

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

Y.M., Appellant)	
)	
and)	Docket No. 19-1445
)	Issued: May 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Jenkintown, PA, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 24, 2019 appellant, through counsel, filed a timely appeal from an April 25, 2019 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 a right shoulder condition causally related to the accepted January 23, 2018 employment incident.

FACTUAL HISTORY

On February 2, 2018 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2018 she injured her right shoulder when lifting tubs and casing mail while in the performance of duty. In a February 2, 2018 narrative statement, she noted that on January 23, 2018 she felt a tight pull in her right shoulder as she was casing mail. Appellant also noted that on January 20 and 22, 2018 she worked with a truck that had an emergency brake which was very difficult to pull. She stopped work on January 23, 2018.³

The record contains an employing establishment authorization for medical attention form, dated January 23, 2018, which authorized appellant to seek medical treatment for right shoulder pain.

On February 8, 2018 OWCP received an unsigned and undated duty status report (Form CA-17) diagnosing right shoulder pain with an injury date of January 23, 2018.

In a development letter dated February 8, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to submit the necessary evidence.

In reports dated January 25 and 26 and February 1, 2, 6, 14, 15, and 28, 2018, chiropractors, Dr. Edward Ceranto and Dr. David J. Craven diagnosed right shoulder sprain/strain. Physical examination findings included tenderness and hypertonicity on palpation in the supraspinatus insertion, supraspinatus, and superior trapezius. In an addendum note of February 14, 2018, Dr. Ceranto noted that appellant had indicated that her injury occurred on January 20, 2018 when pulling the brake on her truck. Appellant had also noted that her symptoms were aggravated on January 23, 2018.

On February 20, 2018 appellant responded to OWCP. She noted that while casing mail and lifting tubs on January 23, 2018 she felt her right shoulder pulling and continually getting tighter. Appellant explained that on January 20 and 22, 2018 she had to push and pull on a tight emergency brake, and that she was pushing and pulling the tight brake at every stop. She indicated that she had a prior accepted claim from January 26, 2005 involving right shoulder impingement and surgery.

In a March 1, 2018 report, Dr. Maxwell Stepanuk, Jr., an osteopath specializing in orthopedic surgery, diagnosed right shoulder tendinitis and right shoulder impingement syndrome.

³ Appellant has a previously accepted right shoulder claim. OWCP assigned that claim File No. xxxxxx623 and accepted that appellant's right shoulder tendinitis and right shoulder impingement was due to a January 26, 2005 employment injury.

He noted that appellant had indicated that she began experiencing shoulder pain following driving a truck with a tight hand brake for two days beginning on January 20, 2018. On January 23, 2018 appellant developed severe right shoulder pain with overhead use of her shoulder and had been off work since then.

In a March 1, 2018 attending physician's report (Form CA-20), Dr. Stepanuk diagnosed right shoulder impingement and tendinitis and checked a box marked "yes" to the question of whether it was employment related and assigned work restrictions on an accompanying work capacity evaluation form (Form OWCP-5c).

In a March 5, 2018 report, Dr. Stephen P. Schmidt, an osteopath specializing in family medicine, diagnosed right shoulder tendinitis. He reported that appellant was injured at work on or about December 20, 2017. Dr. Schmidt also noted that appellant aggravated her previously injured and repaired right shoulder from pulling and pushing and was seen on multiple dates commencing January 23, 2018.

By decision dated March 16, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted January 23, 2018 employment incident.

OWCP thereafter continued to receive medical evidence.

In progress notes dated March 9 and 20, 2018, Dr. Craven noted examination findings and diagnosed right shoulder sprain/strain.

Dr. Stepanuk, in a March 15, 2018 report, diagnosed right shoulder tendinitis, right trapezius strain/sprain, and cervical strain/sprain based on injury history, examination findings, and review of x-ray interpretations. Examination findings included restricted right shoulder range of motion with pain, cervical spasm, cervical range of motion, and right trapezius spasm. He opined that appellant's preexisting right shoulder injury/repaired right shoulder was aggravated by employment activities performed on January 23, 2018, including pulling and pushing. In an April 2, 2018 report, Dr. Stepanuk diagnosed right trapezius myositis.

On March 23, 2018 appellant was seen by Dr. Mark Pearson, a chiropractor, who provided examination findings and diagnosed right shoulder strain/sprain.

On April 2, 2018 Dr. Schmidt released appellant to return to part-time work with restrictions effective April 3, 2018.

In a form dated March 29, 2018, but postmarked April 21, 2018, appellant requested review of the written record by an OWCP hearing representative.

In Form CA-17 reports dated April 4 and May 5, 2018, Dr. Schmidt released appellant to return to work with restrictions effective April 5, 2018.

By decision dated July 20, 2018, OWCP denied appellant's request for review of the written record by an OWCP hearing representative as untimely filed.

In an August 7, 2018 report, Dr. Schmidt diagnosed right trapezius and cervical sprains/strains, right shoulder tendinitis and impingement syndrome. He opined that appellant's right trapezius and cervical sprains/strains were directly caused by the accepted January 23, 2018 employment incident. Dr. Schmidt explained that she aggravated her prior injured/repared shoulder due to performing work duties including casing mail, as well as by pulling and pushing on a stiff emergency brake.

On August 10, 2018 appellant requested reconsideration.

On August 24, 2018 OWCP received March 27 and August 7, 2018 reports from Dr. Schmidt, which was repetitive of prior reports.

By decision dated November 5, 2018, OWCP denied modification.

On January 25, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a report dated January 23, 2019, Dr. Schmidt opined that appellant's right shoulder injury had been directly caused by repetitive use of a hand brake in her work. He described the mechanism of injury as pulling a hand brake following repetitive stretching and reaching. Dr. Schmidt explained that appellant had a prior work-related right shoulder injury, which required surgery in 2011 and had resulted in a weakening of the shoulder.

By decision dated April 25, 2019, OWCP denied modification finding the medical evidence of record was insufficient to establish that the diagnosed condition had been caused or aggravated by the accepted January 23, 2018 employment incident. It noted that Dr. Schmidt had identified two distinct causes, the repetitive motions and activities of appellant's employment over time, and her operation of a handbrake. However, the alleged event of January 23, 2018 only referred to the lifting of tubs and casing mail.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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 *Supra* note 2

⁵ *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.⁶ 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.⁷

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁸ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion as to whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹³ 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).¹⁴

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-noted injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that this case is not in posture for a decision.

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1599 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *J.P.*, *supra* note 5; *L.T.*, *supra* note 9; *Shirley A. Temple*, 48 ECAB 404 (1997).

¹² *E.M.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁴ *Id.*; *Victor J. Woodham*, 41 ECAB 345 (1989).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

Appellant filed a Form CA-1 alleging a January 23, 2018 traumatic injury arising from her employment duties on January 23, 2018 involving casing mail and lifting tubs of mail. However, in an accompanying narrative statement, she also alleged that her injury was due in part to pulling on very tough emergency brake on January 20, and 22, 2018. Appellant also noted that she had a prior accepted claim for right shoulder impingement and surgery. In response to OWCP's development letter, she again clarified that her current claim was related to both the pulling of the emergency hand brake on January 20, and 22, 2018, as well as her repetitive lifting and casing mail on January 23, 2018. The Board therefore finds that appellant indicated a traumatic injury by filing a Form CA-1, but described an occupational disease.¹⁶ Under FECA, although it is the employee's burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence.¹⁷ It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim form filed.¹⁸ OWCP's procedures provide that if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, it should make a determination as to whether the correct claim was established and, if not, it should convert the claim to the proper type of claim, and notify the claimant and employing establishment (and any representative, if applicable) of the conversion.¹⁹ Appellant's claim and subsequent statements relate circumstances of an occupational rather than traumatic injury.

The Board further finds that the medical evidence of record also provides support for a cumulative injury occupational disease claim. The reports from Drs. Schmidt and Stepanuk attributed appellant's right shoulder conditions to her use of a tight hand brake on January 20 and 22, 2018, as well as to her repetitive lifting and casing mail on January 23, 2018. However, OWCP continued to adjudicate and deny appellant's claim because she filed the claim as a traumatic injury as it had allegedly occurred within a single workday or shift. Under the circumstances of the case, appellant is alleging an occupational disease injury resulting from her work environment over a period longer than a single workday or shift.

As noted, under OWCP File No. xxxxxx623 OWCP accepted that appellant's right shoulder tendinitis and right shoulder impingement was due to a January 26, 2005 employment injury. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.²⁰ For example, if

¹⁶ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁷ See *G.S.*, Docket No. 16-0908 (issued October 26, 2017); *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

¹⁸ *Id.*

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2)(b) (June 2011). *S.N.*, Docket No. 12-1814 (issued March 11, 2013).

²⁰ *Id.* at Chapter 2.400.8(c) (February 2000).

a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.²¹

Upon remand OWCP shall administratively combine the claim files and properly adjudicate the claim as an occupational disease claim. After this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: May 6, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

²¹ *Id.*; *N.S.*, Docket No. 19-0232 (issued July 11, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).