



## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a right upper extremity condition causally related to the accepted November 6, 2017 employment incident.

## **FACTUAL HISTORY**

On December 4, 2017 appellant, then a 63-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2017 he sustained a torn rotator cuff of the right shoulder when he unloaded trailers and trucks and sorted letter flats while in the performance of duty. He stopped work on November 7, 2017.

Dr. Howard M. Pecker, a Board-certified orthopedic surgeon, completed a form on November 6, 2017 recommending that appellant remain off work until December 10, 2017. He diagnosed a torn right shoulder cuff. On December 7, 2017 Dr. Pecker again recommended that appellant remain off work pending authorization for surgery.

In a development letter dated January 31, 2018, OWCP informed appellant that he had submitted insufficient factual and medical evidence to establish his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant at least 30 days to respond.

A magnetic resonance imaging (MRI) scan of appellant's right shoulder dated October 18, 2017 demonstrated grade 1 shoulder impingement syndrome with moderate tendinopathy/tendinitis of the supraspinatus tendon and a small joint effusion. There was no evidence of rupture or tear of the remaining rotator cuff muscles and tendons.

In a report dated October 26, 2017, Dr. Pecker related that appellant had experienced right shoulder pain for the past two and a half weeks. He reported that appellant worked as a sorter at the employing establishment, and sorted over 6,000 pieces of mail per day. On physical examination Dr. Pecker observed a mild-to-moderately positive sign at the greater tuberosity of the right shoulder, and a mildly positive drop sign. He reviewed x-rays of the right shoulder and noted impressions of right shoulder impingement, tenosynovitis, biceps tendinopathy, and acromioclavicular arthritis. Dr. Pecker recommended work restrictions.

On November 6, 2017 Dr. Pecker reported that appellant continued to work at sorting and experienced pain with attempted forward elevation of the shoulder, which, he added in an addendum, that appellant stated began when he moved containers while unloading a truck and felt a pain and a "pop" in his shoulder. He related appellant's physical examination findings and diagnosed right shoulder impingement with a bursal-sided rotator cuff tear and secondary shoulder pain. Dr. Pecker performed a shoulder injection and recommended that appellant remain off work.

In a duty status report (Form CA-17) dated February 22, 2018, Dr. Pecker recommended that appellant remain off work due to a diagnosis of right rotator cuff tear.

In an attending physician's report (Form CA-20) dated February 27, 2018, Dr. Pecker diagnosed right shoulder impingement and a right shoulder rotator cuff tear, and checked a box marked "Yes" to indicate his opinion that the conditions were employment related. He related that appellant had stated that the injury occurred when he began moving containers while unloading a

truck. Dr. Pecker noted that appellant had been disabled from October 26, 2017 through February 22, 2018.

By decision dated March 8, 2018, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish that his diagnosed medical conditions were causally related to the accepted employment incident of November 6, 2017.

On April 23, 2018 OWCP received appellant's response to its development letter. Appellant indicated that, on November 6, 2017 after unloading approximately twenty-five containers, he was pulling a carrier-routed flat postal container with a bad wheel to the other side of a building when he felt something tear in his right shoulder. He alleged that the stress and strain of pulling tons of mail containers into the building by himself on that date caused his right shoulder muscles to tear off the shoulder bones, which resulted in a rotator cuff tear.

By letter dated March 23, 2018, Dr. Pecker explained that appellant complained of pain in his shoulder after an episode of overuse when he sorted over 6,000 pieces of mail in a single day and had to unload seven trucks by himself, which involved prolonged overhead use and forward elevation of his right shoulder. A subsequent MRI scan demonstrated evidence of radiculopathy and a bursal-sided rotator cuff tear. Dr. Pecker opined that it was reasonable to conclude that sorting thousands of letters and magazines on a daily basis to such a high degree of stress and strain, coupled with appellant's age and lifelong occupational use of the shoulder, contributed to his current condition of right shoulder impingement and bursal-sided rotator cuff tear.

In a form report dated April 9, 2018, Dr. Pecker indicated that appellant's condition commenced as of October 2017. He noted that appellant was unable to perform job functions due to limited use of the right arm and shoulder.

On April 23, 2018 appellant requested reconsideration of OWCP's March 8, 2018 decision.

By decision dated July 18, 2018, OWCP denied modification of its March 8, 2018 decision.

In office notes dated July 26, 2018, Dr. Pecker related that appellant was approximately one month post surgery for labral repair and biceps tenodesis. He explained that the biceps tenodesis was performed because patients with rotator cuff tears have associated biceps pathologies, as the biceps passes over portions of the rotator cuff, and that this surgical technique was commonly used in patients of appellant's age. Dr. Pecker noted that this procedure was also performed as a treatment for labral tearing, which was present at the time of surgery. Appellant described the incident of November 6, 2017 to Dr. Pecker, stating that appellant sustained his condition on that date when a heavy cart suddenly jammed from a broken wheel as he was pulling it, which caused "eccentric loading" of his right arm. At that time, his symptoms, which were mild before the injury, suddenly became more severe and consistent with "an acute on chronic tear." On physical examination of the right shoulder, Dr. Pecker observed supple forward elevation to 110 degrees and external to neutral. He stated that appellant was healing normally status post surgery.

On September 6, 2018 appellant was again seen by Dr. Pecker for his right shoulder condition. He reported improvement with therapeutic exercise and range of motion. Dr. Pecker related appellant's current physical examination findings. He diagnosed stiffness post-biceps tenodesis for a labral tear of the right shoulder. Dr. Pecker noted that there was some question as

to how “eccentric loading” caused a tear in the labrum. He explained that the mechanism for the tear was a contraction of the biceps muscle against the biceps tendon, which subsequently tore the labrum where it was attached. Dr. Pecker stated that “eccentric loading” was a known causative factor for these types of tears as it “causes excess muscle loading without the flex of release which might normally occur to prevent injury. This is a kind of direct causation and not an aggravation, acceleration, or precipitation.” He concluded that the precipitating factors of mail handling may have predisposed appellant to the injury, although the mechanism described was sufficient for a sole cause.

On September 20, 2018 appellant, through counsel, requested reconsideration of OWCP’s July 18, 2018 decision.

By decision dated December 19, 2018, OWCP denied modification of its July 18, 2018 decision. It found that Dr. Pecker had not differentiated between the effects of appellant’s preexisting shoulder condition and the symptoms related to the incident of November 6, 2017.

By letter dated July 16, 2019, Dr. Pecker noted that he had been asked to provide sufficient differentiation between appellant’s preexisting condition and appellant’s condition after November 6, 2017, at which time he was pulling a fully-loaded 1,200-pound flats container off of a truck. He noted that appellant’s October 18, 2017 right shoulder MRI scan demonstrated no gross evidence of labral tear and no evidence of rotator cuff rupture or tear. At the time of appellant’s surgery on June 20, 2018 it was noted that he had a torn labrum anteroinferiorly and superiorly, which were repaired at the time of surgery. Dr. Pecker stated that because the preinjury MRI scan did not show the labral tear, and the postinjury surgery revealed a labral tear, it was his opinion within a reasonable degree of medical certainty that the incident of November 6, 2017 was the proximate cause of the labral tear and, absent surgery, resulted in a permanent injury to the right shoulder. He opined that the momentum of a 1,200-pound cart was sufficient to cause failure in the tissue of the labrum when the moving cart came to a stop and appellant, already applying maximal force, was subject to the eccentric loading of a type that is known to cause soft-tissue injury in the shoulder, as his body weight and the weight of the cart were going in opposite directions, which caused forceful traction on the shoulder and labrum.

On July 30, 2019 appellant, through counsel, requested reconsideration of OWCP’s December 19, 2018 decision.

By decision dated August 5, 2019, OWCP denied modification of its December 19, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including 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,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

any disability or medical 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 upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>8</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

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

On October 26, 2017 Dr. Pecker explained that appellant began to complain of pain in his shoulder after an episode when he sorted over 6,000 pieces of mail in a single day and had to unload seven trucks by himself, which involved prolonged overhead use and forward elevation of his right shoulder. On July 26, 2018 appellant described the incident of November 6, 2017 to Dr. Pecker, stating that a heavy cart suddenly jammed from a broken wheel as appellant was pulling it, which caused eccentric loading of his right arm. Dr. Pecker related that at that time, appellant's symptoms, which were mild before the injury, suddenly became more severe and consistent with an acute on chronic tear. On September 6, 2018 he explained that the mechanism for appellant's tear was a contraction of the biceps muscle against the biceps tendon, which subsequently tore the labrum where it was attached. Dr. Pecker stated that "eccentric loading" causes excess muscle loading without the flex of release which might normally occur to prevent injury. This is a kind of direct causation and not an aggravation, acceleration, or precipitation." He concluded that, while the precipitating factors of mail handling may have predisposed appellant to the injury, the mechanism described was sufficient for a sole cause for appellant's condition.

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<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

On July 16, 2019 Dr. Pecker further explained that appellant had an MRI scan of his right shoulder on October 18, 2017 which demonstrated no gross evidence of labral tear and no evidence of rotator cuff rupture or tear. At the time of appellant's surgery on June 20, 2018 it was observed that he had a torn labrum anteroinferiorly and superiorly, which were repaired at the time of surgery. Dr. Pecker stated that because the preinjury MRI scan did not show the labral tear, and the postinjury surgery revealed a labral tear, it was his opinion within a reasonable degree of medical certainty that the employment incident of November 6, 2017 was the proximate cause of the labral tear and, absent surgery, resulted in a permanent injury to the right shoulder. He opined that the momentum of a 1,200-pound cart was sufficient to cause failure in the tissue of the labrum when the moving cart came to a stop. Dr. Pecker explained that appellant, already applying maximal force, was subject to the "eccentric loading" of a type that is known to cause soft-tissue injury in the shoulder, as his body weight and the weight of the cart were going in opposite directions, which caused forceful traction on the shoulder and labrum.

The Board finds that these reports from Dr. Pecker are sufficient to require further development of the medical evidence. Dr. Pecker is a Board-certified physician in orthopedic surgery, who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship, and he provided a comprehensive understanding of the medical record and case history. His reports suggest a pathophysiological explanation as to how appellant's unloading of a heavy cart from a truck on November 6, 2017 resulted in his diagnosed right upper shoulder condition. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>11</sup> Dr. Pecker provided a well-rationalized and logical opinion that differentiated appellant's condition alleged to have been caused or aggravated by the employment incident of November 6, 2017 from his preexisting symptoms. Accordingly, his medical opinion is sufficient to require further development of appellant's claim.<sup>12</sup>

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.<sup>13</sup> OWCP has an obligation to see that justice is done.<sup>14</sup>

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed right shoulder conditions were causally related to or aggravated by the accepted employment incident of November 6, 2017, or any other factors of his federal employment. If the physician opines that the diagnosed conditions

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<sup>11</sup> *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.

<sup>12</sup> *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).

<sup>13</sup> *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>14</sup> *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).

are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Pecker. After such further development of the case record as OWCP deems necessary, it 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 August 5, 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: October 28, 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