

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

_____)	
T.S., Appellant)	
)	
and)	Docket No. 18-1315
)	Issued: May 5, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
New York, NY, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 June 20, 2018 appellant, through counsel, filed a timely appeal from a February 26, 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 to consider the merits of this case.³

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.*

³ The Board notes that following the February 26, 2018 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 left shoulder condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On April 12, 2016 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2016 she sustained a left shoulder injury, in the form of left shoulder pain, due to lifting while in the performance of duty. She stopped work on March 29, 2016 and requested continuation of pay.

In an April 14, 2016 development letter, OWCP requested that appellant submit evidence in support of her claim, including a physician's reasoned opinion addressing the relationship between her claimed medical condition and the reported employment incident. It also requested that she complete and return an attached questionnaire which posed various questions regarding the nature of her claimed injury and the course of her medical treatment. OWCP afforded appellant 30 days to submit the requested evidence.

In an April 23, 2016 response, appellant submitted a completed questionnaire in which she reported that on March 28, 2016 she felt pain in her left shoulder after she lifted two mail tubs (each weighing more than 25 pounds) to her mail case. She discussed her self-treatment regimen and explained that she delayed in filing a claim because her pain prevented her from visiting the claim office and she needed to obtain a report from her physician to submit with her claim.

In April 18, 2016 letters, the employing establishment controverted appellant's traumatic injury claim as well as her request for continuation of pay, noting that she reported to an attending physician on April 12, 2016 that she did not experience any trauma or particular accident at work. However, it advised that appellant's claim should be considered to be a claim for an occupational injury, rather than a traumatic injury.

Appellant submitted a March 30, 2016 note from Dr. Osiris Salcedo, a Board-certified internist, who indicated that appellant's absence was advised "due to injury or illness" until she was reevaluated on April 7, 2016. On April 7, 2016 Dr. Salcedo noted that "due to injury" appellant was excused from work until evaluated by an orthopedic physician. In an April 18, 2016 report, she advised that appellant complained of continuing left shoulder pain. Dr. Salcedo reported physical examination findings for the left shoulder of limited abduction and local tenderness, and she diagnosed left shoulder pain and sprain of the left rotator cuff capsule.

On April 12, 2016 Dr. George J. Zambetti, a Board-certified orthopedic surgeon, noted that appellant complained of experiencing an insidious onset of left subacromial shoulder pain beginning approximately two weeks prior. Appellant reported that she did not experience any trauma or particular accident at work. Dr. Zambetti noted that, upon physical examination of the left upper extremity, appellant exhibited pain but had good strength and very little restriction of range of motion (ROM). He diagnosed subacromial tendinitis/bursitis of the left shoulder. In an April 12, 2016 note, Dr. Zambetti advised that appellant could return to work in six weeks. In an attending physician's report (Form CA-20) dated April 12, 2016, he listed the date of injury as March 28, 2016, diagnosed subacromial tendinitis/bursitis of the left shoulder, and checked a box

marked “Yes” to indicate that her appellant’s condition was caused or aggravated by an employment activity. Dr. Zambetti opined that appellant could resume light-duty work on May 23, 2016.⁴ In an April 26, 2016 report, he noted in the “history of present illness” portion of the report that appellant’s “injury is a repetitive stress problem that was created by repetitive lifting at work” and opined that her condition was “clearly work related.” Dr. Zambetti reported findings on examination of severely limited ROM of the left shoulder with pain and he diagnosed subacromial tendinitis of the left shoulder.⁵

By decision dated May 25, 2016, OWCP denied appellant’s claim because she did not establish the factual component of fact of injury. It indicated that she provided conflicting accounts to her attending physicians regarding the cause of her left shoulder problems. OWCP found that the evidence of record was insufficient to establish that the claimed “injury and/or event(s) occurred.”⁶ It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 8, 2016 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. During the hearing held on February 14, 2017, appellant testified that her claim was for an occupational injury and not a traumatic injury. She testified that she had, on occasion, lifted items at work weighing 25 pounds or more since July 2014.

In a June 30, 2016 report, Dr. Salcedo noted that appellant reported picking up a bucket of mail on March 28, 2016 and immediately feeling a click in her left shoulder with pain. Findings on examination revealed tenderness of the left shoulder joint and decreased ROM of the left shoulder. Dr. Salcedo diagnosed left shoulder pain and sprain of the left rotator cuff capsule. In July 5 and 29, 2016 reports, she again diagnosed left shoulder pain and sprain of the left rotator cuff capsule.⁷

On July 19, 2016 appellant was treated for her left shoulder condition by Dr. Danilo Sotelo, a Board-certified orthopedic surgeon. She reported lifting a bucket at work on March 28, 2016 and experiencing a pop in her left shoulder. Examination of the left shoulder revealed restricted ROM, positive impingement sign, and subacromial tenderness. Dr. Sotelo noted that an MRI scan of the left shoulder revealed a labral tear and rotator cuff tendinosis, and diagnosed rotator cuff syndrome and other injury to the tendons of the rotator cuff of the left shoulder. He recommended that appellant undergo left shoulder surgery. On August 18 and October 6, 2016 Dr. Sotelo noted that physical examination of the left shoulder revealed limited ROM and he collectively diagnosed left shoulder pain and sprain of the left rotator cuff capsule and again recommended surgery. In

⁴ An April 19, 2016 magnetic resonance imaging (MRI) scan of the left shoulder revealed mild diffuse rotator cuff tendinosis without rotator cuff tear, mild acromioclavicular joint impingement, anterior labral tear, and no fractures or dislocations.

⁵ In an April 26, 2016 letter, Dr. Zambetti indicated that appellant was under his orthopedic care for a “workman’s compensation issue.”

⁶ The record also contains a May 26, 2016 decision containing the same text, but OWCP later indicated that the May 25, 2016 was the date of its decision initially denying appellant’s claim.

⁷ In the July 5, 2019 report, Dr. Salcedo listed the date of injury as March 28, 2016.

an October 25, 2016 report, he noted October 6, 2016 examination findings, diagnosed left shoulder pain, and found appellant totally disabled due to such pain.

On January 20, 2017 appellant was treated by Dr. Gabriel Dassa, a Board-certified orthopedic surgeon, who reported left shoulder findings of limited ROM, diffuse tenderness, and positive impingement sign. Dr. Dassa diagnosed left shoulder pain. In a February 16, 2017 letter, he indicated that appellant had been under his office's care for a March 28, 2016 injury and updated his diagnoses to include left shoulder anterior labral tear and mild diffuse left rotator cuff tendinitis. Dr. Dassa opined that appellant's condition was the result of working as a letter carrier for the past two and a half years in which her duties consisted of heavy lifting on a daily basis. Appellant reported lifting "3 buckets prior to the 2 buckets" weighing approximately 25 pounds each when she felt a pop in her left shoulder on March 28, 2016. Dr. Dassa indicated that, when an employee lifts heavy buckets of mail over a long period of time, these actions will cause wear and tear on the tendons and eventually cause tendons to tear. He noted that these tendons can get irritated or inflamed resulting in tendinitis and indicated, "[T]his is also a result of overuse of the arm." Dr. Dassa noted that an April 19, 2016 MRI scan of the left shoulder revealed mild diffuse rotator cuff tendinitis, anterior labral tear, and mild acromioclavicular joint impingement. He recommended arthroscopic surgery of the left shoulder.

In a February 1, 2017 report, Dr. Naglaa Hussein, a Board-certified physical medicine and rehabilitation physician, noted that appellant reported feeling left shoulder pain after lifting a heavy bucket at work a year prior. He reported restricted ROM of the left shoulder upon examination and diagnosed impingement syndrome and adhesive capsulitis of the left shoulder.⁸ In a February 14, 2017 report, Dr. Hussein diagnosed impingement syndrome of the left shoulder and adhesive capsulitis of the left shoulder. He listed the date of injury as March 28, 2016 and noted that the objective findings were consistent with the history of injury.

By decision dated April 6, 2017, OWCP's hearing representative affirmed the May 25, 2016 decision, as modified. The hearing representative determined that, based on appellant's testimony at the hearing, her claim should be treated as one for an occupational injury, not a traumatic injury. However, the claim remained denied because the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted factors of her federal employment, *i.e.*, lifting items at work weighing 25 pounds or more since July 2014.

On November 30, 2017 appellant, through counsel, requested reconsideration of the April 6, 2017 decision.

Appellant submitted a May 24, 2016 report from Dr. Zambetti who reported examination findings, including loss of left shoulder ROM with pain upon subacromial motion, and diagnosed subacromial tendinitis of the left shoulder. In a June 28, 2016 letter, Dr. Zambetti noted treating appellant conservatively for a workers' compensation injury to her left shoulder that "appeared to be subacromial tendinitis."

⁸ The case record contains the first page of a January 30, 2017 report which lists Dr. Hussein as a provider, but the report is incomplete and unsigned.

In March 2 and April 4, 2017 reports, Dr. Hussein reported findings that were similar to those contained in his prior reports. He diagnosed impingement syndrome of the left shoulder and adhesive capsulitis of the left shoulder. In the April 4, 2017 report, Dr. Hussein listed the date of injury as March 28, 2016 and noted that the objective findings were consistent with the history of injury.

In a May 3, 2017 report, Dr. Dassa noted that appellant reported a March 28, 2016 lifting incident. He diagnosed impingement syndrome of the left shoulder with rotator cuff tendinosis and left shoulder labrum tear. In another May 3, 2017 report and a May 25, 2017 report, he diagnosed left shoulder pain and impingement syndrome of the left shoulder. In the May 25, 2017 report, Dr. Dassa listed the date of injury as March 28, 2016 and noted that the objective findings were consistent with the history of injury. He returned appellant to work without limitations on May 9, 2017.

By decision dated February 26, 2018, OWCP denied modification of its April 6, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁹ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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 medical condition for which compensation is claimed is causally related to the employment injury.¹⁰ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹¹

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 identified employment factors.¹²

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ 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

⁹ *Supra* note 2.

¹⁰ *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).

¹¹ *K.V. and M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹² *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).

¹³ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.¹⁴ 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).¹⁵

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.

Appellant submitted a March 30, 2016 note from Dr. Salcedo in which she indicated that appellant's absence was advised "due to injury or illness" and an April 7, 2016 note in which she noted that "due to injury" appellant was excused from work until evaluated by an orthopedic physician. In an April 18, 2016 report, Dr. Salcedo diagnosed left shoulder pain and sprain of the left rotator cuff capsule. In June 30, July 5, and 29, 2016 reports, she again diagnosed left shoulder pain and sprain of the left rotator cuff capsule.¹⁶ However, these reports are of no probative value regarding appellant's claim for an occupational left shoulder injury because they do not contain an opinion on the cause of appellant's medical condition. 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 Therefore, these reports are insufficient to establish appellant's claim.

In an April 12, 2016 report, Dr. Zambetti listed the date of injury as March 28, 2016, diagnosed subacromial tendinitis/bursitis of the left shoulder, and checked a box marked "Yes" to indicate that appellant's condition was caused or aggravated by an employment activity. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹⁸ Dr. Zambetti provided no rationale for his opinion on causal relationship in this report. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.¹⁹ As such, Dr. Zambetti's April 12, 2016 report is insufficient to meet appellant's burden of proof.

In another April 12, 2016 report, Dr. Zambetti noted that appellant complained of experiencing an insidious onset of left subacromial shoulder pain beginning approximately two weeks prior. Appellant reported that she did not experience any trauma or particular accident at work. Dr. Zambetti diagnosed subacromial tendinitis/bursitis of the left shoulder. In an April 12, 2016 note, he advised that appellant could return to work in six weeks. Appellant also submitted a

¹⁴ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁵ *Id.*; *Victor J. Woodhams*, *supra* note 12.

¹⁶ In the June 30 and July 5, 2019 reports, Dr. Salcedo noted a reported date of injury of March 28, 2016.

¹⁷ *See L.F.*, Docket No. 19-1905 (issued April 10, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁸ *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁹ *Id.*

May 24, 2016 report in which Dr. Zambetti diagnosed subacromial tendinitis of the left shoulder, but it does not contain an opinion relative to causal relationship. As none of these reports contain an opinion on the issue of causal relationship they are of no probative value and are insufficient to establish appellant's claim.²⁰

In an April 26, 2016 report, Dr. Zambetti noted that appellant's "injury is a repetitive stress problem that was created by repetitive lifting at work" and opined that her condition was "clearly work related." He diagnosed subacromial tendinitis of the left shoulder. In an April 26, 2016 letter, Dr. Zambetti indicated that appellant was under his orthopedic care for a "workman's compensation issue." Although he opined that appellant sustained an occupational injury due to performing work duties over time, he did not provide a rationalized medical opinion which adequately explained the reasons for this opinion. Dr. Zambetti did not provide a discussion of appellant's work duties or explain how they could have been competent to cause or aggravate the diagnosed left shoulder conditions and, therefore, his reports are of limited probative value regarding causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.²¹ Therefore, the April 26, 2016 report and April 26, 2016 note are insufficient to establish appellant's claim. In a June 28, 2016 letter, Dr. Zambetti noted treating appellant conservatively for a workers' compensation injury to her left shoulder that "appeared to be subacromial tendinitis." Although Dr. Zambetti again indicated a work-related cause for appellant's condition in this letter, he did not provide a rationalized medical opinion on causal relationship and this report is of limited probative value.²²

In a July 19, 2016 report, Dr. Sotelo noted that appellant reported lifting a bucket at work on March 28, 2016 and experiencing a pop in her shoulder. He diagnosed rotator cuff syndrome and other injury to the tendons of the rotator cuff of the left shoulder. On August 18 and October 6, 2016 Dr. Sotelo collectively diagnosed left shoulder pain and sprain of the left rotator cuff capsule and recommended surgery. In an October 25, 2016 report, he diagnosed left shoulder pain, and found total disability due to such pain. However, these reports are of no probative value regarding appellant's claim for an occupational left shoulder injury because they do not contain an opinion on the cause of appellant's medical condition.²³

In a February 1, 2017 report, Dr. Hussein noted that appellant reported feeling left shoulder pain after lifting a heavy bucket at work a year prior. He diagnosed impingement syndrome and adhesive capsulitis of the left shoulder. In a March 2, 2017 report, Dr. Hussein also diagnosed impingement syndrome of the left shoulder and adhesive capsulitis of the left shoulder. These reports are of no probative value on appellant's claim for an occupational injury because Dr. Hussein did not provide an opinion on causal relationship.²⁴ In February 14 and April 4, 2017

²⁰ See *supra* note 18.

²¹ See *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

²² See *supra* note 22.

²³ See *supra* note 18.

²⁴ See *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

reports, Dr. Hussein diagnosed impingement syndrome of the left shoulder and adhesive capsulitis of the left shoulder, listed the date of injury as March 28, 2016, and noted that the objective findings were consistent with the history of injury. Although Dr. Hussein provided an ostensible opinion on causal relationship in these reports, they are of limited probative value in establishing appellant's claim because they do not contain a rationalized opinion on causal relationship.²⁵

In a February 16, 2017 letter, Dr. Dassa indicated that appellant had been under his office's care for a March 28, 2016 injury and had been diagnosed with left shoulder anterior labral tear and mild diffuse rotator cuff tendinitis. He opined that appellant's condition was the result of working as a letter carrier for the past two and a half years in which her duties consisted of heavy lifting on a daily basis. Dr. Dassa indicated that appellant reported lifting "3 buckets prior to the 2 buckets" weighing approximately 25 pounds each when she felt a pop in her left shoulder on March 28, 2016. He noted that, when an employee lifts heavy buckets of mail over a long period of time, these actions will cause wear and tear on the tendons and eventually cause tendons to tear. Dr. Dassa indicated that these tendons can get irritated or inflamed resulting in tendinitis and indicated, "[T]his is also a result of overuse of the arm." Although he opined that there was a work-related cause for appellant's condition in this letter, he did not provide a rationalized medical opinion on causal relationship and this letter is of limited probative value.²⁶ Dr. Dassa did not describe appellant's work duties other than to generally indicate that she engaged in heavy lifting and he did not adequately explain how these duties would have been competent to cause or aggravate the diagnosed conditions. His discussion of the mechanism of injury is vague in nature in that it is expressed in general terms and does not sufficiently reference appellant's specific medical findings. Moreover, Dr. Dassa's opinion is of limited probative value for the further reason that it is equivocal in nature as he suggested both an occupational and a traumatic cause for appellant's medical condition without providing adequate explanation.²⁷

In a January 20, 2017 report, Dr. Dassa had previously diagnosed left shoulder pain, but he provided no indication that a specific medical condition was related to employment factors. Similarly, in two May 3, 2017 reports, he collectively diagnosed impingement syndrome of the left shoulder with rotator cuff tendinosis, left shoulder labrum tear, and left shoulder pain. However, Dr. Dassa did not provide any opinion on causal relationship in these reports and these reports are of no probative value.²⁸ In a May 25, 2017 report, he diagnosed left shoulder pain and impingement syndrome of the left shoulder, listed the date of injury as March 28, 2016, and noted that the objective findings were consistent with the history of injury. Although Dr. Dassa suggested a work-related cause for the diagnosed conditions in his May 25, 2017 report, it is of

²⁵ See *G.R.*, Docket No. 19-0940 (issued December 20, 2018). The case record contains the first page of a January 30, 2017 report which lists Dr. Hussein as a provider, but the report is incomplete and unsigned. This document is of no probative value regarding the underlying medical issue of the present case because the Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). See *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²⁶ See *supra* note 22.

²⁷ See *E.B.*, Docket No. 18-1060 (issued November 1, 2018) (finding that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship).

²⁸ See *supra* note 18.

limited probative value in establishing appellant's claim because it does not contain a rationalized opinion on causal relationship.²⁹

Appellant also submitted several reports dated between August 9, 2017 and January 2, 2018 from Dr. Durbhaka who noted that she treated appellant for a right foot injury that appellant reported occurred due to twisting her right foot at work on August 8, 2017. These reports are of no probative value with respect to the present case as this case does not concern a claim for an August 8, 2017 traumatic injury.³⁰

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed conditions and the accepted factors of her federal employment, she has not met her 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.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 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

²⁹ See *supra* note 22.

³⁰ See *supra* note 18.