

ISSUE

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

FACTUAL HISTORY

On May 26, 2016 appellant, then a 59-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right torn rotator cuff due to factors of her federal employment.³ She noted that she first became aware of her condition and realized its relation her federal employment on December 9, 2015. Appellant explained that she delivered mail from a right-hand drive vehicle and placed her arm in and out of the window to open and close mailbox doors for approximately 500 daily deliveries. She stopped work on December 23, 2015.

In a narrative statement dated December 19, 2015, appellant explained that on December 9, 2015 she extended her right arm to place two letters inside a mailbox and felt a stinging sensation in her upper arm. She noted that she had never experienced an issue with her right shoulder before. Appellant sought treatment on that date, but was unable to see a physician because the paperwork provided by her supervisor did not contain sufficient information to bill the visit as a workers' compensation claim. She further explained that on December 15, 2015 she was examined by a physician and referred for a magnetic resonance imaging (MRI) scan.

In support of her claim, appellant submitted treatment notes from Dr. Abayev relating a diagnosis of right rotator cuff syndrome. In a December 16, 2015 treatment note, Dr. Abayev related that she worked for the employing establishment and he explained that she had been performing repetitive motions with her right arm for a long time. He indicated that on December 9, 2015, when appellant tried to lift her arm to place mail into a mailbox, she felt sudden pain in her upper right shoulder. Appellant reported decreased range of motion (ROM) in her right shoulder and pain radiating to her neck and across her collar bone. She was referred for an MRI scan.

On December 23, 2015 Dr. Abayev held appellant off work from December 23, 2015 through January 3, 2016. In a January 5, 2016 work excuse note, he placed her off work from January 4 to 11, 2016.

³ The record reflects that appellant previously filed a traumatic injury claim (Form CA1) on December 31, 2015 for right shoulder pain due to repetitive motion. OWCP assigned OWCP File No. xxxxxx696 and, by decision dated June 14, 2017, it denied the claim. Appellant timely appealed the decision and (in the November 2, 2018 decision, the Board found that she had not met her burden of proof to establish right shoulder conditions causally related to the accepted December 9, 2015 employment incident. The Board explained that reports from the treating physician, Dr. Nison Abayev, a Board-certified family practitioner, were insufficient to establish that appellant's diagnosed right shoulder conditions were causally related to the accepted December 9, 2015 employment incident. Docket No. 17-1547 (issued November 2, 2018). Further development of the claim resulted in OWCP denying appellant's request for reconsideration in a December 14, 2018 decision. Appellant timely appealed to the Board, which found that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). Docket No. 19-0672 (issued September 11, 2019). The current claim has been consolidated with OWCP File No. xxxxxx696, with the latter serving as the master file.

In a February 10, 2016 report, Dr. Abayev noted that appellant presented for follow up of right rotator cuff tear and that she brought in paperwork from OWCP which indicated that “the [physician] has not explained how lifting your arm to mail in or mailbox would have caused your medical condition.” Dr. Abayev related, “Well, I believe [that] we can give them explanation how it happened. As per patient’s description, [she] lifts arm with the mail and inserts it in the mailbox. Constant repetitive motions day in and day out caused sequential injury to the supraspinatus tendon to the point that small partial ruptures continued to progress to the point of complete rupture. This caused sudden onset of worsening of the pain with [loss] of [ROM] and caused traumatic pain.” Dr. Abayev diagnosed right rotator cuff syndrome and tendinitis.

In a February 15, 2016 work excuse, Dr. Kevin Harreld, a Board-certified orthopedic surgeon, diagnosed right supraspinatus tear and placed appellant off work from February 15 to March 28, 2016.

In a March 24, 2016 work excuse, Dr. Harreld indicated that appellant would undergo right shoulder rotator cuff repair that day. He noted that he anticipated that she would continue to be off work for four months. Dr. Harreld continued to submit progress reports following appellant’s arthroscopic procedure.

In a development letter dated May 31, 2016, OWCP informed appellant of the deficiencies of her claim. 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 appellant’s 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 her 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.

OWCP subsequently received reports dated May 3 and June 14, 2016 from Dr. Harreld, which noted appellant’s right rotator cuff repair of the right shoulder. On June 20, 2016 Dr. Harreld opined that, based upon the history provided, “there appears to be a direct chronological relation and causal relationship to [appellant’s] overhead work injury on [December 9, 2015] and her resulting rotator cuff tear.”

In a June 15, 2016 report, Dr. Abayev noted the dates on which he previously treated appellant. He explained that on December 15, 2015 appellant indicated that, while placing mail into the mailbox on December 9, 2015, she felt what she described as a “wasp sting” in her right upper arm; however, he could not treat her without a claim number. She returned on December 23, 2015 with a claim number, and she was diagnosed with rotator cuff tendinitis. Dr. Abayev noted that she informed him that she had worked for the employing establishment for 19 years, 6 days a week, carried the same mail route for over 15 years, and had 552 deliveries per day. He explained that appellant reached mailboxes from the right side of her vehicle and opined that “[r]epetitive

motion of delivering mail for the past 15 years is obviously a contributing and aggravating factor for [appellant's] medical condition.” Dr. Abayev noted that he ordered an MRI scan to confirm his diagnosis and the MRI scan revealed a supraspinatus tendon tear, warranting a referral to an orthopedic surgeon.

Appellant provided a June 16, 2016 response to OWCP's development questionnaire. She described her employment duties. Appellant noted that she had “no prior pain in [her] right shoulder” until December 9, 2015, when she was reaching to put mail in a mailbox and “felt a sharp pain in [her] right shoulder” She explained that she was told that the incident was a traumatic injury and an accident report was filed at that time.

In a June 13, 2016 statement, W.F., the employing establishment postmaster, noted that on December 9, 2015 appellant called to notify him that she felt a sharp pain in her right shoulder while delivering mail to a curbside box. Appellant completed her route and, upon her return, she completed a form with the assistance of the safety office. The form “referenced that the cause was repetitive motion.” W.F. explained that the safety officer advised appellant to file a traumatic injury claim because she had no prior pain or issues with her shoulder. W.F. noted that the traumatic claim was denied, and that she was misadvised as to which claim to file because there was no injury or pain prior to December 9, 2015.

By decision dated August 17, 2016, OWCP denied appellant's occupational disease claim. It found that the evidence of record was insufficient to establish that the events occurred as described. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 8, 2016 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 15, 2019. The hearing representative held the case open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated July 30, 2019, an OWCP hearing representative modified the August 17, 2016 decision to reflect that appellant had established that she performed repetitive motions with her right shoulder while delivering mail for the past 15 to 20 years. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between appellant's medical condition and 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,⁴ 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

⁴ See *L.M.*, Docket No. 19-1981 (issued May 11, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

related to the employment injury.⁵ 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.⁶

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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁹ 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.¹⁰

ANALYSIS

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

In his February 10, 2016 report, Dr. Abayev noted appellant's repetitive work activity which required that she lift her arm while holding mail and reach to insert the mail into the mailbox. He explained that "[c]onstant repetitive motions day in and day out caused sequential injury to the supraspinatus tendon to the point that small partial ruptures continued to progress to the point of complete rupture." Dr. Abayev explained that this progression then caused appellant's sudden onset of worsening of the pain with loss of ROM. In his June 15, 2016 report, he noted that she had worked for the employing establishment for 19 years, 6 days a week, carried the same mail route over 15 years, and had 552 deliveries per day. Dr. Abayev explained that appellant reached mailboxes from the right side of the vehicle and opined that the repetitive motion of delivering

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *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).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*; *Victor J. Woodhams*, *supra* note 7.

mail for the past 15 years was the “obvious contributing and aggravating factor for [appellant’s] medical condition.”

Dr. Abayev’s reports provide a pathophysiological explanation as to how appellant’s accepted factors of federal employment caused or aggravated her diagnosed right rotator cuff tear. The Board has long held that it is not necessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹¹ Although not fully-rationalized, Dr. Abayev’s reports are sufficient to require further development of appellant’s claim.¹²

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant’s federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Abayev. Following this and other such 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.

¹¹ See *S.M.*, Docket No. 19-1634 (issued August 25, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹² *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹³ *Id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁴ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 24, 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