

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

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<b>L.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1981</b>
	)	<b>Issued: May 11, 2020</b>
<b>U.S. POSTAL SERVICE, DAYTON</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Dayton, OH, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On September 30, 2019 appellant filed a timely appeal of the June 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record provided to the Board includes evidence received after OWCP issued its June 13, 2019 decision. 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 bilateral shoulder injuries causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On March 12, 2019 appellant, then a 62-year-old expeditor, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her left rotator cuff due to factors of her federal employment. She noted that she first became aware of her condition and realized it was caused or aggravated by her federal employment on March 6, 2019. Appellant explained that she had been an expeditor for 27 years, which required her to perform a significant amount of pushing and pulling of equipment, which could weigh anywhere from 230 to 800 pounds. She stopped work on March 6, 2019 and returned the next day.

In an April 4, 2019 letter, the employing establishment controverted appellant's claim. It provided that she had been employed with the employing establishment for 34 years and that employees are reminded all the time that it is unsafe to pull the equipment. The employing establishment reasoned that because appellant had been employed for 34 years, she "should have known better," and therefore had not established fact of injury.

In a development letter dated April 8, 2019, OWCP informed appellant that she had not submitted evidence to establish that she experienced the employment factors alleged to have caused her injury. 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 her physician, providing a firm diagnosis of a condition and a rationalized opinion on how appellant's employment duties caused or aggravated her condition. It afforded him 30 days to provide the necessary information.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of her statements, a description of the tasks she performed which required physical exertion, and a description of precautions taken to minimize effects of the employment activities. It afforded the employing establishment 30 days to submit the requested information.

In a May 18, 2018 duty status report (Form CA-17), Dr. Isaac Corney, Board-certified in family medicine, provided work restrictions for appellant related to a bilateral hernia she sustained due to repetitive lifting.

In an April 22, 2019 progress note, Dr. James Klosterman, a Board-certified orthopedic surgeon, noted that appellant presented with bilateral shoulder pain, which she alleged began last year and was caused by the pushing and pulling work she performs at her job. On review of x-rays of appellant's shoulders, he found no acute bony abnormalities. Dr. Klosterman diagnosed shoulder impingement syndrome of the left and right shoulders and recommended that she undergo a magnetic resonance imaging (MRI) scan for further evaluation.

In response to OWCP's questionnaire, appellant submitted an April 23, 2019 statement in which she detailed the related employment activities as moving equipment off of trucks daily, two or three times a week. She provided that the weight of the equipment she pushes and pulls varies depending on the amount of mail she is required to move. Appellant also claimed that she was never instructed or given written procedures instructing her to never pull the equipment. She further asserted that she had observed other employees and supervisors pulling the equipment on a daily basis.

Appellant also provided position descriptions for her duties as a general expeditor and for a mail handler assistant.

By decision dated June 13, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>3</sup> 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.<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, 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 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>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</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>7</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.<sup>8</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 factors.<sup>9</sup>

### ANALYSIS

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

Dr. Klosterman's noted in an April 22, 2019 progress note that appellant was experiencing bilateral shoulder pain that began a year prior and was caused by the pushing and pulling she performed at work. He diagnosed shoulder impingement syndrome of the left and right shoulders and recommended she undergo an MRI for further evaluation. Although his notes generally supported causal relationship between appellant's shoulder impingements and the accepted factors of her federal employment, Dr. Klosterman did not provide sufficient rationale explaining these conclusions. Without explaining how the repetitive movements involved in appellant's employment duties caused or contributed to her injuries, his opinion is of limited probative value.<sup>10</sup> Further, Dr. Klosterman's conclusions are largely based on appellant's opinion as to what caused her injuries, rather than by his independent analysis of the cause of her conditions.<sup>11</sup> A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted employment factors resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.<sup>12</sup> Accordingly, the Board finds that Dr. Klosterman's progress notes are of little probative value on the issue of causal relationship.

The remaining medical evidence consists of a May 18, 2018 Form CA-17 from Dr. Corney concerning a bilateral hernia condition. As this evidence addresses a condition unrelated to appellant's shoulder conditions, the Board finds that Dr. Corney's Form CA-17 is of no probative value on the issue of causal relationship between appellant's shoulder conditions and her accepted employment factors.

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated her shoulder impingement syndrome, appellant has not met her burden of proof to establish that her condition is causally related to the accepted factors of her federal employment.

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<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>9</sup> *Id.*; *Victor J. Woodhams*, *supra* note 6.

<sup>10</sup> *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>11</sup> *See D.L.*, Docket No. 15-0866 (issued November 23, 2015); *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

<sup>12</sup> *See Y.T.*, Docket No. 17-1559 (issued March 20, 2018).

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 injuries causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 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