

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

M.A., Appellant)	
)	
and)	Docket No. 19-0905
)	Issued: January 26, 2021
U.S. POSTAL SERVICE, COVINGTON)	
STATION POST OFFICE, Covington, WA,)	
Employer)	
)	

Appearances:
Coby Jones, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 22, 2019 appellant, through her representative, filed a timely appeal from a September 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).²

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 Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated July 21, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0905 (issued July 21, 2020).

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period May 20 to August 15, 2017, causally related to her accepted employment injury.

FACTUAL HISTORY

On September 5, 2017 appellant, then a 64-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained severe degenerative right shoulder arthropathy due to factors of her federal employment. She noted that she first became aware of her claimed condition on May 2, 2016 and realized its relation to her federal employment on August 24, 2017. On the reverse side of the claim form, appellant's supervisor reported that appellant had "not worked in a long time."

In an August 18, 2017 narrative statement, appellant related that she had previously filed a traumatic injury claim (Form CA-1) for a May 20, 2017 injury to her right shoulder under OWCP File No. xxxxxx938, however, OWCP denied that claim.⁵ She explained that she had undergone surgery to her left shoulder and since her return to work on May 2, 2016 with restrictions, she had to rely more on her right arm to perform her job duties. Appellant noted that her right shoulder was painful and worsening and that since she lifted a tray of mail on May 20, 2017 it was impossible to use her arm in any functional capacity. She described in detail job duties she had performed as a letter carrier for the past 27 years and noted that most of her work was done with her right arm and involved reaching, grabbing, swiping, unlocking doors, pulling doors, extending and pulling, and carrying heavy parcels.

A May 20, 2017 x-ray of appellant's right shoulder read by Dr. Patrick Bacon, a Board-certified diagnostic radiologist, revealed findings suggestive of rotator cuff injury and advanced acromioclavicular and advanced glenohumeral joint suggestive of degenerative joint disease.

In a May 26, 2017 report Sharon Lemoine, an advanced registered nurse practitioner, indicated that appellant was treated on that date in the emergency department and that appellant should be off work from May 26 to 27, 2017. She also noted that appellant was encouraged to seek further medical evaluation and release to work.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the September 24, 2018 decision, OWCP received additional evidence. 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 evidence for the first time on appeal. *Id.*

⁵ In an August 2, 2017 decision, OWCP denied the claim in OWCP File No. xxxxxx938.

In a June 6, 2017 report, Dr. Kevin L. Smith, a Board-certified orthopedic surgeon, noted that he had been treating appellant for her left shoulder. He related that on May 19, 2017 she was at work when she pulled a door and something caught in her mail delivery vehicle and she had immediate pain and dysfunction in her right arm. Dr. Smith noted that the next day, appellant reinjured her right arm after lifting a tray. He related that she indicated that she felt an immediate sharp pain in her right arm which was “searing” and “[appellant] had to drop the tray.” Dr. Smith indicated that on May 20, 2017 appellant went to emergency room and x-rays revealed right shoulder advanced rotator cuff tear arthropathy, rounding of the greater tuberosity, sclerosis with cystic changes of the glenohumeral joint, high-riding humeral head, and progressive wear of the superior glenoid. He noted that she had longstanding cuff tear arthropathy of the right shoulder and she had exacerbated it recently with an injury at work. Dr. Smith also related that on physical examination range of motion (ROM) of appellant’s right shoulder was limited in all directions with moderate pain at the extremes.

A June 29, 2017 right shoulder gadolinium arthrogram read by Dr. Jim Schumacher, a Board-certified internist, revealed glenohumeral osteoarthritis and a large full thickness rotator cuff tear.

A June 29, 2017 MR arthrogram of the right shoulder read by Dr. Jarrod Durkee, a radiologist, revealed supraspinatus, subscapularis, and biceps tendon tears, circumferential labral tears, adhesive capsulitis, nonvisualization of the anterior inferior glenohumeral ligament, possibly torn, and moderate-to-severe glenohumeral and acromioclavicular joint osteoarthritis.

In a July 11, 2017 report, Dr. Smith noted that appellant had been his patient for at least three years and that he had treated her for a work-related left shoulder injury which required a left total shoulder arthroplasty. He indicated that she had a recent severe injury/exacerbation of her right shoulder while at work on May 19, 2017. Dr. Smith opined that appellant’s work left her with severe right shoulder damage. He advised that she had severe stiffness, weakness, roughness, and grinding, with a very painful and dysfunctional right shoulder. Dr. Smith also noted that appellant’s magnetic resonance imaging (MRI) scan showed a right shoulder massive rotator cuff tear, with diffuse severe degeneration of her shoulder, and he diagnosed right shoulder cuff tear arthropathy and requested authorization for surgery.

In an August 16, 2017 disability certificate, Dr. Smith noted that appellant was seen on that date and that she was excused from work from May 20, 2017, until further notice. He advised that she was being treated for her right shoulder cuff tear arthropathy and due to this condition, she was incapacitated and unable to perform any job tasks.

Dr. Smith, in an August 24, 2017 report, diagnosed right shoulder “cuff tear arthropathy” and explained that essentially, that involved a combination of severe arthritis along with massive rotator cuff pathology caused by cumulative trauma involving repetitive motions with the sorting and movement of letters and packages. He also indicated that the combination of conditions was quite debilitating and painful. Dr. Smith related that appellant had a long history of issues, regarding both of her shoulders, as well as her neck and back to a degree, and on May 19 and 20, 2017 she had a severe increase in issues related to accidents at work. He further explained that a postal worker endured considerable wear and tear on their entire body, particularly the upper extremities. Appellant had worked in that capacity for over 27 years, when she constantly lifted,

pushed, pulled and carried trays of mail and packages weighing up to 70 pounds, which had created an increased biomechanical stress to the tendons of the rotator cuff of the shoulder making it more susceptible to injury, arthritis, cartilage loss and tear.

On October 19, 2017 OWCP accepted the claim for right shoulder arthropathy.

In a disability certificate dated November 1, 2017, Dr. Smith noted that appellant was seen in his office on May 23, June 6, July 11, August 16, and November 1, 2017. He indicated that she should be excused from work beginning May 20, 2017, until further notice. Dr. Smith explained that the severity of appellant's right shoulder arthropathy prevented her from performing her regular carrier duties. He completed a December 1, 2017 work capacity evaluation (Form OWCP-5c) advising that she was unable to work and needed surgery.

A November 1, 2017 duty status report (Form CA-17) from Dr. Smith, indicated that appellant had degeneration of the right shoulder and that clinical findings included a cuff tear and arthropathy. He indicated that she was unable to work. Dr. Smith also provided a November 1, 2017 report noting that appellant's surgery was approved and was being scheduled.

A November 10, 2017 x-ray of appellant's right shoulder read by Dr. Jay S. Pearson, a chiropractor, revealed a complete rotator cuff tear. In a November 21, 2017 report, Dr. Pearson noted that he treated her with massage therapy.

Appellant filed claims for compensation (Form CA-7) for disability from May 20, 2017 to June 22, 2018.

In a February 9, 2018 report, Dr. Smith noted that appellant was scheduled for right shoulder arthroplasty. Postoperative reports dated February 12, 2018, revealed that she underwent a right shoulder cuff tear arthroplasty.

In a development letter dated May 18, 2018, OWCP informed appellant that the documentation received to date was insufficient to establish her claim for wage-loss compensation. It advised her of the type of medical evidence necessary to establish her disability claim and afforded her 30 days to submit the necessary evidence.

On May 25, 2018 OWCP authorized payment of wage-loss compensation on the supplemental rolls as of August 16, 2017 and on the periodic rolls as of May 27, 2018.

OWCP continued to receive medical evidence regarding the status of appellant's right shoulder condition in 2018.

By decision dated June 26, 2018, OWCP denied appellant's claim for compensation for disability from work for the period May 20 to August 5, 2017, finding that the medical evidence

of record was insufficient to establish total disability from work causally related to the accepted employment-related condition.⁶

On August 21, 2018 appellant requested reconsideration and submitted additional evidence.

In a July 11, 2018 report, Dr. Smith noted that appellant had been his patient for some time as he was treating her bilateral shoulders and most recently the right shoulder. He explained that he initially saw her on May 22, 2017 after an x-ray of the right shoulder in the emergency room on May 20, 2017. Dr. Smith advised that his examination revealed considerable degenerative changes as well as suspected soft tissue damage and that he concluded at that time that appellant was unable to perform the essential duties of her position due to her restricted ROM, instability, and immobility. He explained that an MRI scan could not be ordered at that time as she did not have a case number, that the MRI scan was conducted on June 29, 2017 and confirmed the previous objective findings of severe rotator cuff damage and considerable arthritis. Dr. Smith noted that on July 17 and August 16, 2017 appellant continued to decline functionally and was unable to perform any of her essential duties as a letter carrier due to the right shoulder condition of rotator cuff tear arthropathy. He noted that she had right shoulder surgery on February 12, 2018 and that he completed Form CA-17 reports dated July 11 and September 19, 2018, advising that she was unable to work.

By decision dated September 24, 2018, OWCP denied modification of the June 26, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁹ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁰

⁶ OWCP described the “accepted condition(s)” as “other specific arthropathies, not elsewhere classified, right shoulder; unspecified rotator cuff tear or rupture of right shoulder, not specified as traumatic.” The Board also notes that the date August 5, 2017 appears to be a typographical error and August 15, 2017 is the correct date.

⁷ See *supra* note 3.

⁸ *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹¹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹²

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.¹³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁴

ANALYSIS

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

In support of her claims for wage-loss compensation, appellant submitted several reports from Dr. Smith. In a June 6, 2017 report, Dr. Smith related that on May 19, 2017 she was at work when she pulled a door, something caught in her mail delivery vehicle, and she experienced immediate pain and dysfunction in her right arm. He noted that appellant went to emergency room on May 20, 2017 and that x-rays of her right shoulder revealed advanced rotator cuff tear arthropathy. Dr. Smith specifically noted that her ROM of the right shoulder was limited in all directions. In a July 11, 2017 report, he noted that a right shoulder MRI scan showed a massive rotator cuff tear, and diffuse severe degeneration of appellant's shoulder. Dr. Smith diagnosed right shoulder cuff tear arthropathy and requested authorization for surgery. In an August 16, 2017 disability certificate, he indicated that appellant was excused from work as of May 20, 2017, the date she went to the emergency room after the work injury on May 19, 2017. In an August 24, 2017 report, Dr. Smith diagnosed "cuff tear arthropathy" and explained that this condition was a combination of severe arthritis along with massive rotator cuff pathology caused by cumulative trauma involving repetitive motions with the sorting and movement of letters and packages. He also explained that the two together were quite debilitating and painful. Dr. Smith provided a disability certificate also dated November 1, 2017, explaining that appellant was seen in his office on May 23, June 6, July 11, August 16, and November 1, 2017, and that she was excused from work beginning May 20, 2017, until further notice. In a July 11, 2018 report, he noted that he saw

¹¹ *Id.* at § 10.5(f); see *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹² *J.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹³ *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹⁴ *D.P.*, *supra* note 8; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

her on May 22, 2017 after an x-ray in the emergency room on May 20, 2017 that his examination revealed considerable degenerative changes as well as suspected soft tissue damage, and that he concluded at that time that she was unable to perform the essential duties of her position due to her restricted right shoulder ROM, instability, and immobility. Dr. Smith noted that an MRI scan on June 29, 2017 confirmed his previous findings that appellant was unable to perform any of her essential duties as a letter carrier due to her right shoulder arthropathy.

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.¹⁵ While Dr. Smith's reports do not contain sufficient rationale to discharge her burden of proof by the weight of the reliable, substantial, and probative evidence that her claimed disability was caused or aggravated by the accepted employment injury, these reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.¹⁶

The Board, therefore, finds that the case must be remanded for further development of the medical evidence. OWCP shall refer appellant to a specialist in the appropriate field of medicine for a reasoned opinion regarding whether her claimed disability is causally related to the accepted employment injury. If the physician opines that the claimed disability is not causally related to the employment injury, he or she must explain with rationale how or why their opinion differs from that of Dr. Smith. On return of the case record OWCP shall also administratively combine the present claim with OWCP File No. xxxxxx938 with the current claim under OWCP File No. xxxxxx928.¹⁷ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ *J.H.*, Docket No. 18-1637 (issued January 29, 2020). *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ *See T.K.*, Docket No. 20-0150 (issued July 9, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁷ OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between case files. *R.R.*, Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2018 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: January 26, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board