

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

S.W., Appellant)	
)	
and)	Docket No. 21-0393
)	Issued: October 14, 2021
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER/FACILITY, Knoxville, TN, Employer)	
)	

Appearances:
Appellant, pro se
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 January 26, 2021 appellant filed a timely appeal from a December 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 1, 2020 decision, appellant submitted 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted August 5, 2020 employment incident.

FACTUAL HISTORY

On August 6, 2020 appellant, then a 44-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 5, 2020 she injured her shoulder when a bad wheel on a general postal container (GPC) caused her to pull a muscle in her shoulder while in the performance of duty. She did not stop work. In a statement which accompanied the claim form, appellant indicated that she injured her right shoulder when she tried to push a GPC, which had a stiff wheel, across the aisle.

In an August 6, 2020 report, Carrie Neal, an advanced practice nurse, noted that appellant had been experiencing pain in her right shoulder after pushing a GPC the day before. On review of an x-ray scan of her right shoulder, she observed no evidence of a fracture, dislocation, or a destructive lesion and diagnosed a right shoulder strain.

On August 8, 2020 the employing establishment offered appellant a modified assignment, which required scanning mail for seven hours per day.

In an August 13, 2020 medical report, Dr. James Howell, Board-certified in family medicine, evaluated appellant for a right shoulder injury. Appellant informed him that she was pushing a GPC and felt a pain in her right shoulder. Dr. Howell diagnosed a right shoulder strain and recommended physical therapy. In a September 3, 2020 medical report, he noted appellant's physical therapy treatment for her right shoulder strain and recommended that she undergo a magnetic resonance imaging (MRI) scan for further evaluation.

In a September 10, 2020 diagnostic report, Dr. Phillip Clark, a Board-certified diagnostic radiologist, performed an MRI scan of appellant's right upper extremity, finding moderate rotator cuff tendinosis with low-grade partial-thickness tearing and mild subacromial subdeltoid bursitis. In a medical report of even date, Dr. Howell reviewed the MRI scan of appellant's right shoulder and diagnosed a right shoulder strain, a tear of the right supraspinatus tendon and a tear of the right infraspinatus tendon.

Appellant also submitted physical therapy reports dated August 25 to October 1, 2020 in which she was evaluated and treated for her diagnosis of a strain of an unspecified muscle, fascia and tendon at shoulder and upper arm level, right arm. She reported that she was pushing a cart at work when the wheel bounded and slowed the cart down, causing her to experience pain in the right shoulder.

In an October 26, 2020 development letter, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It requested that she submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the alleged incident caused or aggravated her medical condition. OWCP afforded appellant 30 days to respond.

Appellant submitted additional physical therapy reports dated from October 6 to 9, 2020.

In a September 25, 2020 medical report, Dr. Justin Kennon, a Board-certified orthopedic surgeon, evaluated appellant for pain in her right shoulder and arm. He observed that on August 5, 2020 she was pushing a heavy cart and later felt significant discomfort in the anterior and posterior aspect of her shoulder with radiating pain down her right arm and fingers. On examination and review of her diagnostic studies, Dr. Kennon diagnosed cervical radiculopathy.

In an October 28, 2020 medical report, Dr. Colin Booth, a Board-certified orthopedic surgeon, evaluated appellant for neck pain radiating into the anterior radial aspect of the right arm that she experienced after pushing a heavy object at work in August. On examination, he diagnosed bilateral C6 radiculopathy right greater than left.

By decision dated December 1, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence from a qualifying physician containing a diagnosis in connection with her claimed injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q)

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 accepted employment incident 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 the specific employment incident.¹⁰

ANALYSIS

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

Dr. Howell, in his August 13 and September 10, 2020 medical reports, indicated that appellant experienced pain in her right shoulder after pushing a GPC at work. On examination and review of an MRI scan of her right shoulder, he diagnosed a right shoulder strain, a tear of the right supraspinatus tendon and a tear of the right infraspinatus tendon. Additionally, Drs. Kennon and Booth examined appellant and diagnosed cervical radiculopathy after she reported sustaining a right upper extremity injury in August 2020 as a result of pushing a heavy cart at work. Therefore, the Board finds that the evidence of record establishes a diagnosed medical condition in connection to the accepted August 5, 2020 employment incident.

As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition. The Board further finds, however, that the case is not in posture for decision with regard to causal relationship.

⁸ *T.H.*, 59 ECAB 388,393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

¹⁰ *Id.*; *Victor J. Woodhams*, 41 ECAB 345,352 (1989).

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2020 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 14, 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