumatic injury, which OWCP accepted for left shoulder bursitis and rotator cuff strain under OWCP File No. xxxxxx025. OWCP has not administratively combined these claims.

documented in his December 30, 2015 report, she had exhibited a strain to the right side of her upper back, neck, and right shoulder. He recalled appellant explaining to him that, despite her weight lifting restrictions, her immediate supervisor had her do more physical work outside of her recommended restrictions. Dr. Rahman opined that she most likely had a permanent injury at this point in time. He noted that a magnetic resonance imaging (MRI) scan dated March 3, 2016 was attached, but it is not of record.

On June 11, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received an additional March 12, 2016 report from Dr. Rahman who continued to diagnose left and right shoulder pain.

A telephonic hearing was held before an OWCP hearing representative on November 7, 2018. Appellant testified that she had a prior approved claim for the left shoulder, she had returned to work with restrictions on August 13, 2015, and performed her duties until November 2015. She alleged that initially her supervisor did not honor her restrictions of no lifting, pushing, or pulling over five pounds. Appellant was required to pull APC's, which could weigh up to 700 pounds, to help her supervisor set up equipment. She related that she performed these duties for a period of time until her right shoulder gave out in November 2015. Appellant also testified that her duties changed to require the pushing of a button and mail sorting, which still placed pressure on her right shoulder. She worked on and off until she stopped work in January 2017. Counsel argued that the evidence submitted was sufficient to compel further development of the medical evidence. The hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated January 14, 2019, OWCP's hearing representative affirmed the May 22, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</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 period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>7</sup> *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 employee.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>10</sup> 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 factor(s).<sup>11</sup>

### ANALYSIS

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

OWCP received a series of reports from Dr. Rahman. In an undated report, Dr. Rahman explained that he had first examined appellant on August 14, 2015 and last treated her on July 5, 2016. He related that in August 2015 appellant's injury was to the left side of her neck, left shoulder, and left side of her upper back. However, after her return to work, appellant had a strain to the right side of her upper back, right side of her neck, and right shoulder. The Board has held, however, that 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, is sufficient to establish causal relationship.<sup>12</sup> Dr. Rahman's report is therefore insufficient to establish the claim.

In reports dated from November 17, 2015 through February 2, 2016, Dr. Rahman related that appellant had been compensating with her right arm/shoulder and back, following her left shoulder injury. 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.<sup>13</sup> Therefore, these reports from Dr. Rahman are also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence explaining a causal relationship between appellant's diagnosed conditions and the accepted employment factors, the Board finds that she has not met her burden of proof to establish the claim.

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<sup>8</sup> *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).

<sup>9</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>11</sup> *Id.*; *Victor J. Woodhams*, *supra* note 8.

<sup>12</sup> See *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>13</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

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 shoulder condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2020  
Washington, DC

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

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

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