

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 2, 2019 appellant, then a 64-year-old contract representative, filed an occupational disease claim (Form CA-2) alleging that she developed a sharp pain in her shoulders due to factors of her federal employment, which included sitting at her desk for a prolonged period of time typing for 10 hours per day. She indicated that she previously underwent bilateral shoulder surgery years ago for a work-related injury with a private sector employer, but her physician determined that her current condition did not result from the previous injury. Appellant also explained that she delayed filing a claim because her physician had to first determine whether her symptoms were from the previous injury. She noted that she first became aware of her condition and realized its relationship to her federal employment on June 12, 2019. Appellant did not stop work.

In an August 13, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish 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 afforded appellant 30 days to respond.

In an August 16, 2019 duty status report (Form CA-17), a nurse practitioner diagnosed right shoulder impingement syndrome, pain, and strain. She released appellant to work without restrictions, but noted that appellant would need assistance pulling and pushing her work chair and reaching above shoulder.

In an August 20, 2019 attending physician's report (Form CA-20), Dr. Kendrick Joyce, an anesthesiology specialist, noted that appellant was seen for a right shoulder injury developed while working. He indicated that she was reaching above her head to get her keyboard when she felt a twinge and pain in her right shoulder that continued as she typed. Dr. Joyce noted that appellant had no preexisting injury or disease. He noted that she had right shoulder tenderness to palpation anterior aspect of the shoulder and trapezius muscle. Dr. Joyce diagnosed right shoulder pain, strain of an unspecified muscle, fascia, or tendon of upper shoulder area, and right shoulder impingement syndrome.³ He concluded that appellant suffered an occupational injury on June 12, 2019 directly related to factors of her federal employment.

In an August 29, 2019 response to OWCP's questionnaire, appellant noted that the employment-related activities that she believed contributed to her condition included typing on a computer and using a telephone for over five years in conditions that were cold and uncomfortable at times. She indicated that she performed her job for 9 to 11 hours a day. Appellant asserted that she was sitting and typing when she felt a sharp pain going down her right shoulder. She explained that she initially suspected that her symptoms might be from a prior injury from 2005. Appellant further explained that the pain did not go away even after receiving an injection in the shoulder. She asserted that when she did things continuously the pain was worse, but she felt a little better

³ Dr. Joyce also diagnosed a left ankle sprain with pain and localized edema.

when she took a brief break from sitting and typing. Appellant noted that she previously had bilateral carpal tunnel surgery and bilateral shoulder surgery.

By decision dated September 16, 2019, OWCP denied appellant's claim finding that she had not submitted evidence containing a medical diagnosis in connection with factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish that she sustained an injury as defined by FECA.

In a September 13, 2019 Form CA-17 report, the nurse practitioner reiterated the prior diagnoses.

Appellant submitted a September 26, 2019 Form CA-20 report from Dr. Joyce in which he again diagnosed right shoulder pain, strain of an unspecified muscle, fascia, or tendon of upper shoulder area, and right shoulder impingement syndrome.

On October 7, 2019 appellant requested reconsideration.

By decision dated October 31, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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,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 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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

⁴ *Supra* note 1.

⁵ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ 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.¹⁰

In a case in which 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-related injury or disease and the preexisting condition.¹¹

ANALYSIS -- ISSUE 1

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

In his August 20, 2019 Form CA-20 report, Dr. Joyce noted appellant's complaint of a right shoulder injury that she developed on June 6, 2019 while at work. He diagnosed right shoulder pain, strain of an unspecified muscle, fascia, tendon of upper shoulder area, and right shoulder impingement syndrome. Thus, the Board finds that appellant has met her burden of proof to establish a diagnosed medical condition.¹²

Therefore, the September 16, 2019 decision is set aside and the case is remanded for consideration of the medical evidence on the issue of causal relationship. Following such further development as may be deemed necessary OWCP shall issue a *de novo* decision.¹³

CONCLUSION

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

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹² *Supra* note 8.

¹³ In light of the disposition as to Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 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: September 23, 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