



## ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted December 10, 2015 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 1, 2016 appellant, then a 57-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2015 she sustained a right rotator cuff tear when she slipped and stumbled on a rocky walkway while in the performance of duty. She indicated that the injury occurred when she returned to her long life vehicle (LLV) and that, when her shoulder jerked to break her fall, she felt immediate severe pain. Appellant did not stop work.

In a December 11, 2015 report, Dr. Nagalakshmi Shetty, Board-certified in rheumatology and internal medicine, related that on December 7, 2015 appellant experienced a sudden jerking movement to her right shoulder. This pain resolved with icing the right shoulder. Dr. Shetty further reported that appellant experienced another "jerky jolt" to her right shoulder on December 10, 2015 when, while delivering mail, appellant stumbled on rocks and caught herself from falling. This time the pain was severe. Dr. Shetty diagnosed right shoulder degenerative arthritis, right shoulder pain, and primary osteoarthritis of both first carpometacarpal joints.

In reports dated December 14, 2015 and February 2, 2016, Dr. Rosemarie DeSantis, a Board-certified rheumatologist, noted a history of the December 10, 2015 employment incident and diagnosed primary osteoarthritis of the right shoulder and primary osteoarthritis of the hands. In her February 2, 2016 report, she also diagnosed a tear of the right rotator cuff.

In a February 22, 2016 report, Dr. Nicholas Jarmon, a Board-certified orthopedic surgeon, related that appellant had immediate onset of right shoulder pain while at work on December 10, 2015 when she fell and caught herself. He provided an assessment of full-thickness rotator cuff tear and recommended surgery. Dr. Jarmon indicated that the tear appeared to be acute in nature as there was no significant muscle atrophy and appellant denied a history of prior trauma. In a March 7, 2016 report, he opined that the tear was causally related to her work as it had occurred at work. In a March 11, 2016<sup>4</sup> attending physician's report (Form CA-20), Dr. Jarmon checked a

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<sup>3</sup> Docket No. 18-1209 (issued March 7, 2019).

<sup>4</sup> The date of the report appears to be incorrect as it refers to appellant's rotator cuff repair which took place March 17, 2016.

box marked "Yes," indicating that appellant's status post tear of the supraspinatus repair was causally related to the December 10, 2015 employment incident.

On March 17, 2016 Dr. Jarmon performed a right shoulder arthroscopic labral debridement, biceps tenotomy, and arthroscopic supraspinatus repair. Postsurgical progress reports and duty status reports (Form CA-17) from him were also received.

In a development letter dated May 9, 2016, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional medical evidence needed and afforded her 30 days to respond.

In response, OWCP received appellant's May 26, 2016 statement wherein she reiterated the details of the claimed December 10, 2015 employment incident. It also received additional treatment notes and Form CA-17 reports from Dr. Jarmon.

By decision dated June 15, 2016, OWCP denied appellant's claim, finding that the medical evidence submitted did not contain a comprehensive medical opinion which established that the diagnosed conditions were causally related to the accepted December 10, 2015 employment incident.

On July 12, 2016 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a June 29, 2016 report, Dr. Jarmon noted that on December 10, 2015 appellant was returning to her LLV after delivering parcels when she stumbled on a rocky path and caught her balance with her right arm. Appellant experienced an immediate onset of pain, but continued on her route, relying on her left shoulder. She denied a history of prior injury to the right shoulder. Dr. Jarmon indicated that appellant's February 10, 2016 right shoulder magnetic resonance imaging (MRI) scan revealed a full-thickness tear of the supraspinatus, for which the March 17, 2016 surgery was performed. With regard to medical causality, he opined that the mechanism of injury described by her could cause a full-thickness rotator cuff tear. Dr. Jarmon explained that the timing of appellant's symptoms coincided with the timing of the injury. Also, the fact that there was no significant muscle atrophy appreciable on the MRI scan suggested that it was an acute, not a chronic, tear.

By decision dated December 5, 2016, the hearing representative affirmed the June 15, 2016 decision denying appellant's claim.

On May 23, 2017 appellant, through counsel, requested reconsideration.

Additional reports were submitted to OWCP. In the January 16, 2017 report, Dr. Jarmon related appellant's description of the employment incident. Dr. Jarmon related that as she was walking back to her vehicle she lost her balance and was able to regain her balance by moving her arms around and kind of catching herself in mid-air, without grabbing onto anything, which is when the pain started. He concluded that this was a reasonable mechanism to cause a full-thickness cuff tear. In the February 16, 2017 report, Dr. Jarmon related that, when appellant moved her arms around to regain her balance, the movement caused or increased sudden stress at the tendon-bone interface of the rotator cuff attachment. He further concluded that, if enough force was seen at

that interface, it could potentially cause a tear based on the strength of the contracture of the rotator cuff. In the March 27, 2017 report, Dr. Jarmon continued to opine that the injury was related to the mechanism of injury appellant described.

By decision dated February 16, 2018, OWCP denied modification of its December 5, 2016 decision.

On May 29, 2018 appellant, through counsel, filed a timely appeal with the Board. By decision dated March 7, 2019,<sup>5</sup> the Board affirmed OWCP's February 16, 2018 decision, finding that she had not met her burden of proof to establish her claim. The Board found that there was no rationalized medical evidence of record to support that the right rotator cuff tear was causally related to the accepted December 10, 2015 employment incident. The Board noted that Dr. Jarmon had generally supported causal relationship between the accepted December 10, 2015 employment incident and appellant's rotator cuff tear, however, his opinion was couched in speculative terms.

On March 9, 2020 appellant, through counsel, requested reconsideration on an appeal request form dated March 2, 2020. Counsel indicated that reconsideration was based on relevant new evidence consisting of a May 20, 2019 report by a Dr. Arthur Becan, a Board-certified orthopedic surgeon, and an October 9, 2019 report by Dr. David Weiss, an osteopath Board-certified in orthopedic surgery.

In a May 20, 2019 report, Dr. Weiss opined that appellant reached maximum medical improvement on May 20, 2018 and that she had seven percent permanent impairment of the right upper extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).<sup>6</sup> He noted the history of the December 10, 2015 employment incident and his review of her medical records. Dr. Weiss noted that, prior to this injury, appellant denied any right shoulder pain or any restrictions in her activities of daily living. With regard to causation, he opined that that the cause of her disability was the work-related injury of December 10, 2015.

In an October 9, 2019 report, Dr. Weiss again noted the history of the December 10, 2015 employment injury and his review of appellant's medical records. He reported that her past medical history was unremarkable with no previous right shoulder injury. Dr. Weiss noted that medical literature indicated that the pathophysiology of shoulder tendinopathy, impingement, and rotator cuff tears was multifactorial with both patient and work-related factors acting concomitantly to reproduce shoulder tendinopathy. He also noted that such medical literature also revealed that awkward postures revealed strong evidence in terms of occupational risk factors for shoulder tendinopathy and rotator cuff tears. Based on the history provided, Dr. Weiss concluded that the jerking of appellant's right shoulder due to the trip caused the shoulder to be placed in an awkward position which led to the rotator cuff tear and labral injury. He further opined that the

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

claimed December 10, 2015 injury also aggravated the preexisting quiescent osteoarthritis of the right shoulder.

By decision dated March 12, 2020, OWCP found that the March 2, 2020 reconsideration request, which OWCP received on March 9, 2020, was untimely filed and failed to demonstrate clear evidence of error.

On April 2, 2020 appellant, through counsel, requested that OWCP set aside OWCP's March 12, 2020 decision on procedural grounds as the reconsideration request was timely filed.

In a May 26, 2020 letter, OWCP advised that appellant's March 2, 2020 reconsideration request, which was received on March 9, 2020, was in fact timely filed. It found that because the one-year period for filing reconsideration of the March 7, 2020 decision had expired on March 8, 2020, a Sunday, she had until March 9, 2020 to timely request reconsideration. Thus, OWCP indicated that OWCP would proceed with a merit review of the case.

By decision dated June 2, 2020, OWCP denied modification of the March 7, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> 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, 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>8</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.

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>9</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete and accurate factual and medical background, must be

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *C.K.*, Docket No. 18-1286 (issued April 20, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</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>10</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).

one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.<sup>11</sup>

In any case where 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted December 10, 2015 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's February 16, 2018 merit decision. The Board considered that evidence in its March 7, 2019 decision and found that it was insufficient to establish a right rotator cuff tear causally related to the accepted December 10, 2015 employment incident. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>13</sup>

With appellant's March 2, 2020 reconsideration request, OWCP received two reports from Dr. Weiss dated May 20 and October 9, 2019 in which he described her right shoulder condition and treatment. In both reports, Dr. Weiss noted an unremarkable medical history with no prior right shoulder injuries. However, the record reflects that appellant had an earlier incident on December 7, 2015 when she experienced a sudden jerking movement to her right shoulder which caused pain, which reflects that she had a preexisting right shoulder condition. Thus, Dr. Weiss' opinions on causation are of diminished probative value as they are not based on a complete and accurate factual and medical history.<sup>14</sup> Additionally, as noted above, in any case where 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 medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>15</sup>

While Dr. Weiss offered an explanation, in his October 9, 2019 report, that the jerking motion of the right shoulder on December 10, 2015 due to tripping caused the shoulder to be placed in an awkward position which led to the rotator cuff tear and an aggravation of the right shoulder osteoarthritis, he did not specifically differentiate between appellant's preexisting condition and

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<sup>11</sup> *R.G.*, *supra* note 8.

<sup>12</sup> *P.L.*, Docket No. 19-1750 (issued March 26, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see Charles W. Downey*, 54 ECAB 421 (2003).

<sup>13</sup> *J.S.*, Docket No. 19-0022 (issued November 4, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>14</sup> *See J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>15</sup> *Supra* note 12.

the effects of the accepted December 10, 2015 employment incident, or explain how her the accepted December 10, 2015 employment incident aggravated her preexisting condition.<sup>16</sup> Thus, his reports are of limited probative value and are insufficient to establish causal relationship.<sup>17</sup>

The Board finds that these additional reports from Dr. Weiss described the mechanism of the employment incident, but did not provide a rationalized medical explanation as to how the awkward placement of appellant's shoulder physiologically caused a right shoulder rotator cuff tear, given the history of her prior injury and preexisting right shoulder conditions. To be of probative medical value, a medical opinion must explain how, physiologically, the mechanism of injury was sufficient to have caused or contributed to the diagnosed conditions.<sup>18</sup> As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship, the Board finds that she has not met her burden of proof.<sup>19</sup>

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 a right shoulder condition causally related to the accepted December 10, 2015 employment incident.

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<sup>16</sup> See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> *K.D.*, Docket No. 19-1405 (issued April 9, 2020); *A.W.*, Docket No. 19-0327 (issued July 19, 2019).

<sup>19</sup> *C.K.*, *supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 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